

Domestic Violence 101

**A User-friendly Manual
on Domestic Violence
for Police and Prosecutors**

4th Edition

PREPARATION AND PRINTING OF THIS DOCUMENT
FINANCED BY THE U.S. BUREAU OF JUSTICE ASSISTANCE
AND UTAH OFFICE OF CRIME VICTIMS REPARATIONS
GRANT NUMBER 02-VAWA-34

*I am only one, but I am one. I cannot do everything, but I can
do something. And I will not let what I cannot do interfere
with what I can do.*

Edward Everett Hale

Domestic Violence 101

4th Edition

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With special appreciation to Tracey Tabet

Do all the good you can,
by all the means you can,
in all the ways you can,
in all the places you can,
at all the times you can,
to all the people you can,
as long as ever you can.

John Wesley

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Introduction to DV 101

Consider this:

Each year, it is estimated that over 40,000 Utah women are physically abused by an intimate partner; 194,000 women are subjected to emotional abuse. Consider the fact that 160,000 Utah children live in homes where their parents hurt each other. Fifty percent of the children will also become victims of physical abuse--100% of these children suffer abuse from the trauma of witnessing violence in their homes. These statistics came as a result of the survey commissioned by the Governor's commission on Women and Families in 1997.

Intimate partner violence continues to affect women more than men. According to the Bureau of Justice Statistics *Intimate Partner Violence 1993-2001 Report February, 2003 NCJ 197838*, in 2000, 1247 women and 440 men were killed by an intimate partner; in recent years an intimate killed 33% of female murder victims and 4% of male murder victims. In 2001, according to estimates from the National Crime Victimization Survey, there were 691,710 nonfatal violent victimizations committed by an intimate partner; about 85% of the victimizations by intimate partners were against women. Intimate partner violence made up 20% of violent crime against women in 2001, only 3% of all nonfatal violence against men.

In a report published August 2001 by the Utah Intimate Partner Violence Death Review Team, a study of intimate partner homicides of 64 women in Utah from 1994-1999 revealed the following: while the women and their killers were from different social and ethnic groups, economic levels and age groups, the average age of the victim and perpetrator was mid-thirties; the majority of the victims and perpetrators were white (75%); average length of relationship was less than 5 years (over 50%); over 50% of the victims were in the process of separating or had separated; there was a prior police response in 39% of the cases; firearms were used in 54.7% of the homicides; children witnessed or were present in 31.3% of the homicides; 46.9% of the perpetrators tested positive for either alcohol or drugs at time of homicide; only 14.1% of victims had a protective order at time of the homicide; 55.6% of the victims had reported PO violations prior to homicides; 68.8% of perpetrators had violent offense police records with 27.1% of them having had a prior dv record.

The goal of the Utah Prosecution Council, who funded through VAWA grant monies the 1st Edition back in 1996, was to design a user-friendly basic domestic violence manual that would provide prosecutors and other related professionals with a better understanding of the dynamics, laws, and other complicated issues in and surrounding the domestic violence cases. We are now in the 4th edition of DV 101 and continue keeping that original goal in mind. The laws cited in this edition include those passed in the 2003 general session of the Utah Legislature. We are all in the business of fighting crime. One of the best ways to eliminate crime and violence in our society is to first eliminate the violence in our homes. We need to:

STOP THE VIOLENCE

HELP THE VICTIM

HOLD THE PERPETRATOR ACCOUNTABLE

Dynamics of Domestic Violence



Dynamics of Domestic Violence

- Anger is a natural emotion
- How you deal with anger is a choice, not an excuse
- Violence is learned behavior
 - Parental model
 - Family violence
 - Pattern of chosen behavior and passed on to next generation
 - It can be “unlearned”
- Perpetrators CHOOSE
 - When and where violence will take place
 - At home and not workplace
 - Against whom
 - They won’t use violence against other males such as their boss, employer, co-worker, bartender, etc. but will use against partner and children
 - How much violence to use
- It only gets worse without intervention
- Likely escalation in frequency and lethality

Fact Situation

- 911 call
- officers rush to the site of a domestic disturbance
- sobbing victim holds ice pack to her swollen face and claims her husband struck her during an argument
- officer asks offender’s account
- replies that a disagreement had “gotten out of hand” but everything is fine now
- officers arrest the offender and call for a unit to transport him to a holding center
- officer photographs the victim’s injuries and obtains a written statement from her
- other department personnel arrive and provide the victim with the telephone number of a local shelter and with information on securing a protective order against her husband
- also suggest the victim have a doctor examine her injuries
- three days after the assault, the victim calls the station to inform one of the arresting officers she wishes to drop the assault charge
- she tells the officer the dispute had been her fault and that her husband was merely defending himself when he struck her
- police are frustrated, confused, and fed up
- prosecutor is willing to press charges and prosecute
- victim lies, won’t testify, or refuses to show up in court
- prosecutor worries about what the jury will think
- police and prosecutors may adopt the attitude:
 - **If the victim doesn’t care, neither do I**

Questions

- Why do we keep going back to the same house over and over again?
- Why does the victim ask for charges to be dismissed?
- Why does she stay?
- Why do they keep fighting?

Result

- Frustration
- Anger toward the victim
- Anxiety over doing their job

Solution

- **Understand the dynamics of domestic violence**
- **Investigate the case properly at the outset, gathering all types of evidence, anticipating that no victim will be available to testify at trial; prosecute the case without the victim because you have the evidence**
- **Enforce Utah's domestic violence laws**

Response by Prosecutors and Law Enforcement

- Change our attitude about domestic violence crimes
- Domestic violence is a crime
 - not a civil or family matter
- Utilize the mandatory arrest statutes and the "no-drop" prosecution philosophy
- Do the kind of investigation that will allow prosecution to proceed without victim's testimony
- Take the responsibility of prosecution away from the victim
- Meet the needs of the victim and the children
 - advocate support
 - counseling
 - shelter
 - medical attention
- Work as a community to ensure that courts have domestic violence treatment providers
 - mandate perpetrator counseling

Cycle of Violence

Three phases of violence

Tension-Building Phase

- little things agitate, irritate
 - drinking
 - messy house
 - kind or timing of meals
 - can be anything
- victim and children are **walking on eggshells**

Violent Episode Phase

- ranges from yelling to homicide
- continuum of violence
 - ranges from non-violence to most extreme violence



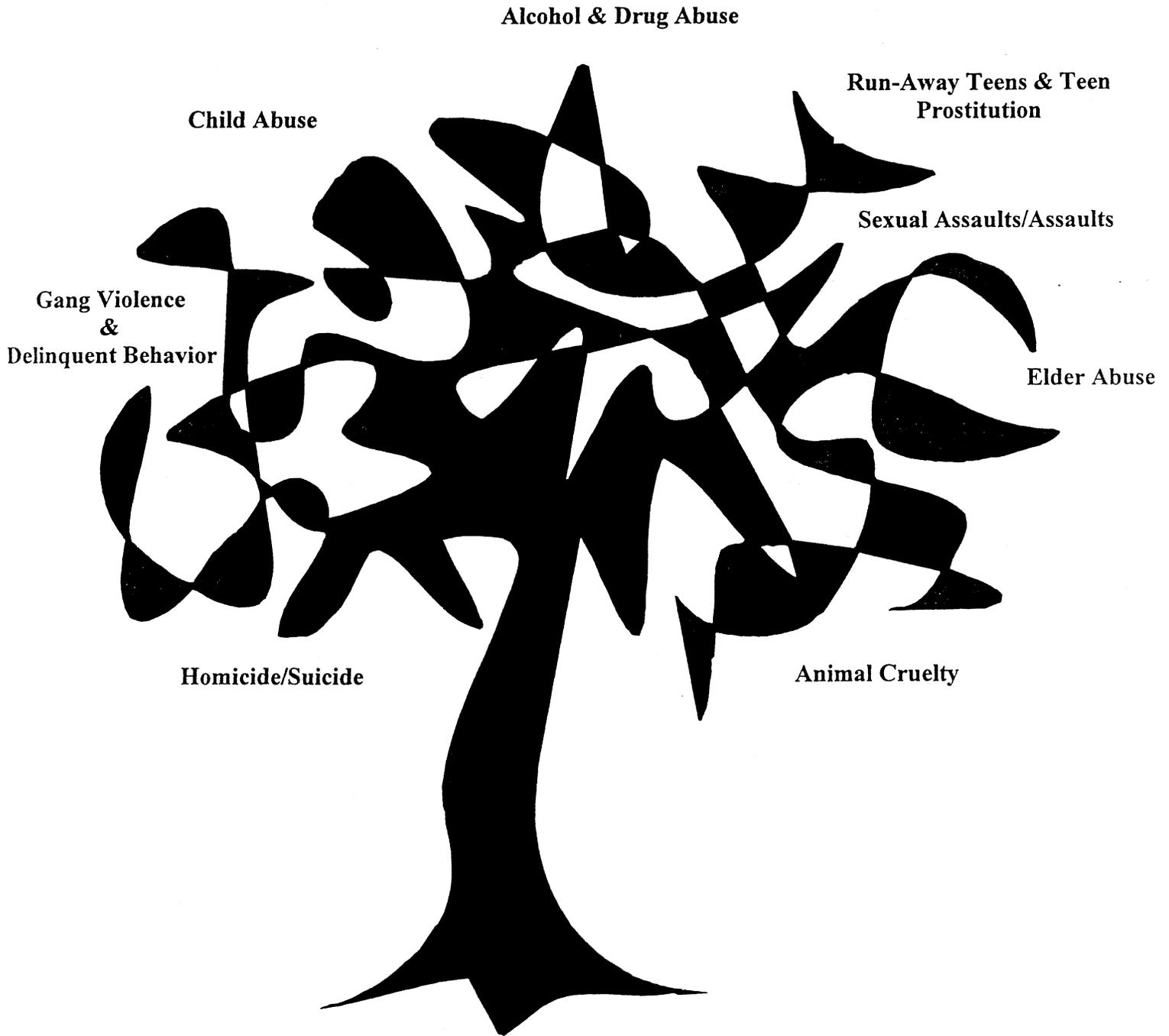
- sometimes victim provokes
 - attempt to control timing of violent episode
 - get through the acute attack so she can get to the honeymoon phase

Honeymoon Phase

- defendant brings victim a bouquet of flowers, and a promise that "nothing like this will ever happen again"
- remorseful
- penitent
- reconciliation
- manipulation

Cycle of violence is learned behavior—and growing up in a violent home is learning to live in a combat zone

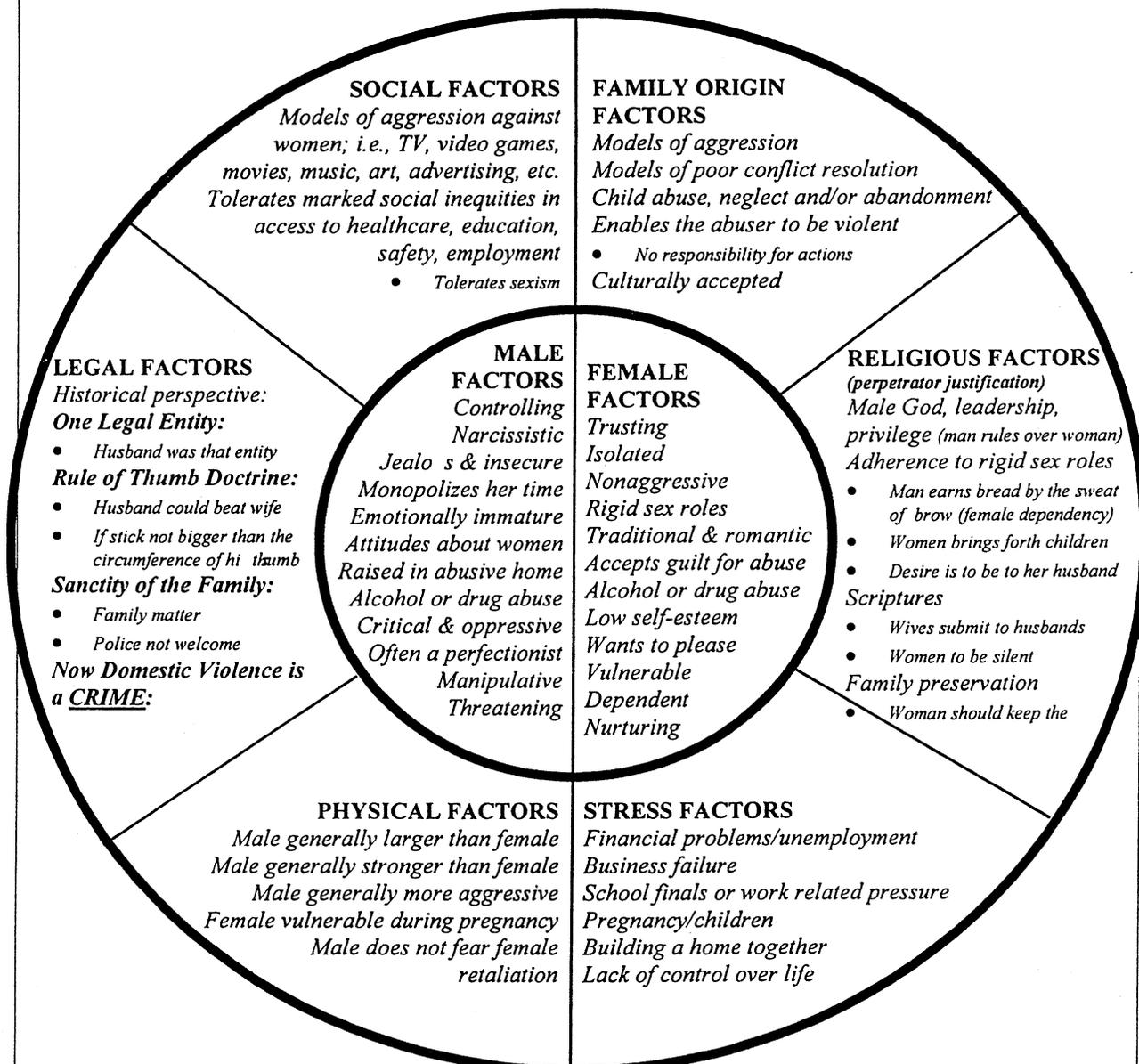
FAMILY TREE OF DOMESTIC VIOLENCE



DOMESTIC VIOLENCE

INTERNAL & EXTERNAL FACTORS CONTRIBUTING TO DOMESTIC VIOLENCE

(90-96% of the abusers are male—male factors are profile of the abuser. Internal & external factors combine to contribute to the problem of domestic violence. Institutions have tolerated, condoned, ignored and justified violence against women)



(Note on religious factors—in the healthy relationship, there is absolutely nothing wrong with these beliefs)
(Female factors: profile of the abused not as readily apparent; they come from all types of family background, social-economic status, educational level, religion, race and culture)

Contributing Factors

Family Origin Factors

- parents
 - models of aggression
 - models of poor conflict resolution
- family violence
 - child abuse
 - witnessing the abuse of a parent
 - neglect
 - abuse (*physical, sexual*)
 - abandonment
 - family enables or allows abuser to be violent
 - no responsibility for actions by abuser or by the family
- claim that it is culturally accepted

Social Factors

- models of aggression against women--(*slowly, women are becoming more aggressive-- however, the majority of the time, it is still male against female*)
 - TV
 - movies
 - video games
 - music
 - art
 - advertising
 - pornography

Legal Factors

- Historical perspective
 - **One Legal Entity Doctrine**
 - husband was the one legal entity recognized by law
 - must have consent of husband to act legally
 - personal property became her husband's
 - if she committed a crime
 - assumed he forced her to do it
 - he was entitled to her earnings
 - at common law considered one person
H. Clark, *The Law of Domestic Relations in the United States*, § 8.1, p. 498 (Practitioner's Ed. 2d ed. 1987).
- **Rule of Thumb Doctrine**
 - husband could beat wife so long as:
 - "rod not thicker than his thumb,"
 - **or** a stick that was not too thick to pass through a wedding ring! United States Commission of Civil Rights, *Under Rule of Thumb: Battered Women and the Administration of Justice 2* (January 1982)

- **STATE V. BLACK**

Supreme Court of North Carolina
60 N.C. 274 (1 Winst. 266) (1864)

- *A husband cannot be convicted of battery on his wife, unless he inflicts a permanent injury, or uses such excessive violence or cruelty, as indicates malignity or vindictiveness: and it makes no difference that the husband and wife are living separate by agreement.*

- **Sanctity of the Family**

- right to privacy
- family matter
- police not welcome behind closed doors

Religious Factors

- Historically, wife considered property of her husband
 - not surprising to find religious and legal approval
 - of his use of physical force against her
- **Rules of Marriage**, Friar Cherubino of Siena, 1475
 - *When you see your wife commit an offense, don't rush at her with insults and violent blows. . . . Scold her sharply and terrify her. And if this still doesn't work . . . take up a stick and beat her soundly, for it is better to punish the body and correct the soul than to damage the soul and spare the body. . . . Then readily beat her, not in rage but out of charity and concern for her soul, so that the beating will redound to your merit and her good.* Quoted in T. Davidson, *Conjugal Crime*, 99 (1978).
- Scriptures **do not** condone use of violence, but do encourage principles that can contribute to domestic violence if misconstrued
 - justification by abuser
 - God punishes
 - God is male
 - man made in the image of God
 - man punishes
 - woman made for the man, not man for the woman
 - *New Testament*
 - male privilege
 - husband is to rule over her--head of household
 - wife to submit to husband--desire to be to her husband
 - male leadership
 - women to be silent in church--attitude extended to society and home
 - adherence to rigid sex roles
 - man earns bread--provides for the family
 - woman brings forth children
 - family preservation
 - woman should keep the family together

Physical Factors

- **men abuse because they can**

- basic biological factors contributing to domestic violence
 - men are generally
 - taller
 - larger
 - weigh more
 - stronger
 - more aggressive
 - will resort to physical confrontation to resolve differences
 - familiar with physical combat situations
 - generally do not fear female retaliation
 - females have more physical challenges than men do
 - vulnerability during pregnancy; women at higher risk for abuse
 - physically disabling
 - female approach to aggression, generally, is expressive--verbal
 - accumulated frustration about intolerable situations, or to discharge built-up tension

Stress Factors

- people are less tolerant during stressful situations
 - not as understanding or loving
 - reaction to irritation higher during
 - school finals
 - unemployment
 - financial difficulty
 - pregnancy
 - problems with children
- however, many men and women who are under incredible pressure still don't resort to violence

Substance Abuse Factors

- doesn't "cause" the violence, but simply lowers the person's inhibitions

Mental Health Issues

DOMESTIC VIOLENCE CRIMES ARE ABOUT

- | |
|---|
| <ul style="list-style-type: none">• power• control• domination• fear |
|---|

Continuum of Force

manipulation→threat→pushing→hitting→slapping→kicking→breaking→choking→killing

- **most dangerous time for a victim is when the victim is leaving**
 - abuser is losing power & control
 - many victims are killed after they seek a protective order
 - victim is gaining some control over own life
 - the law is involved; a judge is now in control
- once to the end of the continuum
 - common statements
 - I will kill you if you leave
 - If I can't have you, nobody can.
 - I will kill you and then myself
- as victim fights to get control
 - victim may start to fight back
 - cycle escalates
 - victim may have the feeling, that " it is the abuser or me"
 - out of frustration in an intolerable situation victim may kill abuser to be free

Why Victims Stay

- Suffering from Battered Spouse Syndrome/Post Traumatic Stress Disorder
- Caught up in Cycle of Violence
- Learned Helplessness theory/Survivor theory (they become passive and do what it takes to survive)
- "Stockholm Syndrome" (victim starts identifying with abuser as the only one who can protect and the only one who cares for the victim)
- Survival (fear of being killed)
 - 75% higher risk of serious bodily injury or death when victim leaves
- Knows abuse will not stop even if she leaves
- Threats of harm to children, victim or suicide threats
- Victim has high tolerance for abuse due to childhood (including witnessing domestic violence of parents)
- Lacks job skills, financial resources or cannot realize life without batterer
- Religious beliefs
- Self blame, guilt, shame of failed marriage
- Belief that children need to be with father
- Physical injuries or condition prevent leaving
- Batterer's control analysis
 - Physical and sexual violence, isolation, emotional abuse, intimidation, threats and coercion, economic deprivation, lesser status, manipulation using kids, blame, denial, minimization of abuse.
 - Impact on criminal justice system
 - Emotional abuse→loss of self confidence in victim→victim's inability to make decision about going forward with case.
 - Isolation→victim losing ability to communicate and/or have interpersonal relationships→ victim's inability to communicate with police/prosecutors.

- Using children→makes victim cautious and unable to function in family setting questioning ability to be parent→victim questions everything; weighs how decision will affect kids in custody or divorce case.
- Threats/coercion→fear and paranoia in victim→victim trusts no one.
- Financial abuse→dependence of victim and kids on abuser→victim will not go forward with prosecution or minimizes or excuses the conduct because of loss of financial support.
- Sexual abuse→causes low self esteem and shame in victim→victim not telling police or prosecutor all of the facts
- "Love" for the abuser; just wants the violence to stop

Intimate Partner Homicide in Utah 1994-1999 (Study of 64 femicides)

- Average age of victim: 34.5
Range was 15-79 years of age
- Race: white (75%)
Hispanic: 18.8%; Black: 4.7%; Asian: 1.5%
- Average age of perpetrator: 37
Range was 17-79 years of age
- Race: white (67.2%)
Hispanic: 20.3%; Black: 4.7%; Asian: 1.5%
- Relationship of perp to victim
Husband: 49.9%; Boyfriend: 35.9%; "Ex:" 17.25%
- Length of relationship
Over 50% less than 5 years
- Over 50% in process of separating or had separated
- Prior police response in 39% of the cases
- Firearms used in 54.7% of the homicides (77% of those used handguns)
Stabbing, strangulation, poisoning/drugs, beating, drowning, other methods
- Children witnessed, were present, or found the body in 34.3% of the homicides
- Victim employed: 47%
- Perpetrator employed: 52%
- 46.9% of perps positive for either alcohol or drugs at time of homicide
- Only 14.1 % of victims had PO at time of homicide
55.6% had reported PO violation prior to homicide
- 68.6% of perps had violent offense police records
27.1% had prior dv record
- 29.1% of perps had prior DCFS contact
As perp or victim or both
- 27% of victims had prior DCFS contact
As perp or victim or both

Statistics

Domestic Violence Homicides in Utah

- 2000: 8 out of 43 homicides were DV
(2001 Crime in Utah report by Dept of Public Safety;
see website: <http://bci.utah.gov/Stats/StatsHome.html>)
- 2001: 16 out of 69 homicides were DV; 5 additional homicides were DV related
(per Utah Domestic Violence Council)
- 2002: estimated 13

Protective Orders FY 2002 (per Administrative Office of the Courts)

	filed by district	disposed of
• 1 st	326	290
• 2 nd	1450	1519
• 3 rd	2274	2227
• 4 th	901	887
• 5 th	497	441
• 6 th	169	177
• 7 th	264	283
• 8 th	224	227
	6105	6051

Stalking Injunctions FY 2002 (per Administrative Office of the Courts)

	filed by district	disposed of
• 1 st	41	9
• 2 nd	78	60
• 3 rd	123	45
• 4 th	123	81
• 5 th	47	35
• 6 th	9	8
• 7 th	11	10
• 8 th	14	11
	446	259

Criminal DV Cases FY 2002

- 10,613 cases filed
(estimated by the OJP Collaborative Project, director Linda Robinson; based upon statewide court filings in District Court provided by the Administrative Office of the Courts)

**2003 Shedding Light Crime Victimization Survey
(Utah Commission on Criminal and Juvenile Justice)**

(A representative sample of more than 2,000 Utahns participated in survey covering January-December 2002)

- Domestic abuse was reported by 2.6% of the respondents. Surprisingly, there were no differences found between males and females, or rural and urban areas. There also were no statistically significant gender differences found in reporting. An alarming 65.2% of the victims were abused on two or more separate occasions, with 11.5% having been abused on 10 or more occasions.
- A disturbing percentage of the victims (74.5%) did not report one or more of the incidents to police. Nearly the same percentage of victims (75.3%) failed to report incidents of domestic abuse in 2000.
- 42.4% believed domestic violence was responsible for Utah's crime problems, up from 39.2% in 2000.
- Stalking behavior was reported by respondents. 6.5% reported unsolicited phone calls; 5.5% reported following/spying (up from 5% in 2000); 2.8% reported standing outside home/work (down from 3.3% in 2000); 2.4% reported showing up where the victim was; 2% reported communication against their will; 1.9% reported unsolicited letters; and .9% reported unwanted items being left for them.
- With stalking behavior, the only significant difference found between urban and rural areas was with individuals standing outside of victims' homes or work, with urban dwellers being more likely to have this occur. Additionally, females were more likely to be followed or spied on and to have someone standing outside their work or residence.

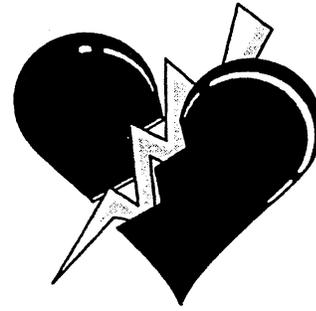
DOMESTIC VIOLENCE IS NOT ABOUT ANGER OUT OF CONTROL--IT IS ABOUT USING ANGER TO GET POWER & CONTROL

VICTIMS *MAY* STAY OR LEAVE AN ABUSIVE RELATIONSHIP FOR THE SAME REASON--THEY WANT TO LIVE--THEY ARE SURVIVORS.

THESE ARE NOT CRIMES OF PASSION, ONLY CRIMES OF POSSESSION!

Gloria Steinem

VIOLENCE



USE VIOLENCE TO CONTROL ANOTHER

- thoughts
- works
- actions
- feelings

MAY BE A REACTION TO PHYSICAL OR SEXUAL VIOLENCE

- self defense = legal
- retaliatory violence = illegal

VIOLENCE RARELY USED TO EXCLUSION OF OTHER CONTROLLING OR COERCIVE TACTICS

- abusive behavior can be a system of behaviors used to achieve desired outcome or to obtain control over another

USE IS INTENTIONAL

- in many cases it is automatic

THESE BEHAVIORS OR TACTICS ARE “LEARNED”

- culturally
- socially
- in family origin—parental role models—many abused as children
- **not an excuse—offenders can choose how they behave**

BLAME VICTIM FOR THEIR PROBLEMS & FOR VIOLENT INCIDENT

- justify
- minimize
- or deny abusive behavior

JUDICIAL INTERVENTION CAN BE CATALYST FOR CHANGE

- can impose penalties for NOT CHANGING

DEFENDANT’S CHANGE—NOT DEPENDENT UPON VICTIM

- is a choice not to use violence or coercion

Law Enforcement



Law Enforcement

Arrival at the Scene

Duties of law enforcement officers--Notice to victims (§77-36-2.1)

A law enforcement officer who responds to an allegation of **domestic violence**

- **Domestic violence means** (§77-36-1 (2))
 - any criminal offense involving
 - violence
 - physical harm
 - **threat** of violence or physical harm
 - any attempt, conspiracy, or solicitation to commit a criminal offense involving
 - violence or physical harm
 - when committed by one **cohabitant** against another

- **Domestic violence also means commission or attempt to commit** any of the following offenses by one cohabitant against another (§77-36-1):
 - aggravated assault
 - assault
 - criminal homicide
 - harassment
 - telephone harassment
 - kidnaping, child kidnaping, or aggravated kidnaping
 - mayhem (*mutilation of a body part*)
 - sexual offenses
 - unlawful sexual intercourse
 - rape
 - object rape
 - sodomy--forcible sodomy
 - forcible sexual abuse
 - aggravated sexual assault
 - sexual exploitation of a minor
 - stalking
 - unlawful detention
 - violation of a protective order (§76-5-108 and §77-36-2.4)
 - offenses against property (*specifically interruption of a communication device, arson, agg. arson, reckless burning, causing a catastrophe, criminal mischief, burglary, agg. burglary, vehicle burglary, possession of burglary tools, criminal trespass, robbery, agg. robbery, etc.*)
 - **THEFT IS NOT A DOMESTIC VIOLENCE OFFENSE**
 - possession of a deadly weapon with intent to assault

- discharge of a firearm from a vehicle, near a highway, or in the direction of any person, building, or vehicle
 - disorderly conduct if conviction result of plea negotiation from an original DV offense
 - child witnessing DV child abuse
 - any other criminal offense involving violence or physical harm (*ie. threat against life or property, vulnerable adult abuse, witness tampering, etc.*)
-
- **Cohabitant means** (§30-6-1)
 - emancipated minor (§15-2-1)
 - < 18 years of age
 - **and** married
 - **or** a person who is 16 years of age or older and who:
 - is or was a **spouse** of the other party (*separated, divorced*)
 - is or was **living as if a spouse** of the other party (*common law marriage, cohabitant*)
 - is **related by blood or marriage** to the other party (*relative, in-law, elder parent*)
 - has **one or more children in common** with the other party; or
 - resides or has **resided in the same residence** as the other party (*roommates, same sex relationships*)
 - is the **biological parent** of the other's unborn child
 - **does not include the relationship of natural parent, adoptive parent, or step-parent to a minor or the relationship of minor siblings to each other**
-
- **shall** use all reasonable means to protect the victim and prevent further abuse
 - **provide for the victim's safety**
 - **confiscate weapons**
 - assist in obtaining emergency **housing or shelter**
 - **provide protection** while he or she removes personal effects
 - assist in obtaining **medical treatment**
 - provide victim with **notice** of rights, remedies, and services
-
- give **written notice** of rights and remedies that includes:
 - protective orders available from district court clerk's office and juvenile court clerk's office (adult and child POs)
 - list of shelters, services, and resources together with telephone numbers
 - information about criminal protective orders (no contact orders)

Statewide domestic violence network--Peace officer duties--Prevention of abuse in absence of order--Limitation of liability (§30-6-8)

- Law enforcement, Public Safety, and Administrative Office of the Courts
 - shall ensure that peace officers at the scene of an alleged violation of a protective order:
 - have **immediate access** to information necessary to verify the existence and terms of that order, and other orders of the court
 - officers shall use every reasonable means to **enforce the court's order**
- If officer has reason to believe
 - a cohabitant or child of a cohabitant is being abused **or**
 - that there is a **substantial likelihood of immediate danger** of abuse
 - although no protective order has been issued
 - that officer shall **use all reasonable means** to prevent the abuse, including
 - **remaining on the scene** as long as there is danger of abuse
 - obtaining emergency **housing or shelter care**
 - explaining to the victim his or her **rights**
 - encouraging and assisting the victim to complete a written **statement describing incident**
 - **arresting** and taking into physical custody the abuser
- No criminal or civil liability as long as person acted in **good faith and without malice**

Six Most Common Areas of Officer Liability

- Failure to take proper actions to protect a citizen
- Failure to appropriately enforce a court order protecting a victim of domestic abuse
- Failure to respond at all or in a timely manner
- Failure to provide information to a victim as required by law
- Arresting a citizen without establishing probable cause
- Exhibiting a pattern of differential treatment or application of the law to domestic violence cases

Officer Immunity §77-36-8

A peace officer may not be held liable in any civil action brought by a party to an incident of domestic violence for making or failing to make an arrest, issuing or failing to issue a citation, for enforcing in **good faith** an order of the court or for acting or omitting to act in any other way in good faith under the Cohabitant Abuse Procedures Act, in situation arising from an alleged incident of domestic violence is immune from civil liability that might result from the officer's action.

Note: Officer may still have liability under federal law for violation of constitutional rights while acting under color of law. See 42 U.S.C. 1983

Constitutional Issues

Caveat

- No immunity in Federal court for violation of civil rights
 - 42 USC § 1983..every person who, under color of law of any statute, ordinance, regulation, custom or usage of any state or territory subjects or causes to be subjected any citizen of the United States to the deprivation of any rights, privileges and immunities, secured by the Constitution and law shall be liable to the other party injured in an action at law, suit in equity or other proper proceeding for redress
- Officer may find him/herself personally liable, not only for damages, but for attorney's fees as well
- **Due Process situations**
 - Police in some way create or increase the danger faced by the victim
 - Police assure victim that abuse in custody and won't be released and abuser is in fact release (victim doesn't take safety measures, relying on police assurance)
 - State grants woman protective order upon which she relies and which the police fail to enforce
 - Police restrain personal liberty of DV victim by arresting victim (w/o going through predominant aggressor analysis and thus arresting wrong person) thereby inhibiting victim's ability to protect herself (through self-defense)
- **Equal protection situations**
 - Police failure to respond to complaints lodged by women in DV cases
 - Discriminatory intent shown by discriminatory application or enforcement of policies, laws, etc.; discriminatory statements by responding officers demonstrating bad attitude against abused women; officers treating DV cases less seriously than other assaults
- **Deliberate indifference situations**
 - Occurs when person knew or of should have known about a pattern of gross abuse and does nothing about it; public official could be assessed punitive damages

Arrest

Powers and duties of law enforcement officers to arrest. (§77-36-2.2)

Primary duty

- **Protect the victim**
- **Enforce the law**

General arrest powers without a warrant (§77-7-2)

- public offense committed or attempted in officer's presence
- reasonable cause to believe a felony or Class A misdemeanor has been committed and reasonable cause to believe person arrested has committed it
- reasonable cause to believe person has committed a public offense and reasonable cause to believe person may
 - flee or conceal himself to avoid arrest
 - destroy or conceal evidence of the commission of the offense; or

- injure another person or damage property belonging to another person

Domestic violence arrest powers without a warrant (§77-36-2.2)

- **probable cause** to believe an act of domestic violence has been committed, officer **shall arrest without a warrant or issue a citation** (§77-36-2.2 (2)(a))
- **shall arrest and take the perpetrator into custody** (*may not utilize the option of issuing a citation*) (§77-36-2.2 (2)(b))
 - if there is probable cause to believe there will be continued violence **or**
 - evidence the perpetrator has caused serious bodily injury **or**
 - used a dangerous weapon **or**
 - if there is a violation of a protective order (§77-36-2.4)
- See State v. Farrow 919 P2d 50 (Ut Ct App 1996)
- If no arrest or initiation of criminal proceedings by citation or otherwise, **notify the victim** (§77-36-2.2 (2) (c))
 - of his/her right to initiate criminal proceedings
 - of the importance of preserving evidence
- Determine the **predominant aggressor** (§77-36-2.2 (3))
 - complaints from two or more opposing parties
 - evaluate each complaint separately
 - if officer determines that one person was the predominant aggressor
 - **need not arrest the other person** (can cite other party if not self-defense)
 - the officer **shall consider**
 - any **prior complaints** of domestic violence
 - the **relative severity of injuries** inflicted on each person
 - the **likelihood of future injury** to each of the parties
 - whether one of the parties acted in **self defense**
 - **Self defense.** (§76-2-402)
 - justified in threatening or using force to the extent that he or she **reasonably** believes that force is necessary
 - to defend himself or a third person against such other's **imminent** use of unlawful force
 - justified in using force only if he or she **reasonably** believes that force is necessary
 - **not** justified if
 - initially provokes with intent to inflict bodily harm upon assailant
 - **may** consider
 - **nature** of the danger
 - **immediacy** of the danger
 - probability unlawful force would **result** in death or serious bodily injury
 - **prior violent acts**
 - **patterns of abuse**
- May *not* threaten to arrest both parties to discourage request for police intervention (§77-36-2.2(4))

Violation of protective orders--Mandatory arrest. (§77-36-2.4)

- shall **arrest** without a warrant
 - **probable cause** to believe violated any provision of
 - ex parte protective order
 - **or** protective order
 - ex parte protective order or protective order means order issued under Title 30, Chapter 6 (adult civil PO) Title 77, Chapter 36 (crim PO), child protective order issued under Title 78, Chapter 3h, or foreign PO
 - **intentional** violation (*even if invited by petitioner to come on premises*)
 - class A misdemeanor
 - a domestic violence offense (§77-36-1)

Enhancements on Domestic Violence Offenses §77-36-1.1

- any prior domestic violence conviction within a 5 year period can be used to enhance a subsequent **misdemeanor** domestic violence charge
- charge and penalty of subsequent offense enhanced one degree
- highest charge possible is a Class A misdemeanor enhanced to a 3rd degree felony
- see also *State v Hunt*, 906 P2d 311 (Utah 1995) on enhancing drug convictions based on counts charged in the same information

Conditions for release after arrest (§77-36-2.5)

- Upon arrest, a person **may not be released** on
 - bail
 - recognizance
 - or otherwise
- prior to **close of next court day** following arrest, **unless** as a condition of release
 - he is ordered by the court *or* agrees in writing that until expiration of that time
 - will have **no contact** with victim
 - not threaten or harass
 - not knowingly enter premises of victim's residence or premises occupied by victim
- victim **may waive** in writing (§77-36-2.5 (3)(a))
 - any or all requirements of the jail agreement or no contact order (**victim cannot "waive" written provisions of a protective order--that is a judges order...this "waiver provision" applies to jail agreement only**)
 - upon waiver, requirements shall not apply
 - court may modify requirements (§77-36-2.5(3)(b))
 - no contact
 - not knowingly enter premises
 - in writing or on record and
 - good cause must be shown
- person arrested for violating terms of jail no contact agreement or order cannot be released for any reason prior to first judicial appearance (§77-20-1)
- **releasing agency shall notify** the arresting agency of (§77-36-2.5(4)(a))
 - release
 - conditions of release
 - arresting agency shall make reasonable effort to notify victim
- when released

- based on written agreement, releasing agency shall (§77-36-2.5(4)(b)(i))
 - transmit information to statewide domestic violence network
- based upon court order, the court shall (§77-36-2.5(4)(b)(ii))
 - transmit order to statewide network
- does not create or increase liability of a law enforcement officer or agency (§77-36-2.5(4)(c))
 - good faith immunity is applicable

- **probable cause** to believe person **violated** jail agreement or court order (§77-36-2.5(5))
 - warrantless arrest
- **knowingly** violates order
 - if original arrest was a felony, violation is a third degree felony
 - may be held without bail if evidence to support new felony charge
 - if original arrest was a misdemeanor, violation is a class A misdemeanor
 - cannot be released prior to first judicial appearance (§77-20-1)

- **City attorneys may prosecute class A misdemeanor violations** (§77-36-2.5(5)(c))

At the time of DV arrest--arresting officer **shall** provide victim & perpetrator written notice of: (§77-36-2.5(7))

- requirements
- notification of penalties for violation
- date & time requirements expire
- address of court
- waiver of rights
- information regarding protective orders (adult and child) (§77-36-2.1(2)(a))

Because of the serious nature of domestic violence

- **bail may be denied** (§77-36-2.5(8))
 - on DV misdemeanors as well as felonies

Appearance of defendant required--Determinations by court (§77-36-2.6)

- Defendant arrested
 - **shall appear in person within one judicial day after arrest**
- Defendant charged by citation, complaint or information
 - **shall appear in person no later than 14 days** after the issuance of the citation or filing of the information
- Court **shall**
 - determine necessity of imposing a criminal protective order
 - other conditions
 - electronic monitoring
- state findings in writing

Reports

Officer

- **shall submit a detailed, written report specifying the grounds** (§77-36-2.2(5))
 - if arrested no one; or
 - arrested both parties
- officer who does not arrest **shall notify victim of victim's right**
 - to initiate criminal proceeding
 - **and** of the importance of preserving evidence
- **shall prepare an incident report** (§77-36-2.2(6))
 - disposition of case
 - made available to victim upon request, **at no cost**
 - send copy to prosecutor within **5 days**
- **agency shall** (§77-36-2.2(7))
 - **make a written record**
 - **maintain records** of all incidents reported to it
 - be identified by agency code for domestic violence

Enforcement of the Law

Primary duty of law enforcement

- **protect the victim**
- **enforce the law**

Enforcement of orders. (§77-36-6)

- Each law enforcement agency **shall enforce all civil and criminal protective orders**
- Requirements **apply statewide regardless of**
 - **jurisdiction** order was issued
 - **location** of victim or perpetrator

Full faith and credit for foreign (issued by another state, territory, or possession of the United States) protective orders. (§30-6-12)

- respondent must have had
 - due process
 - notice
 - hearing
- protective order enforceable in Utah as long as in effect in other state
 - certified copy **may** be filed in district court (*no fee*)
 - petitioner must file affidavit that order is in effect and respondent served
 - clerk's office to send to statewide network
- law enforcement can rely upon
 - certified copy **and**
 - statement by petitioner that order is effect and respondent served (*if not filed in clerk's office*)

- violation of order subject to same penalties as if violation of Utah order (*class A misdemeanor*)

Peace officers' immunity from liability. (§77-36-8)

- may not be held liable in any civil action for
 - making or failing to make an arrest
 - issuing or failing to issue a citation
 - enforcing in good faith an order of the court
 - for acting or omitting to act in any other way in good faith

CAVEAT: not immunized against violations of federal civil rights

Responding to a DV Call

- Determine THREAT LEVEL quickly upon arrival and secure the scene
- Determine PROBABLE CAUSE if crime occurred
- If crime occurred and there are dual injuries as result of incident or allegations, you must identify the PREDOMINANT AGGRESSOR

Responding Officer's Reaction to Recurring Visits for Domestic Violence at the Same Location

Often officers deal with the same victim and the same perpetrator over and over again. They become frustrated, confused and fed up with the fact that the victim does not leave the perpetrator. **Officers should not:**

- threaten to arrest both parties in order to discourage any party's request for police intervention
- let emotions interfere with the investigation
- request that victim make a citizen's arrest
- make any statement that would discourage a victim from reporting an act of domestic violence in the future

Dispatcher Response

The dispatcher is to assess the emergency nature of the call and to dispatch an officer to the location of the incident.

- if warranted, the dispatcher shall treat the call ***like any other life-threatening call***
- dispatch at least **two officers** to the scene
- assign a **priority** to the call based on the seriousness of the injuries or threatened harm, and whether or not the assailant is on the premises
- **listen** for back ground noises that will assist in **evaluating the threat level**
- relay all information to the responding officer, including past call history
- determine whether there is a civil protective order or criminal protective order on file or on statewide network
- radio officer(s) as soon as the **existence or nonexistence of an order** is ascertained
- **stay on the line** with the caller if safety requires or if the caller requests
- **advise victim** of intended department response and use crisis intervention skills as required

The dispatcher is **not** to inquire of the caller whether she intends to press charges or obtain a protective order and shall not lead the caller to believe that police response is contingent upon her agreeing to take further action against the alleged perpetrator.

Responding Officer Arrives at the Scene

The officer shall

- avoid use of sirens and emergency lights in the vicinity of the scene
- do not park police unit directly in front of the residence
- question persons encountered while approaching the scene
- observe surroundings before knocking on the door
 - initial contact with occupant(s)
 - identification
 - consent search--must be freely & voluntarily given

- refused entry
 - be persistent
 - request the dispatcher call the complainant
- forced entry
 - probable cause to believe a felony is occurring
 - has just occurred
 - or that life is in danger
- assess present threat of danger to either party or the officer

The officer shall assure that the parties are **physically separated**

- if verified **existence** of protective order
 - has been **served**
 - or the victim produces a **copy** of an order
 - and officer can detect that it has been served
- if the suspect is still on the scene
 - the officer shall **arrest** the alleged perpetrator for violation of the order
 - arrest for violation of a protective order from Utah
 - arrest for violation of a protective order from another state (*Full Faith & Credit*)
 - filed with district court
 - **or** law enforcement can rely upon certified copy and on statement by victim that the order is in effect and the perpetrator has been served with a copy

The officer **may** arrest if officer has probable cause to believe that a domestic abuse assault has been committed which **did not result in any injury to the victim**

- such assaults may include:
 - **threat to injure or kill the alleged victim**
 - don't have to have blood & guts to arrest
 - pushing
 - throwing an object at the alleged victim which does not hit the victim
 - visible injuries are **not** necessary in order to make an arrest
 - look for evidence of head injuries
 - dizziness
 - difficulty concentrating
 - difficulty remembering
 - evidence of an assault may include, but is not limited to
 - torn clothing
 - disarray in the home
 - smeared makeup
 - **or** verbal complaints of pain by the victim
- The officer **MUST ARREST** and **TAKE** the perpetrator **INTO CUSTODY** if there is probable cause to believe:
 - there will be **continued violence**
 - perpetrator has **caused serious bodily injury**
 - perpetrator **used a dangerous weapon**
 - perpetrator **violated a protective order**
 - if the responding officers determine that an arrest of the perpetrator is warranted, the officers shall seize all weapons **including**

- firearms and knives allegedly used in the assault
- **and** those weapons in plain view of the officers

If an **arrest** has been made, the officer(s) at the jail asks whether or not arrested person is willing to sign a jail agreement or no-contact order

- victim **may waive** in writing the requirements of jail agreement or no-contact order
- determine whether the alleged victim is in need of medical attention
- call for an ambulance or offer to drive the alleged victim to the hospital or make other transportation arrangements
- if the victim declines medical treatment, the officer shall not force the alleged victim to obtain treatment
- verbally inform victim of the programs and/or shelters that serve the victim's area
- provide a list of services in the community available for victims of domestic violence

No officer shall lead a victim to believe that present or future police intervention is contingent upon the victim making contact with, or receiving services from, a domestic violence program or shelter

- explain what a protective order is and inform the victim that they may seek a court order of protection by filing for one at the district court
- before leaving the scene, the responding officers shall provide the victim **written notice** of the victim's rights
- interview all parties separately, *i.e.*, victim, suspect, witnesses, children

The following **should not** influence the officer's determination of probable cause to arrest except as they relate to the elements of the crime:

- Whether or not the victim wants to prosecute
 - Whether the victim has cooperated with police in past investigations
 - Whether the victim stayed with the batterer after calling the police in the past
 - Marital status or domestic relationship of suspect and victim
 - Whether or not the suspect lives on the premises with the victim
 - Existence or lack of protective order
 - Victim's preference that an arrest be made or not
 - Occupation, community status and/or financial consequences of arrest
 - Complainant's history of prior complaints
 - Verbal assurances that violence will cease
 - Non-visible injuries
 - Complainant's emotional state
 - Speculation that victim may not follow through with prosecution
 - Speculation that case may not result in conviction
 - Assumptions that violence is more acceptable in certain cultures
 - Language abilities or barriers and/or immigration status
 - Sexual preference or orientation of parties
-
- **If have probable cause that a crime occurred and only one part used violence *not in self-defense*, MUST arrest or cite**

Dual Arrests

What if both parties used violence?

- Arrest both? Problems:
 - Rarely appropriate; reality is you may very well be arresting the victim
 - Department may risk lawsuit
 - Children removed from home
 - Victim not protected and batterer gains more power
 - Real victim gets criminal record and cannot receive CVR funds
 - Victim will not call police in future
- Determine if one party acted in self-defense
 - Reasonably believes force is necessary
 - Other's use of unlawful force is imminent
 - Deadly force only if reasonably believes necessary to prevent death or serious bodily injury
 - Not justified if initially provokes the use of force against himself *with the intent to use force as an excuse to inflict bodily harm upon assailant*
- Officer should look at:
 - Was the force reasonable and necessary to prevent harm?
 - What was the harm, actual or imminent?
 - What did the victim believe about the harm about to be perpetrated?
 - Section 76-2-402 outlines the following factors:
 - Nature of the danger
 - Immediacy of the danger
 - Probability unlawful force would result in death or serious bodily injury
 - Other's prior violent acts or propensities
 - Patterns of abuse or violence in parties' relationship
 - Possible indicators of reasonable force:
 - Bites on chest area where someone's head might have been restrained
 - Scratches on wrists or forearms which someone might inflict if trying to get away from being choked
 - Fingernail marks deeply gouged into neck or back
 - Disparity of force used between two parties (wife pushes, husband punches)
 - Injuries inconsistent with "story"
 - Size disparity and use of weapon by smaller person to repel larger person
- Injuries
 - Never assume how or when an injury happened—ASK
 - Always attempt to assess if injury could be defensive in nature
 - Look for injuries on both parties—defensive wounds may be on either party or both
 - Document all injuries in writing and with photographs; document also "no injuries" in writing and photographs
 - Assess if injuries appear consistent with how each party states they occurred
- If valid self-defense, then MUST arrest or cite person who used violence not in self-defense
- If not valid self-defense, then MUST look at predominant aggressor analysis under Section 77-36-2,2(3)

Predominant Aggressor Analysis

(Used when there appears to be two suspects)

- Purpose of required analysis
 - reduce number of mutual arrests
 - avoid arresting victims of DV
- Use objective standard in determination
 - prior complaints of DV
 - relative severity of injuries
 - likelihood of future injury to each person
 - whether one party acted in self-defense
- Other factors you may consider:
 - Who in the relationship poses the most danger to the other?
 - Who is at most risk of future harm/injury?
 - What is the relative severity of injuries inflicted on each person?
 - What is the likelihood of future harm?
 - Are there prior complaints of DV involving the parties?
 - Are the injuries consistent with the amount of force claimed to have been used by each party?
 - Did one party use unreasonable amount of force in response to the other's actions?
 - Have there been past incidents that would cause one party to react in a manner that caused such injury?
 - Who is the most significant aggressor in the incident?
- Determining predominant aggressor allows officer to arrest the most significant aggressor and take to jail; the other person may just be cited
 - In cases where children present, this leaves one person at home with kids but holds both people accountable for their actions if both used unlawful force or violence against the other person
- Mutual combat or provocation is not the cause of domestic violence
- Verbal provocation, no matter how severe, is never justification for violence
- Failure of batterer to take responsibility for violent behavior and victim's self blame does not justify mutual arrest

*Mandatory arrest policies have, at times, resulted in substantial numbers of arrests of victims. While "primary aggressor" rules have helped in this area, it has also been necessary to aggressively call on law enforcement to refuse to take victims of domestic violence to jail unless **there is a clear and uncontradicted violation of the law without justification or excuse.** Prosecutors play a powerful role in this regard by taking a policy stance on mutual arrest cases which makes it clear that police officers who invest their time in repeated and indefensible mutual arrest will see no criminal prosecution and will be held accountable within the community response task force or police agency's internal affairs division. In San Diego, proactive training in our police academies have reduced mutual arrests to less than 3% of all arrests in domestic violence incidents.*

(Western State University Law Review)

PREDOMINANT PHYSICAL AGGRESSOR ANALYSIS

**Officer
at the Scene**
(appears to be two suspects)

Conducts Two Separate Investigations

**Suspect
#A**

Self-Defense

- *Not justified if he or she initially provokes the use of force against himself with the intent to use force as an excuse to inflict bodily harm upon the assailant*

**No Assault
STOP**

Suspect B, Pred. Agg.

**Statutorily Created
Four Factor Analysis**

Prior complaints of domestic violence

- *History of violence*

Relative severity of injuries inflicted on each person

- *Proportional nature of mutual injuries*

Likelihood of future injury to each person

- *Height/weight of parties*

Whether one party acted in self-defense

- *Injuries offensive/defensive*
- *Simple scratches on "victim's" body (probably defensive)*
- *Bite marks on "victim's" arms or chest (probably defensive)*
- *Other defensive wounds*
- *Comments of injuries by "victim" occurs after "victim" is cuffed or placed under arrest (probably defensive); if occurs before any mention of arrest, needs evaluation*

Law of Probability

Presence or lack of fear in either party

- *Presence of fear—not likely to be the predominant aggressor*
- *Evidence of fear—crying, fearful,*

**Suspect
#B**

Self-Defense

- *Not justified if he or she initially provokes the use of force against himself with the intent to use force as an excuse to inflict bodily harm upon the assailant*

**No Assault
ST P**

Suspect A, Pred. Agg.

Determine Predominant Aggressor

Statutory Mandate to Determine Predominant Aggressor Cohabitant Abuse Procedures Act (§77-36-2.2(3))

If a law enforcement officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who the predominant aggressor was. If the officer determines that one person was the predominant physical aggressor, the officer **need not arrest the other person** alleged to have committed domestic violence. In determining who the predominant aggressor was, the officer shall consider:

- (a) any prior complaints of domestic violence;
- (b) the relative severity of injuries inflicted on each person;
- (c) the likelihood of future injury to each of the parties; and
- (d) whether one of the parties acted in self defense.

Objective:

- **To reduce the number of mutual arrests**
- **Avoid arresting the victims of domestic**

Use an objective standard in determining who the predominant aggressor is

- Use the **four factor analysis** in the Cohabitant Abuse Procedures Act. Look at:
 - **Prior complaints of domestic violence**
 - *History of violence*
 - *Violence in another relationship*
 - *Other violence in general*
 - *Patterns of abuse or violence in the parties' relationship*
 - *Prior incidents of violence even if it did not result in investigation, arrest or conviction*
 - *Victim's statements about prior violence--"This is the last time he is going to hit me."--clue to previous violence*
 - **Relative severity of injuries inflicted on each person**
 - *Proportional nature of mutual injuries*
 - *Scratch v. Broken Arm*
 - *Push v. Black Eye*
 - *Verbal Abuse v. Verbal Threats v. Physical Abuse*
 - **Likelihood of future injury to each person**
 - *Height/weight of parties*
 - *He is 6'5" & weighs 250 lbs.*
 - *She is 5'6" & weighs 125 lbs.*
 - *Logical conclusions*
 - **Whether one party acted in self-defense**
 - **Self defense.** (§76-2-402)
 - justified in threatening or using force to the extent that he or she **reasonably** believes that force is necessary
 - to defend himself or a third person against such other's **imminent** use of unlawful force
 - justified in using force only if he or she **reasonably** believes that force is necessary

- **not** justified if
 - initially provokes with intent to inflict bodily harm upon assailant
- **may** consider to determine imminence or reasonableness
 - **nature** of the danger
 - **immediacy** of the danger
 - probability unlawful force would **result** in death or serious bodily injury
 - **prior violent acts**
 - **patterns of abuse**
 - **violent propensities**
- **Not justified if he or she initially provokes the use of force against himself with the intent to use force as an excuse to inflict bodily harm upon the other party**
- Analysis
 - *Was A justified?*
 - *defending self or a third party?*
 - *Was B justified?*
 - *defending self or a third party?*

 - *Injuries offensive/defensive*
 - *Simple scratches on body (probably defensive by other party)*
 - *Bite marks on arms or chest (probably defensive by other party)*
 - *Other defensive wounds--ulnar side of the arm*
 - *Interview after handcuffs: comments by the arrested person, now claiming to be the "victim" (wounds probably defensive); if occurs before any mention of arrest, wounds need evaluation*
- **Law of Probability--non-statutory**
 - Presence or lack of fear in either party
 - *Presence of fear--not likely to be the primary aggressor (gender reactions different)*
 - *Evidence of fear*
 - *Crying*
 - *Hysterical*
 - *Irrational*
 - *Nervous--won't look you in the eye*
 - *Disoriented & confused*
 - *Apologetic*
 - *Lack of fear*
 - *Angry*
 - *Calm*
 - *Threatening*
 - *Controlling*

Note: victim's reactions may be situational. Once an officer comes on the scene, the victim may feel safe to lash out at the perpetrator because she or he has protection. It may appear to the officers at that time that the hysterical victim is the perpetrator, while the perpetrator may sit calmly in the corner. Victim may appear to be uncooperative because priorities shift with appearance of officers--she or he is no longer concerned about safety, but retaliation, children, finances, etc.

Avoid using a subjective standard in determining predominant aggressor

- Men do not have the right to “discipline” their spouses for behavior not approved of
- Most studies agree--mutual combat or provocation is **not** the cause of domestic violence
- Verbal provocation, no matter how severe, is never a justification for violence
- Failure of batterer to take responsibility for his violent behavior and **victim’s self-blame** does not justify mutual arrests

Listen

- Look eyeball to eyeball (*unless culturally impermissible--may show lack of respect*)

Note: identify what abuse is--many victims don’t realize they are being abused--physical abuse is a crime--use identifiers such as “slapping” and “kicking” when asking about abuse.

Don’t be manipulated by suspect (*doesn’t stop you from manipulating suspect to get the story*)

- Let’s “talk sports”
- Share military experiences
- “You know how women are;” “She’s crazy;” “She pushed my buttons.”
- The more alike cop and suspect are, the harder it is for the cop to believe the suspect did what he did

Questions by police officer will usually reveal predominant aggressor

- What will the other party say precipitated the event?

Consequences of arresting the wrong person:

- victim cannot get treatment under Crime Victim Reparations if they have been accused of being the perpetrator
- many aspects of the system are shut off to the victim once labeled the perpetrator

Children may provide an officer with information that may assist in determining predominant aggressor

- get children’s statements, excited utterances, etc.
- get names and ages of children--Crime Victim Reparations will pay for treatment
- children have seen the abuse before
- they **know** who the **predominant aggressor** is in the family
- what are we **teaching** the children if we arrest the wrong person?
 - perpetrator gets away with the abuse
 - victim is abused by the system too
 - law enforcement does not help--doesn’t pay to call for help
 - victim must self-protect
 - **or** children must protect self and the victim
- **children will learn violence works**
 - perpetrator gets what he or she wants
 - victim gets punished for not doing what perpetrator wants
 - abuse continues
 - next generation recreates patterns
 - violence multiplies and spreads into schools and communities
 - use violence to get what you want--to resolve differences

HOW TO AVOID FRUSTRATION WHEN INVESTIGATING DOMESTIC VIOLENCE CASES

Before you ever set foot through that door on a domestic violence call, assume the following will occur by the time you get to trial:

- ❖ **ASSUME THE VICTIM WILL RECANT**
(Get written statement; note in report demeanor and excited utterances, statements of present sense impression, then existing mental, emotional or physical condition; signed medical release for relevant medical records)
- ❖ **ASSUME THE CHILDREN WILL RECANT**
(Note in report the demeanor and excited utterances of the kids)
- ❖ **ASSUME THAT ANY INJURY WILL BE HEALED BEFORE ANY HEARING**
(Take photos of injuries then and later; get relevant medical records)
- ❖ **ASSUME THAT ANYTHING THAT IS BROKEN WILL BE FIXED OR THROWN OUT**
(Take photos and then gather up, if possible, as evidence to show the judge or jury)
- ❖ **ASSUME THAT ANYTHING NOT PHOTOGRAPHED WILL BE DENIED**
(Photograph, photograph, photograph!)
- ❖ **ASSUME THAT THE SUSPECT WILL CONTACT THE VICTIM BEFORE THE PROSECUTOR DOES**
(The first officer responding to the call is in the best position to get all the relevant evidence...after that, the assumptions fall into place and frustrate successful prosecution)

Knowing these things will enable you to do the kind of investigation and gather the kinds of evidence so that these assumptions will not have any adverse impact on the trial

Investigation of Domestic Violence Cases

- IF YOU DIDN'T WRITE IT DOWN, IT DIDN'T HAPPEN
- DO NOT ASSUME THAT ANY STATEMENT WILL BE INADMISSABLE

Investigation of a domestic abuse case begins once the officer(s) arrives on the scene

After assuring that the procedures laid out above have been followed (*e.g., determination of condition of victim, determination of presence of weapons, etc.*), the officer shall

- conduct a thorough investigation and prepare reports of all incidents of domestic violence and all crimes related to domestic violence
- mind-set of responding officer should mirror the philosophy of the prosecutor
 - **How can we prove this case without the participation of the victim?**
- **do not**, however, neglect the importance of victim safety considerations and referrals for the victim
- mandatory or pro-arrest policies play a critical role in relation to victim safety and thorough case investigation
- arrest not only acknowledges the criminal behavior, but provides immediate safety to the victim and heightens the likelihood of a provable case.

The officer shall:

- interview all witnesses separately, including the victim, suspect, children, neighbors, etc.
- if the victim has no visible injuries, the officer shall ask if the victim has pain anywhere and shall document the presence of pain
- document the parties' condition and demeanor, including torn clothing, smeared makeup, and evidence of injury
- note the size of the victim in relation to the size of the suspect
- record condition of the scene (*e.g., have things been thrown about, is furniture broken, are curtains ripped*)
- if the suspect is taken into custody, the officer shall document spontaneous statements made by the suspect
- keep the suspect and victim separated
- **Miranda** rights will be read to the suspect
- if medical treatment is needed, the officer, after assuring that such treatment is or soon will be provided, shall obtain a release of information form from the victim in order to obtain the medical records
- document the extent of the injuries and if the injuries are visible
- assure that photographs of the injuries are taken as soon as possible
- record the names(s) of all medical personnel who will be treating the victim
- collect and record all evidence
 - identify perpetrator and exonerate others
 - corroborate the victim's version or discredit the perpetrator's version
 - corroborate the statement of a witness
 - reconstruct the crime if there are no witnesses
- document and prepare an incident report
 - record enough information so that an investigator can later identify/find the suspect
 - record what evidence was found

- provide sufficient information to find witnesses again
- tell a story--dates, times, places, people
 - address elements of each crime
 - example: intoxication
 - under the influence of intoxicating liquor
 - in a public place, person is a danger to himself or others
 - in a private place, person is a danger and unreasonably disturbs others
 - **prosecutors will not charge a crime if your report does not address each and every element of that crime**
- take photographs of property damage

Conviction Without a Victim

Three things you need for a conviction without a victim

Hearsay exception

Identification of perpetrator

Corroborating evidence

Out of court statements and hearsay evidence

- Medical
 - use to prove injury
 - use to corroborate v testimony how injury occurred
 - statements to medical personnel for purpose of medical diagnosis, URE 803(4) (written records; actual witness testimony--paramedics, nurse, doctor, etc.)
 - Statements of physical, mental or emotional condition, URE 803(3)
 - admissible to prove existence of a particular condition after an incident
 - Present Sense Impression, URE 803(1)
 - 911 calls, walking through scene while talking into recorder, statements made to others under these circumstances
 - Excited Utterance, URE 803(2)
 - **OFFICER MUST WRITE DOWN CONDITION OF PERSON SPEAKING AND THEN WRITE DOWN STATEMENTS**
 - Victim, children

Identification of perp

- Perp at scene/ID by officer
- Perp gone/ID by photo from house and excited utterance of victim identifying photo as perp
- Perp gone/excited utterance by victim or medical exception as to who did it and ID in court by someone who knows the perp either by name or relationship to victim

Corroborating evidence

- Photos
 - Victim (at time of incident and days later)
 - House
 - Kids
 - Perp

- 911 tape
- Medical records
- Other witnesses
- Damaged property, torn clothing, etc.
- Prior incidents, URE 404(b)
 - useful to show motive
 - lack of mistake or accident
 - plan
 - intent
 - preparation
 - knowledge
 - identity

Evidentiary Issues

It's important to ask about and note evidence or statements of past violence by the subject against the victim or other family members or even household property or pets. Prosecutors may be able to introduce such prior incidents of domestic violence as evidence in a prosecution of the subject.

POLICE OFFICERS CAN

- **substantially** increase their chances of conviction
- **reduce** likelihood of repeat conduct
- by **arming** prosecutors with knowledge of prior domestic violence
 - even if abuse did not result in investigation, arrest or conviction

Documentation of statements by the victim, the defendant, the children, and witnesses

- gives the prosecutor a weapon against the abuser whose victim recants
- or refuses to testify

If the prosecutor can show

- logical relevance of prior bad acts
- to **any fact in issue**
 - motive
 - intent
 - preparation
 - plan
 - knowledge
 - identity
 - absence of mistake or accident--*"I fell down the stairs."*
 - or any other reason to help prove an element of the crime
- other than the defendant's character
 - to show the person acted in conformity therewith
- **evidence of prior bad acts is admissible** (Utah Rules of Evidence 404(b))

Police and prosecutors want to see the cycle of domestic violence broken

- officers who **investigate**, rather than merely report domestic violence case
- and who **document** their investigations
- **arm** prosecutors with the tools to turn an arrest into a conviction

Once the abuser is under the supervision of the court

- many solutions for domestic violence
 - can become a reality, not just a suggestion

Investigation

Gather information from *all* persons who had any knowledge of the matter

- victim
- suspect
- children
- eye witnesses
 - *testify to what they saw*
- other witnesses
 - *testify to what they heard*

DO NOT ASSUME THAT ANY STATEMENT WILL BE INADMISSIBLE!

Hearsay

A statement

- other than one made by the declarant
 - while testifying at the trial or hearing
- offered in evidence
- **to prove the truth of the matter asserted**

Statements which are not hearsay

- even though the statement is introduced by someone other than the declarant of the statement
 - **Prior statements by the witness**
 - defendant tells "A" to the officer at the scene
 - but says "B" while testifying at trial
 - prosecutor can cross-examine on prior statement
 - cross-examination not subject to a hearsay objection
 - **Admission by a party-opponent** (*defendant or legal agent of the defendant*)
 - may be admitted by another witness without a hearsay objection
 - officer testifies that, "Joe told me "A" when I arrived at his house"
 - only grounds to attack statement is to claim
 - prior statement was not made by defendant
 - witness' recollection of the statement is incorrect

If the statement is hearsay

- it may be admissible under the numerous exceptions to the hearsay rule (*Rule 803 URE*)

Exceptions to hearsay rule

- are based upon the assumption that people are likely to tell the truth under the conditions described in various exceptions

Exceptions

Present sense impression (URE 803(1))

- statement describing or explaining an event or conditions
- made while the declarant was perceiving the event
 - recording of a child or other witness on a 911 tape
 - tape recording of an officer describing what he sees upon arrival at a crime scene

Excited utterance (URE 803(2))

- statement relating to a startling event
- made while declarant was under
- the stress of excitement caused by the event
 - victim-- "That bastard just kept kicking and kicking me!"
 - suspect-- "You're damned right I kicked her! She deserved it!"
 - child --"I screamed at Daddy to stop kicking Mommy, but he just yelled at me to 'Shut up!'"
 - witness-- "Please get over here! Joe's kicking her so hard he's going to kill her!"
- **record not only what is said**
 - but the emotional state of the declarant
 - **and** what is going on at the time the statement is made
- see West Valley City v. Hutto 5P3d1 (Ct App 2000)

Then existing mental, emotional, or physical condition (URE 803(3))

- statement of the declarant's **then** existing
 - state of mind
 - emotion
 - sensation
 - or physical condition
 - *such as intent, plan, motive, design, mental feeling, pain, and bodily health*
- may not be a statement of memory or belief of someone who was there
 - He said three times, "I'm going to shoot your damn had off!" (*intent or plan*)
 - Victim to a friend, "Oh, God! It hurts so much when I breath!" (*pain or bodily health*)
 - Victim, "I can tell exactly when he's getting ready to beat me! I bought a gun and I'll use it next time!" (*plan, motive, design*)

Statements for purpose of medical diagnosis or treatment (URE 803(4))

- describing medical history
 - or past or present symptoms, pain, or sensations
- statement from an emergency room physician, a nurse, or EMT
 - "She told me that her husband had beat her with a poker and that it was the third time that month he had done it!"
- be sure to subpoena medical records to support the witness

- **and** make sure the witness' testimony matches what is in the medical record
- use to prove injury or use to corroborate v testimony how injury occurred

Unavailable Witness Exception (URE 804)

- declarant is exempted by ruling of the court from testifying on the grounds of privilege
 - spouse of the defendant
 - cleric to whom witness confided
 - lawyer
 - doctor (*injury reporting exception*)
 - or mental health therapist
- there are exceptions to any of the above--be careful anytime you are dealing with any of them
- witness persists in refusing to testify despite an order of the court to do so
- declarant testifies to lack of memory of the subject matter of his or her statement
- is absent because of death or then existing physical or mental illness
- is absent and the proponent of the statement has been unable to obtain the declarant's attendance by process or other reasonable means

The following are not excluded by the hearsay rule if the declarant is unavailable

- former **testimony in a legal setting** if the adverse party had an opportunity and motive to cross examine the declarant
- statement under belief of **impending death**
- statement **against interest**
 - no reasonable person in the declarant's position would have made that statement unless believing it to be true
- Other exceptions (**catch-all provision**) (URE 804(5))
 - statement not covered by any other exception
 - but having **equivalent circumstantial guarantees of trustworthiness**
 - statement offered as evidence of a material fact
 - statement more probative on the point for which it is offered than any other evidence which the proponent can produce through reasonable efforts
 - general purposes of these rules and the interest of justice will best be served by admission of the statement
- statements admitted under catch-all provision need to consider "**indicia of reliability**"
 - **indicia of reliability** from most reliable to least
 - prior testimony in court where the opposing party did not have an opportunity to cross examine the declarant
 - statement of the declarant sworn to before a notary public
 - written and signed statement of the declarant made in the presence of an officer just after the incident
 - oral statement of the declarant made to an officer just after the event and written down by the officer as nearly verbatim as possible
 - written statement of the declarant which is signed by the declarant and witnessed by the signatures of two prominent citizens known by the declarant
 - oral statement to an officer which the officer summarizes in his or her report some hours later
 - oral statement to the officer which he or she didn't write down but which he or she recalls

Weapons seizure

Goals

- Safety
- Compliance with state statutes and with state and federal constitutional requirements re: search and seizure
- Minimize unnecessary exposure to civil liability

Strategies

- Search and seizure issues
- Plain view
 - Consent-express or implied by anyone with lawful authority
 - "Safe-keeping"
 - However, if person lawfully entitled to possess them demands return, police normally required to comply with request
 - Issue of "federal" prohibition on possession
 - Get local agreement with ATF and local PD to seize weapons
 - Ex: sheriff's office serves PO on respondent and sees guns; if have agreement with ATF, can seize; otherwise, must leave guns and simply notify ATF
 - NOTE: ex parte order does not qualify for federal firearm prohibition

Investigation of Civil & Criminal Protective Order Violations

- violations of orders
 - contacted victim
 - didn't stay away from victim, residence, or premises
 - threatened or abused victim
- determine if there is an enforceable order in place--check statewide network (*warrant system*)
 - contact court that issued order
 - complaining party should have a copy of order (*unless jail agreement/no contact order*)
 - documents will have names of parties and court file number
 - verification through statewide network can be done by entering the court identifier and the court file number or just the name of the respondent (*try using one of these methods*)
- valid order--investigate like any other crime--with one exception
 - ask victim what their feelings, thoughts and reactions were when seeing the suspect/respondent
 - record "how did you feel" information--allows prosecutor to put some emphasis to this case, taking it above just the "technical violation."
 - interview eyewitnesses--takes it above "he said/she said"
- in report, include
 - case number of the protective order
 - time of the violation
 - if possible, have dispatch print a copy of the order as it is displayed on the computer screen and attach it to your report

- if order in victim/petitioner's possession has not been served, use the forms and serve suspect/respondent

Follow-up Investigation

If field officers have done their job, follow-up will probably be limited to gathering documents for them to prepare the formal charge(s)

- prosecution should be provided with certified copies from the protective order file
 - it is recommended that the following be supplied
 - verified petition for protective order
 - ex parte protective order
 - return of service--shows date and time of service and name of process server
 - any extensions/continuances that cover the time of the violation
 - protective order--if has been served and was in effect at time of the violation
- supplemental report should provide a **time line** of the events in the protective order case
 - show where the violation fits into the events in the protective order case
 - makes series of events clearer for the prosecutor as well as the defense
- witness list must include the person who did service
 - know which order was in effect at the time of violation so the correct person is subpoenaed
 - properly drawn line will assist in determining who this is
- violation of a protective order is a domestic violence crime
 - subject to **enhancement of penalties** (§77-36-1.1)
 - priors can be Utah convictions or convictions from other states

Notification of Victim

- APP to notify victim of criminal probation violations or threats by defendant
 - good faith effort/ mailing to last known address

Resources for Victims

Shelters

- There are 16 programs in Utah from Blanding to Logan
 - Logan, Brigham City, Ogden, Davis County, 2 in Salt Lake County, Tooele, Provo, Park City, Price, Richfield, Moab, Vernal, Cedar City, St. George, Blanding

Victim advocates

- **Division of Family Services--Development and assistance of volunteer network.** (§30-6-11)
 - develop a statewide network of volunteers and community resources to
 - support, assist
 - advocate on behalf of victims of domestic violence
 - provide assistance to persons seeking orders for protection
 - provide nonlegal assistance on location and availability of shelters and community resources
 - Through police agencies, shelters or prosecutors' offices; Adult Probation and Parole

Division of Child and Family Services

- DV workers; CPS workers

Legal services

- Legal Aid in Salt Lake City handles all protective orders regardless of income
- Utah Legal Services may handle protective orders in many other areas of the state

Other community resources

- Clergy
- Healthcare providers
- Workplace Employee Assistance programs
- Private and public mental health providers/programs
- Local coalitions
- Specialized police units
- DV resource information and referral line at 800-897 LINK (5465)
- Attorney General's Office at 800-244-4636
- Utah Domestic Violence Council at (801) 521-5544
- Judicial District Victim's Rights Councils; call CVR at 800-621-7444 for specific district info

Risk Factors Affecting Lethality

(adapted from the Treatment Sub-Committee of the SLADVC)

Officers (or the victim advocate) should consider asking victims the following questions. The answers may be relevant to assist the officer or prosecutor in seeking higher bail or no bail, as well as helping victims with safety planning.

2. Has abuser threatened to kill victim, children or others?
 - a. Physically _____
 - b. Verbally _____
3. Has abuser previously attempted to kill victim, children or others? _____
4. Has abuser threatened to harm or kill himself or others? _____
 - a. Has abuser exhibited fantasies or details of plans of suicide or homicide? _____
5. Has abuser previously injured victim or children or others seriously enough to require medical treatment? _____
6. Does abuser have criminal history of violence? _____
7. Is abuser intoxicated on a daily or weekly basis or does s/he heavily or regularly use amphetamine, heroin or other street drugs and does s/he become violent when abusing substances? _____
8. Has abuser broken a protective order or restraining order in the past? _____
9. Has the violence in the home increased in severity and scope over the past year? _____
10. Does the abuser have a history of stalking behaviors? _____
11. Has the abuser threatened or abused children? _____
12. Has the abuser forced sexual activities upon the partner or children? _____
13. Has the abuser ever prevented the victim or children from leaving by threatening physical harm to self or others if they left? _____
14. Does the abuser have a physical, medical or mental condition that contributes to the violence? _____
15. Has the victim recently separated from or terminated the relationship with the abuser? _____
16. Has the abuser harmed or killed family pets or threatened to do so? _____
17. Does the abuser have a history of violence in his/her family of origin? _____
18. Has the abuser dropped out of treatment or been non-compliant in a domestic violence treatment program? _____
19. Does the abuser have chronic, severe mental health problems? _____
20. Does the abuser exhibit excessive jealousy? _____
21. Has the abuser destroyed the victim's personal property? _____

(Even one "yes" indicates the possibility of continued threat of harm and interventions should be employed to protect the victim)

Low risk	0-5 "yes" answers
Moderate risk	6-10 "yes" answers
High risk	11-15 "yes" answers
Severe risk	16-20 "yes" answers

Domestic Violence Investigation Checklist

- Conduct a thorough investigation and prepare reports of all incidents of domestic violence and all crimes related to domestic violence
- Responding officer should **mirror the philosophy of the prosecutor**
 - How can we prove this case without the participation of the victim?
- Do not neglect the importance of victim safety considerations and referral for the victim
- Mandatory or pro-arrest policies play a critical role in relation to victim safety and thorough case investigation
 - Arrest not only acknowledges the criminal behavior, but provides immediate safety to the victim and heightens the likelihood of a provable case

ARRIVAL AT THE SCENE

- _____ Determine location and condition of victim
- _____ Determine if suspect is still at scene
- _____ Determine if any weapon is involved
 - If so, **confiscate weapon**
- _____ Determine what, if any, crime has occurred
 - **Probable cause** to believe a domestic violence crime has been committed
- _____ Summons ambulance if injuries require
- _____ Separate victim, suspect and witnesses
 - Remove victim from suspect's line of sight
- _____ Interview victim and witnesses separately
 - Determine predominant physical aggressor--especially if both are injured (2 suspects)

VICTIM

- _____ Describe victim's location upon arrival
- _____ Record any spontaneous statements made by the victim
 - Statements describing how the injuries happened
 - Statements about conditions leading to incident
 - use of drugs, lost job, etc.
- _____ Describe victim's emotional condition and demeanor (*circle all that apply*)
 - Angry
 - Apologetic
 - Crying
 - Fearful
 - Hysterical
 - Calm
 - Afraid
 - Irrational
 - Nervous
 - Threatening
 - Others: explain
- _____ Describe victim's physical condition and injuries (*circle all that apply*)
 - Complains of pain
 - Bruise(s)
 - Abrasion(s)

- Minor cut(s)
- Laceration(s)
- Fracture(s)
- Concussion
- Others: explain

_____ Note torn clothing

_____ Note smeared make-up

_____ Note evidence of injury (*diagram*) and details

_____ Note victim's relationship to suspect (*circle one that applies*)

- Spouse
- Former spouse
- Cohabitant
- Former cohabitant
- Lived or living together
 - roommates
- Related by blood or marriage
- Have children in common
- Same sex
- Emancipated minor
- Parent of child from relationship

_____ Record history of abuse

- Prior history of domestic violence
- Prior history of violence documented
- Any ex parte or protective orders
 - If not yet served, inform suspect and note in report
 - Notify sheriff's office to serve or serve if you can

_____ Give victims required statutory info., no contact requirement and victim service agencies

_____ Record any temporary address/telephone of victim or name, address & phone of someone who will know victim's whereabouts

_____ Record height, weight, and age of victim

_____ Get written or recorded statement from victim

SUSPECT

_____ Describe the suspect's location upon arrival

_____ Record any spontaneous statements made by the suspect

- Statements describing how the injuries happened
- Statements about conditions leading to incident
 - use of drugs, lost job, etc.

_____ Prevent communications between suspect and victim/witnesses

_____ Describe suspect's emotional condition and demeanor (*circle all that apply*)

- Angry
- Apologetic
- Crying
- Fearful
- Hysterical
- Calm
- Afraid

- Irrational
- Nervous
- Threatening
- Others: explain

_____ Describe suspect's physical condition and injuries (*circle all that apply*)

- Complains of pain
- Bruise(s)
- Abrasion(s)
- Minor cut(s)
- Laceration(s)
- Fracture(s)
- Concussion
- Pay attention to **self defense** type marks such as scratches on front or bite marks to chest, under arms, upper arms
- Others: explain

_____ Note evidence of substance/chemical abuse by suspect

_____ Interview suspect

_____ Record alibi statements

_____ Advise suspect of rights

_____ Obtain waiver

_____ Get statement

_____ Note height, weight, and age of suspect

WITNESSES

_____ Interview the reporting party

_____ Interview witnesses separately

_____ List names and ages of children

_____ Interview children and note emotional demeanor

- **Write down all statements:**
 - Present sense impression--statement describing and event or conditions
 - Excited utterance--statement relating to a startling event
 - Then existing mental, emotional, or physical conditions
 - Statements for purpose of medical diagnosis or treatment
 - Statements under impending death
 - Statements against interest

EVIDENCE

_____ Note condition of crime scene

- Disarray of furniture or other items
- Damaged property, furniture, walls, etc.
- Blood or other physical evidence

_____ Photograph crime scene, if applicable

_____ Photograph victim's injuries

_____ Make arrangements to photograph victim's injuries a couple of days later

_____ Photograph suspect's injuries (*or lack of injuries*)

_____ Seize any corroborative evidence

- Weapons
- Pieces of broken items or glass
- Torn clothing

- Bloodstained articles
- Damaged personal items of the victim
- _____ Document threats prior to, during, and after incident
- _____ Recorded the "911" case # _____ and incident # _____
- _____ Criminal history (BCI record, NCIC record)
- _____ Document prior history of abuse
 - Reported
 - Unreported
 - Convictions
 - Where occurred
 - Reports or report numbers
 - Prior requests for service to that address
- _____ Obtain medical release from victim
- _____ Obtain copy of medical report including Dr.'s name, address and phone number
- _____ Document complaint of injuries
 - **Hearsay exception:** *a statement of the declarant's then existing state of mind, emotion, sensation or physical condition which includes mental feeling, pain and bodily health*
- _____ Obtain names, addresses and phone numbers of ambulance or paramedic personnel treating the victim
- _____ Obtain copies of any protective orders

COMPLETING CRIME REPORT

- _____ Make sure all elements of offense are included in report
 - i.e., Assault, class B misdemeanor:
 - an attempt, with unlawful force or violence, to do bodily injury to another or
 - a threat, accompanied by a show of immediate force or violence, to do bodily injury to another; or
 - an act, committed with unlawful force or violence, that causes or creates a substantial risk of bodily injury to another
- _____ Make sure information is given to victims
 - Rights
 - Rights to initiate criminal proceedings
 - Importance of preserving evidence
 - Remedies
 - Protective orders
 - Services
- _____ Upon request, transport victim to a hospital or shelter or other place of safety

* If not applicable, mark "NA"

Police Checklist

- Determine predominant physical aggressor
 - *prior complaints of DV*
 - *relative severity of injuries inflicted on each person*
 - *likelihood of future injury to each person*
 - *whether one party acted in self-defense*
- Give notice to V of rights and remedies
- Confiscate weapons used or involved in DV
- Make arrangements for V to obtain housing or shelter
- Provide protection to V while removing personal effects
- Arrange for, facilitate or provide medical treatment
- Write incident report and disposition (grounds for arrest, no arrest or arrest of both)
- If no arrest or further action, notify V of right to initiate criminal proceedings and importance of preserving evidence

- If have PC that DV offense occurred, **MUST arrest or cite;**
- If have PC that a DV offense occurred and PC ***that violence will continue*** or ***serious bodily injury was caused*** or ***dangerous weapon was used*** or ***protective order was violated***
YOU MUST ARREST AND TAKE INTO CUSTODY

- Copy of report to prosecutor w/in 5 days
- Identify report as "domestic violence" for record keeping
- No cost to victim for copy of report
- If use citation, **notify offender that s/he must appear in court** within 14 days of citation

Police Officer Domestic Violence

Effective Date
April 1, 1999

Subject
Police Officer Domestic Violence

Reevaluation Date
June 30, 1999

I. PURPOSE

This policy acknowledges that some police officers commit domestic violence against their intimate partners. The purpose of this policy is to establish procedures for handling matters of domestic violence and abuse involving police officers. This policy will provide police executives and officers guidance in addressing incidents where one (or more) party to a possible domestic violence incident is an employee, whether sworn or civilian, of any rank in the department.

Although the language of the policy speaks to police officers, departments are encouraged to apply the principles to all employees whenever appropriate.

II. POLICY

The policy takes a continuum approach, seeking first to educate at all phases of an officer's career, then prevent, or interdict, domestic abuse situations early on in order to reduce victimization of the partner and increase the chances of officer career stability.

Where incidents of domestic violence are alleged to have occurred, the department will act quickly to protect the victim, arrest the perpetrator, and conduct parallel administrative and criminal investigations. This policy delineates a position by the department of absolute intolerance (i.e., zero tolerance) of domestic violence. An officer found guilty of domestic violence, either through criminal court or an administrative hearing, shall have his/her police powers revoked.

Once implemented, the policy will apply to past convictions, and existing and future police officer domestic violence crimes.

III. DEFINITIONS

Domestic violence: For the purposes of this policy, refers to any act of violence (threatened or actual) including but not limited to:

- * bodily injury or threat of imminent bodily injury
- * sexual battery
- * physical restraint
- * property crime directed at the victim
- * violation of a court order of protection, or similar injunction
- * death perpetrated by a police officer (on or off duty) or any police department employee upon his or her partner. Partner is defined as any individual with whom the officer:
 - * is or was legally married
 - * has a child in common
 - * is or has cohabitated
 - * has or had a dating relationship
 - * is specified as such by state law.

Note: Departmental policies concerning all other forms of family violence committed by a police officer should parallel this policy.

IV. PROCEDURES

This policy applies to past convictions for domestic violence, as well as existing and future offenses. In the process of adopting this policy of zero tolerance, departments must review the records of all officers to ensure they are free of domestic violence convictions.

Federal law prohibits police officers who have been convicted of misdemeanor domestic violence crimes from possessing a firearm.

A. Prevention, Education, and Training

The department will adhere to a zero tolerance policy towards police officer domestic violence and violations of the policy will not be tolerated. The department will provide training to officers on domestic violence and the zero tolerance policy throughout all phases of a police officer's career.

1. Prevention Through Collaboration

a. The department shall collaborate with local domestic violence victim advocacy organizations, coordinating councils, and state domestic violence coalitions in the development of domestic violence training curricula and shall use local advocates in the training of officers.

b. The department shall collaborate with local and national law enforcement agencies that have already implemented domestic violence training. The information gathered can serve as a guideline for the development of domestic violence training curricula, and experienced officers from these jurisdictions can assist in training within the department.

c. The department shall provide copies of all departmental protocols and policies on domestic violence to local domestic violence victim advocacy organizations.

d. The department shall provide training where requested to local domestic violence victim advocacy organizations on the department's domestic violence policies and protocols.

2. Education

a. Upon implementation of the policy, all Recruit, Patrol, Internal Affairs Officers, Dispatchers/Communications Officers, Field Training Officers, and Administrative Command/Supervisors shall receive instruction on the following issues/topics:

- * General Domestic Violence Training (to include cultural, racial, gender, and same-sex issues)
- * Domestic Violence Dynamics, Tactics and Behavior Patterns
- * Cultural Dynamics and Potential Barriers to Assistance/Intervention
- * Stalking Tactics and Behavior Recognition
- * Warning Signs of Domestic Violence by Police Officers
- * Domestic Violence Response Protocol
- * Command Notification and Reporting Procedures
- * General Domestic Violence Investigation and Evidence Collection
- * Primary or Dominant Aggressor Determination
- * Officer Safety
- * Victim Rights and Safety
- * Confidentiality Issues
- * Ethical Considerations
- * Criminal and Civil Liability
- * Lethality Assessment and Safety Planning
- * Working with Advocates, Collaboration and Assistance
- * Weapons Removal and Seizure—Legal Issues
- * Cross-jurisdictional Policies and Protocol
- * Intra/Interstate Enforcement of Protective Orders

* Federal Stalking, Domestic Violence, Immigration and Gun Control Laws

b. Additional Administrative Command/ Supervisor training related to domestic violence should address the following:

- * Department Legal Considerations and Liability
- * Media and Public Relations
- * Criminal versus Administrative Investigations
- * Conducting Lethality/Dangerousness Assessments

3. Training

a. In-Service Training

Departments shall select a series of effective and concise materials on domestic violence for routine dissemination to all personnel. Periodic in-service trainings on domestic violence and stalking shall be held to review policies and discuss their implementation.

b. Roll-Call Training

Officers shall receive regular instruction about domestic violence and stalking during roll call.

4. Program Evaluation

To enhance the effectiveness of the training, departments should work with internal or external research resources to evaluate the training being provided.

B. Early Warning and Intervention

1. Pre-Hire Screening and Investigation

a. Departments shall conduct thorough background investigations of all potential new employees to determine if elder abuse, child abuse, and/or domestic violence issues exist.

b. All candidates shall be asked about past arrests or convictions for elder abuse, child abuse, and/or domestic violence-related incidents and past civil protection orders.

c. Those candidates with a history of perpetrating elder abuse, child abuse or domestic violence shall be screened out at this point in the hiring process.

2. Post-Conditional Offer of Employment

a. The department shall require a psychological examination of all viable candidates to be performed by an experienced psychologist and/or psychiatrist.

b. The psychological screening will focus on indicators of violent or abusive tendencies or behaviors in their background.

3. Post-Hire Intervention

When new officers are hired, the department will offer training that includes families of the recruits to discuss this policy and other issues. Families shall be instructed on whom to call in the department if problems occur.

4. Department Responsibilities

a. The department shall either in response to observed warning signs or at the request of an officer provide non-punitive avenues of assistance to officers, their partners, and other family members before an act of domestic violence occurs.

b. The department shall identify a procedure for making confidential referrals to confidential counseling services either internally or in collaboration with existing community services that have specific expertise in domestic violence.

c. Officers who disclose to any member of the department that they have personally engaged in domestic violence are not entitled to confidentiality. The report of such criminal conduct must be treated as an admission of a crime and shall be investigated both criminally and administratively.

5. Supervisor Responsibilities

a. Demonstration of inappropriate aggressive behaviors while conducting police business shall be documented for consideration by supervisors. These behaviors include the following: stalking and inappropriate surveillance activities, unusually high incidences of physical altercations, injuries, or verbal disputes.

1. Supervisors shall maintain close supervision of officers whose behavior is inconsistent with acceptable standards for on-duty problem resolution.

2. Supervisors shall monitor frequent tardiness and absences.

3. Supervisors shall proactively inquire about all on- or off-duty officer injuries.

4. Supervisors shall immediately make their ranking supervisor aware of any and all such behaviors.

b. Supervisors shall be cognizant of and document all behavior, on or off duty, where officers may be exhibiting signs of possible domestic violence-related problems; including increased use of force during arrests, alcohol and/or drug abuse, increase in controlling behaviors, stalking activity, citizen and fellow officer complaints of unwarranted aggression and verbal abuse, and inappropriate aggression toward animals.

1. Supervisors shall immediately make their ranking supervisor aware of any and all such behaviors.

2. The chief of police shall be informed of such circumstances or concerns in a timely manner through the department's chain of command.

3. Supervisors shall prepare and submit written requests for evaluating an officer's mental and physical well-being by suitable professionals when behaviors or circumstances deem appropriate.

6. Police Officer Responsibilities

a. Officers are encouraged and entitled to seek confidential assistance from the department to prevent a problem from escalating to the level of criminal conduct against an intimate partner.

b. Officers with definitive knowledge of abuse and/or violence involving fellow officers must report such information in a timely manner to their supervisor. Failure to do so will subject the officer to investigation, disciplinary action, and possible sanction and/or criminal charges.

c. All officers shall be aware of possible witness or victim intimidation/coercion. Whenever an officer suspects this is occurring, he/she shall prepare a written report and immediately deliver it to the investigator in charge of the case through the proper chain of command.

d. Officers who engage in threatening, harassing, stalking, surveillance or other such behavior designed to interfere with cases against fellow officers or intimidate witnesses will be subject to investigation, disciplinary action, and possible sanction and/or criminal charges.

e. Officers who fail to cooperate with the investigation of a police officer domestic violence case will be subject to investigation, and possible sanction and/or criminal charges.

f. An officer who falsely reports that a victim of police officer domestic violence has committed a crime (such as child abuse or neglect) will be subject to investigation, and possible sanction and/or criminal charges.

g. An officer who is the subject of a criminal investigation, protective or restraining order related to domestic violence, regardless of jurisdiction, is required to report him/herself to his/her supervisor and provide notice of the court dates, times, appearances, and proceedings in a timely manner.

h. An accused officer who is the subject of any civil protective order proceeding, whether or not the order is issued and regardless of jurisdiction, shall notify his/her supervisor in a timely manner and provide a copy of the order, if issued, to his/her supervisor.

C. Incident Response Protocols

1. Department-wide Response

a. The department shall accept, document, and preserve all calls or reports, including those made anonymously, involving possible police officer domestic violence as "on-the-record" information.

b. All reports of possible criminal activity implicating police officers in domestic violence shall be documented in accordance with the policies governing the handling of all reports of domestic violence by citizens. A criminal incident report shall be completed including details on date, time, location, circumstances, names (if known), officials notified, and actions taken; a case file number shall be assigned and the report filed.

c. A copy of the report detailing the possible criminal activity implicating an officer in domestic violence shall be directed to that officer's immediate supervisor.

d. All such incident reports shall be made available by the department to the involved victim without cost.

2. Communications Response

a. Communications officers/dispatchers shall be instructed to assign top priority to all domestic violence calls, including those that involve or appear to involve a police officer of any department.

b. Communications officers/dispatchers shall document all domestic violence calls received that involve, or appear to involve, a police officer and immediately notify the supervisor, regardless of the involved officer's jurisdiction.

c. Communications officers/dispatchers shall prepare and preserve documentation of the facts and circumstances of the call, including the 911 tape, for use in potential criminal or administrative investigations.

d. Communications officers/dispatchers shall have available current lists of local domestic violence victim advocacy organizations for on-scene supervisors to provide to victims.

3. Patrol Response

a. Upon arrival on the scene of a domestic violence call/incident involving a police officer, the primary patrol unit shall immediately notify dispatch and request a supervisor be sent to the scene, regardless of the involved officer's jurisdiction.

b. If the alleged offender has left the scene and probable cause exists, the responding officers shall

1. search the area as appropriate

2. obtain information from victim, family, and witnesses as to where the offender may have gone

3. seek an arrest warrant.

4. On-Scene Supervisor Response

a. A supervisor shall report to the scene of all police officer domestic violence situations, regardless of the involved officer's jurisdiction.

b. The on-scene supervisor shall assume command, ensure that the crime scene is secure and that all evidence is collected, including color photographs. Video documentation of the victim and scene shall be recorded where such resources are available.

c. In cases where probable cause exists, the on-scene supervisor shall ensure an arrest is made.

d. If the offender has left the scene, the supervisor shall ensure a search is conducted and an arrest warrant is obtained.

e. Arrest of both parties involved in a domestic violence incident should be avoided. The supervisor shall ensure that a thorough investigation is conducted and an arrest of the primary aggressor is made in accordance with state law.

f. Whenever an officer is arrested, the supervisor shall relieve the accused officer of his/her service weapon regardless of whether the officer is a member of the responding department. Where allowable under federal, state, or local ordinances, all other firearms owned or at the disposal of the accused officer shall be removed to ensure the victim's safety.

g. Whenever a police officer domestic violence call does not result in an arrest, the on-scene supervisor shall submit a written report explaining any and all reasons why an arrest was not made or a warrant was not sought.

h. The on-scene supervisor shall ensure the victim is informed of the following:

1. The availability of an on-scene advocate.

2. Confidential transportation to a safe house, shelter, or any other location that ensures victim safety.

3. Procedures for obtaining restraining and/or protective orders and victim rights.

4. The standard of probable cause for arrest including the signature to appear on the complaint.

5. Judicial process, victim rights, and compensation following an arrest.

6. Written information on community resources and local domestic violence victim advocacy organizations.

5. Additional Critical Considerations

a. When responding to a domestic violence complaint involving a police officer from another jurisdiction, all responding officers, investigators, and supervisors shall follow the same procedures that are to be followed in responding to a domestic violence complaint involving an officer from their own department. The responding supervisor shall notify the chief of police, or his/her designee, in the accused officer's

jurisdiction verbally as soon as possible and in writing within 24 hours.

b. In the event that the reported incident involves the chief of police or commissioner, the supervisor shall immediately notify the individual in government who has direct oversight for the chief, for example, the mayor.

c. In responding to domestic violence situations where the victim is a police officer, standard domestic violence response and investigation procedures should be followed.

d. In responding to domestic violence incidents where the parties involved are both police officers, standard domestic violence response and investigation procedures should be followed. After probable cause and dominant aggressor are determined, an arrest should be made and all service weapons of the accused officer confiscated.

Note: State law may provide for the seizure of additional weapons.

6. Department Follow-Up

a. The supervisor shall in a timely manner debrief all officers who respond to a police officer domestic violence call. During the debriefing, the supervisor shall

1. Review department confidentiality guidelines.

2. Reaffirm that officers share information only on a need-to-know basis.

3. Establish a clear delineation of assignments in order to assist victims in a coordinated and consistent manner.

b. Arrest warrants charging police officers with domestic assault and civil protective orders issued at a later time shall be served by no fewer than two officers with at least one being of senior rank to the officer being served.

c. On-scene and follow-up investigators shall proactively seek out information on existing restraining and/or protective orders and, if found, shall enforce them.

d. Following the reported incident, the department shall designate a member of the command staff specifically trained in conducting lethality assessment and safety planning to act as a principal contact for the victim. The assigned officer will keep the victim apprised of the case throughout the adjudication process and provide the victim with a copy of the incident report.

e. A specially trained member of the command staff shall conduct an assessment to determine the potential for further violence on the part of the accused officer. Based on the outcome, the department will need to make decisions concerning referrals, duty assignments, and administrative actions.

D. Victim Safety and Protection

1. Working with community resources and advocacy agencies, the department shall make available all necessary and appropriate services to each victim.

2. All officers shall keep all information concerning victims confidential, including their whereabouts, safety plan, and any communications.

3. The command staff officer shall inquire whether the victim wants any weapons removed from his/her home for safekeeping by the department.

4. The command staff officer designated as the victim's principal contact shall conduct a lethality assessment with the victim. The information gained shall be incorporated into the safety plan developed with the victim.
5. All officers shall be aware of the increased danger to victims when the victim leaves an abusive partner, and the designated command officer shall caution the victim to be alert to stalking activities on the part of the abuser and assist in safety planning.
6. The command staff designated as principal contact for the victim shall inform the victim of confidentiality policies and their limitations, and ensure that confidentiality is maintained throughout the case.
7. All officers shall be aware of possible witness or victim intimidation/coercion. Whenever an officer suspects this is occurring, he/she shall prepare a written report and immediately deliver it to the investigator in charge of the case through the proper chain of command.
 - a. In order to ensure coercion is not being attempted, the investigator in charge shall seek out secondary sources of information.
 - b. Given the likelihood that a victim will recant, supplemental evidence should be sought out and preserved.

E. Post-Incident Administrative and Criminal Decisions

Departments shall conduct separate parallel administrative and criminal investigations of alleged incidents of police officer domestic violence. If the facts of the case indicate that domestic violence has occurred or any departmental policies have been violated, administrative action shall be taken separate and distinct from any criminal proceedings as soon as practicable. Independent of the outcome of the criminal case, the department shall adhere to all positions and policies relating to the incident. The department will adhere to/observe all necessary protocols to ensure an accused officer's departmental, union, and legal rights are upheld during the administrative and criminal investigations.

1. Administrative Investigations and Decisions

The responsibility to complete the administrative investigation of a police officer domestic violence incident shall rest with the Internal Affairs Division of the department, or in the event that no such unit exists, the chief shall appoint an investigator.

- a. The investigating official shall conduct an administrative investigation utilizing standard elements of criminal investigations. Witnesses shall be contacted, re-interviewed, and statements recorded; crime scene evidence, photographs and medical records accessed, 911 tapes requested, and all information fully documented.
- b. Where sufficient information exists, the department shall take immediate administrative action to intervene, which can include removal of badge, removal of weapon, reassignment, administrative leave with or without pay, or termination.
- c. Where an arrest was not made, but sufficient concern exists, the department shall initiate an independent administrative investigation and decide the officer's status based on the outcome of the investigation.
- d. In determining the proper course of administrative action, a department shall consider factors such as level of danger an officer poses to the victim (based on risk assessment measures), an officer's history of compliance with departmental rules, history of aggressive behaviors, and existence of an alcohol or substance abuse problem.
- e. Pending the administrative and criminal investigations for alleged acts of domestic violence and/or violation of departmental policies, the department shall assign the accused officer to duties that do not

require response to domestic violence cases.

2. Criminal Investigations and Decisions

The responsibility to complete a criminal investigation of an incident of police officer domestic violence shall rest with the domestic violence unit of the department, or in the event that no such unit exists, the criminal investigations unit or detective division.

a. The investigating official shall conduct criminal investigations as she/he would for any other criminal violation. Witnesses shall be contacted, statements recorded, evidence collected, photographs taken of the scene and injuries, medical records accessed, 911 tapes requested, and all information fully documented.

b. When appropriate, the investigating official or department shall conduct sufficient interviews (taped) to support criminal charges, to include family members, friends, neighbors, colleagues, or others who may have information in accordance with the officer's and victim's privacy rights.

c. Even though an initial report may already exist concerning a police officer, if the victim reports any subsequent or additional criminal activity, each incident shall be documented separately, assigned a case number, and investigated thoroughly.

d. The department shall completely investigate the charges and where warranted seek prosecution even if the victim recants the charges.

e. The department shall establish a liaison to work with the prosecuting/district attorney for each case. This officer shall present the information to the prosecuting or district attorney for proper action in a timely fashion and request that the prosecuting attorney in turn make timely decisions about the adjudication of the case.

f. Filing of court papers/complaints shall be requested by the investigating officer, as with any other case for criminal prosecution.

3. Criminal Conviction

a. Federal law prohibits officers convicted of misdemeanor domestic violence assaults from carrying firearms. The department shall ensure compliance with federal law.

b. Any police officer convicted of a domestic violence crime as defined herein shall have his/her police powers revoked.

Every effort has been made by the IACP Research Center and the Police Response to Violence Against Women Advisory Group to ensure that this model policy incorporates the most current information and contemporary professional judgment on the issue. However, law enforcement administrators should be cautioned that no "model" policy can meet the needs of any given law enforcement agency. Each law enforcement agency operates in a unique environment of federal court rulings, state laws, local ordinances, regulations, judicial and administrative decisions and collective bargaining agreements need to be considered.

This project was supported by Grant No.97-WT-VX-KOO3 awarded by the Violence Against Women Office, Office of Justice Programs and Office of Community Oriented Policing Services, U.S. Department of Justice. The Assistant Attorney General, Office of Justice Programs, coordinates the activities of the following offices and bureaus: the Bureau of Justice Assistance, the Bureau of Justice Statistics, National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention, the Office of Victims of Crime, and the Violence Against Women Office. Points of view or opinions in this document are those of the author and do not represent official position or policies of the United States Department of Justice.

FRAMINGHAM POLICE DEPARTMENT DOMESTIC ABUSE INVESTIGATION CHECKLIST

This form is to be used for report writing and evidence collection only. Many of the items listed will not apply in every case. This form is not to be used as part of you report.

VICTIM INFO

- ___ Name: _____
- ___ Noted date of birth _____
- ___ Noted location upon arrival _____
- ___ Administered 1st Aid, noted if medical treatment was sought _____
- ___ Noted time dispatched, arrived, and when victim spoke _____
- ___ Recorded excited utterances _____
- ___ Described demeanor _____
- ___ Height, weight, eye & hair color _____
- ___ Described physical condition _____
- ___ Noted complaints of injuries _____
- ___ Described injuries in detail (size, location, color) _____
- ___ Noted relationship to suspect _____
- ___ Detailed description of incident _____
- ___ Recorded history of abuse _____
- ___ Recorded history of court orders _____
- ___ Explained rights under 209A _____
- ___ Provided written copy of rights _____
- ___ Recorded temporary address/phone (Do **NOT** include in report !!!!!) _____
- ___ Advised of suspect's right to bail _____
- ___ Does this case also involve:
- ___ Child abuse _____ report filed
- ___ Elder Abuse _____ report filed
- ___ Disabled abuse _____ report filed

SUSPECT INFO

- ___ Name: _____
- ___ Noted date of birth _____
- ___ Noted location upon arrival _____
- ___ Administered 1st Aid, noted if medical treatment was sought _____
- ___ Noted when suspect first spoke _____
- ___ Recorded excited utterances _____
- ___ Described demeanor _____
- ___ Height, weight, eye & hair color _____
- ___ Described physical condition _____
- ___ Noted complaints of injury _____
- ___ Described injuries in detail (size, location, color) _____
- ___ Temporary address noted (if vacate order exists) _____
- ___ Noted existence of any restraining orders _____
- ___ Fingerprinted suspect _____
- ___ Checked LEAPS ___ WMS ___ BOP ___
- ___ Following Miranda, when applicable:
- ___ Asked if s/he wanted to make a statement _____
- ___ Noted whether suspect knew of and/or understood restraining order _____
- ___ Detailed description of incident _____
- ___ Noted history of abuse in any relationship _____

WITNESS INFO

- ___ Identified reporting party _____
- ___ Interviewed reporting party _____
- ___ Documented names, DOB's, addresses and phone numbers of all witnesses _____
- ___ Interviewed all witnesses, separately _____
- ___ Listed names and DOB's of children present _____
- ___ Recorded names of emergency personnel _____
- ___ Identified treating physician _____
- ___ Identified desk officer/dispatcher _____

EVIDENCE

- ___ Photographed/described crime scene _____
- ___ Took full body picture of suspect _____
- ___ Took fully body picture of victim _____
- ___ Photographed victim's injuries _____
- ___ Photographed suspect's injuries _____
- ___ Seized items thrown or broken _____
- ___ Seized firearms for safety _____
- ___ Seized firearms under surrender order _____
- ___ Requested medical records _____
- ___ Requested 911 tape _____

Questions to ask victim:

1. Has there been past abuse yes no
2. Has the offender ever choked or strangled you? yes no
3. Has the offender ever threatened or attempted to kill you? yes no **The children?** yes no
Themselves? yes no
4. Does offender have a gun or firearm? yes no Type: _____

Does the offender have access to firearms? yes no Whose? _____
If so, has he used or threatened to use a firearm against you? yes no

Where are the firearms? _____

Does offender carry other types of weapons such as knives? yes no

Type: _____ | _____

Did the offender use or threaten to use the above weapon against you? yes no

5. Do you believe the offender could seriously injure or kill you? yes no
6. Does the offender currently abuse alcohol? or drugs? (check box indicates yes)
7. Does the offender have a history of violent behavior towards others? yes no
8. Was Victim sexually assaulted? yes no

Suspects Relationship to Victim (Check only one)			
<input type="checkbox"/> Child	<input type="checkbox"/> Spouse	Check one	Length of relationship _____ Year(s)
<input type="checkbox"/> Sibling	<input type="checkbox"/> Former Spouse	<input type="checkbox"/> Cohabitant	_____ Month(s)
<input type="checkbox"/> Parent	<input type="checkbox"/> Dating/Engaged	<input type="checkbox"/> Former cohabitant	Date ended(if applicable)
<input type="checkbox"/> Other Relative	<input type="checkbox"/> Other	<input type="checkbox"/> Never lived together	_____/_____/_____
		<input type="checkbox"/> Child in common	

If not arrested do you have a photograph of the offender? yes no

Photo's of Victim injuries yes no Type: Digital 35mm By: _____

FRAMINGHAM POLICE STANDARD OFFENSE REPORT

1 DISPATCHED 2 CITIZEN 3 ON VIEW _____	DATE/TIME REPORTED	DATE/TIME OCCURRED	CASE #
LOCATION OF OFFENSE		TYPE OF PREMISE	
A. _____ B. _____ C. _____		1 STREET 2 SINGLE RESIDENCE 3 MULTIPLE RESIDENCE 4 COMMERCIAL 5 GAS STATION 6 STORE 7 PHARMACY/DOCTOR OFFICE 8 PUBLIC COMMUNITY BLDG/SCHOOL (INSERT NUMBER) _____	
D. _____ E. _____ F. _____		9 RESTAURANT 10 WARE HOUSE 11 TAVERN BAR 12 VEHICLE 13 BANK 14 OPEN AREA (PARK, FIELD, ETC.) 15 OTHER	

CODES (INSERT LETTER) V-VICTIM B-BUSINESS W-WITNESS P-PARENT DC-DISCOVERED CRIME RP-REPORTING PARTY

1 NAME- LAST, FIRST, MIDDLE							1 CODE	RESIDENCE ADDRESS-PHONE			
SEX	RACE	HAIR	EYES	HT.	WT.	DOB	AGE	OCCUPATION	BUSINESS ADDRESS-PHONE		
2 NAME- LAST, FIRST, MIDDLE							2 CODE	RESIDENCE ADDRESS-PHONE			
SEX	RACE	HAIR	EYES	HT.	WT.	DOB	AGE	OCCUPATION	BUSINESS ADDRESS-PHONE		
3 NAME- LAST, FIRST, MIDDLE							3 CODE	RESIDENCE ADDRESS-PHONE			
SEX	RACE	HAIR	EYES	HT.	WT.	DOB	AGE	OCCUPATION	BUSINESS ADDRESS-PHONE		
DID VICTIMS RECEIVE MEDICAL ATTENTION? WHERE?							ADDITIONAL INFORMATION (LOCAL USE ONLY)				
VIC #1 _____ VIC #2 _____ VIC #3 _____											

PROPERTY STATUS: (INSERT LETTER) S-STOLEN RE-RECOVERED-SAFEKEEPING SUPPLEMENT STATUS
 F-FOUND HE-HOLD FOR EVIDENCE ANALYSIS "A" DESTROY "D"

STATUS	QTY.	DESCRIPTION OF PROPERTY	CODE	MODEL-SERIAL-OWNER APPLIED NO.	VALUE

PROPERTY CODES

A: CURRENCY/MAIL/CHECKS/STAMPS B: JEWELRY/PRECIOUS METALS C: CLOTHING D: LOCALLY STOLEN MOTOR VEHICLES E: OFFICE EQUIPMENT F: TV/RADIOS/STEREOS/ELECTRONIC EQUIP	A (INSERT LETTER)	G: FIREARMS/WEAPONS H: HOUSEHOLD GOODS I: CONSUMABLE GOODS/DRUGS J: LIVESTOCK/PETS K: BUILDING & CONSTRUCTION EQUIP/MATERIAL LAWN EQUIP./MIS.
---	-----------------------------	--

SE STATUS _____ VE _____ INACTIVE _____ CLEARED	FURTHER ACTION _____ YES _____ NO	CASE DISPOSITION ARREST _____ ADULT _____ JUVENILE _____ UNFOUNDED _____ EXCEPTIONAL CLEARANCE
--	--------------------------------------	--

ATROL DETECTIVE JUVENILE	NARCOTICS <input type="checkbox"/> OTHER <input type="checkbox"/> DOG OFFICER <input type="checkbox"/>	OFFICERS SIGNATURE (PSN) _____ TIME _____ DATE _____ REVIEWED BY (PSN) _____ TIME _____ DATE _____
--------------------------------	--	---

* (INSERT NUMBER) WHERE APPLICABLE

WEAPON	METHOD OF ENTRY	POINT OF ENTRY	INSTRUMENT USED FOR ENTRY INTO BUILDING	COMPLETE THEFTS ONLY	RELATIONSHIP OFFENDER TO VICTIM
0 NO WEAPON 1 HANDGUN 2 SHOTGUN 3 RIFLE 4 KNIFE 5 HANDS ETC. 6 OTHER WEAPON	1 FORCIBLE 2 UNLAWFUL NO FORCE 3 ATTEMPTED FORCIBLE _____ SAFE ENTERED 1 YES 2 ATTEMPTED 3 NO	1 FRONT 2 REAR 3 SIDE _____ 1 DOOR 2 WINDOW 3 PATIO DR. 4 DUCT-VENT 5 ROOF 6 WALL 7 ADJ. BLDG. 8 OTHER	1 KEY 2 PRY TOOL 3 SAW-DRILL 4 HAMMER 5 BOLT CUTTER 6 CHOPPING TOOL 7 CHAN LOCKS - VISE GRIPS 8 PHYSICAL FORCE 9 THROWN OBJECT 10 OTHER	1 COIN-OPERATED MACHINES 2 FROM BLDGS 3 MV PARTS & ACCESSORIES 4 SHOPLIFTING 5 POCKET-PICK 6 PURSE-SNATCH 7 EMBEZZLEMENT 8 POSS STOLEN PROPERTY 9 ALL OTHER	1 HUSBAND 2 WIFE 3 FATHER 4 MOTHER 5 SON 6 DAUGHTER 7 BROTHER 8 SISTER 9 STEPFATHER 10 STEPMOTHER 11 STEPSON 12 STEPDAUGHTER 13 STEPBROTHER 14 STEPSISTER 15 GRANDPARENT 16 GRANDCHILD 17 IN-LAW 18 EX-HUSBAND 19 EX-WIFE 20 CL. HUSBAND 21 CL. WIFE 22 OTHER FAMILY 23 GUARDIAN 24 BOYFRIEND 25 GIRLFRIEND 26 EX-BOYFRIEND 27 EX-GIRLFRIEND 28 ACQUAINTANCE 29 FRIEND 30 EMPLOYER-EMPLOYEE 31 STRANGER 00 UNKNOWN V1 _____ V2 _____ V3 _____

PHYSICAL EVIDENCE

— FINGERPRINTS	— TOOLMARKS	— STAINS, BLOOD, SEMEN, ETC.	— MUD-SOIL	— CLOTHING	— DOCUMENTS
— GLOVEPRINTS	— TOOLS-INST	— PAINT SAMPLES	— CG. BUTTS	— FIBERS	— RAPE KIT
— SHOPRINTS	— WEAPON	— HAIR	— PHOTOGRAPHS	— VEHICLE	— OTHER
— TIRE MARKS	— SHELLS-BULLETS	— FRAGMENTS	— INSULATION DUST	— DRUGS PARA	

SUSPECT INFO	SUSPECT NO. 1 NAME (LAST, FIRST, MIDDLE)				ADDRESS				
	SEX	RACE	HAIR	EYES	HT.	WT.	DOB	AGE	DATE ARRESTED
	SUSPECT NO. 2 NAME (LAST, FIRST, MIDDLE)				ADDRESS				
	SEX	RACE	HAIR	EYES	HT.	WT.	DOB	AGE	DATE ARRESTED
	SUSPECT NO. 3 NAME (LAST, FIRST, MIDDLE)				ADDRESS				
	SEX	RACE	HAIR	EYES	HT.	WT.	DOB	AGE	DATE ARRESTED

HAIR LENGTH	HAIR STYLE	FACIAL HAIR	GLASSES	SCARS-MARKS	TATTOO	TEETH	EYES
1 LONG 2 MEDIUM 3 SHORT 4 BALDBALDING 5 OTHER 0 UNK.	1 AFRO 2 WAVY 3 SHAG 4 STRAIGHT 5 BRAIDED 6 WIG 7 OTHER 8 UNK.	1 FULL BEARD 2 GOATEE 3 MUSTACHE 4 SIDEBURNS (UNUSUAL) 5 OTHER 0 NONE	1 SUNGLASSES 2 EYE GLASSES FRAMES 3 PLASTIC 4 WIRE RIMMED 5 OTHER 0 NONE	1 HEAD-FACE 2 NECK 3 HAND 4 ARM 5 BODY 6 OTHER 0 UNK.	1 EXTREMITY 2 BODY 3 FACE 4 PICTURES 5 NAME/INITIAL 6 OTHER 0 UNK.	1 GOLD SILVER 2 GOLD DESIGN 3 MISSING GAPS 4 PROTRUDING 5 DECAYED DIRTY 6 BROKEN 7 VERY WHITE 8 OTHER 0 UNK.	1 MISSING 2 CROSSED 3 BULGING 4 SQUINT 5 BLINK 6 AFFLICTED EYE 7 OTHER 0 UNK.
S1 _____ S2 _____ S3 _____	S1 _____ S2 _____ S3 _____	S1 _____ S2 _____ S3 _____	S1 _____ S2 _____ S3 _____	S1 _____ S2 _____ S3 _____	S1 _____ S2 _____ S3 _____	S1 _____ S2 _____ S3 _____	S1 _____ S2 _____ S3 _____

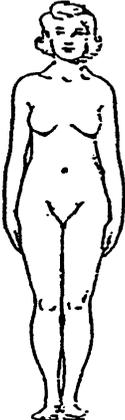
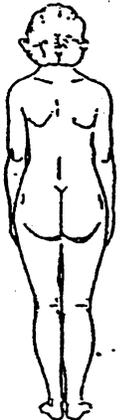
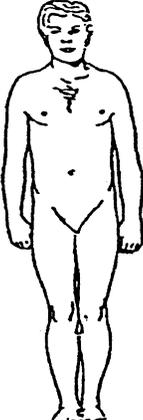
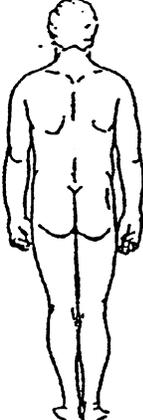
COMPLEXION	BUILD	SPEECH	GENERAL APPEARANCE	SUSPECT WORE	AT TIME OF OFFENSE SUSPECT UNDER INFLUENCE OF	OTHER IDENT MARKS
1 LIGHT 2 MEDIUM 3 DARK 4 ACNE 5 FRECKLED 6 RUDDY 7 OTHER 0 UNK.	1 SMALL 2 MEDIUM 3 HEAVY 4 MUSCULAR 0 UNK. R/L HANDED 1 RIGHT 2 LEFT 0 UNK.	1 PROFANE ABUSIVE 2 SOFT POLITE 3 APOLOGETIC 4 ACCENT 5 STUTTER 6 DEEP RASPY 7 HIGH 8 EFFEMINATE 9 LISP 0 UNK.	1 NEAT WELL DRESSED 2 DIRTY RAGGED 3 UNIFORMED 4 MOD UNUSUAL 5 UNUSUAL JEWELRY 6 OTHER 0 UNK.	1 SKI MASK 2 STOCKING MASK 3 CAP HAT 4 COAT/JACKET 5 SPORTSWEAR 6 GLOVES 7 OTHER 0 UNK.	1 ALCOHOL 2 DRUGS 3 BOTH 4 UNKNOWN	
S1 _____ S2 _____ S3 _____	S1 _____ S2 _____ S3 _____	S1 _____ S2 _____ S3 _____	S1 _____ S2 _____ S3 _____	S1 _____ S2 _____ S3 _____	S1 _____ S2 _____ S3 _____	

VEHICLE INFORMATION

VEHICLE INFORMATION <input type="checkbox"/> STOLEN <input type="checkbox"/> WANTED <input type="checkbox"/> RECOVERED <input type="checkbox"/> TOWED <input type="checkbox"/> SUSPECT <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> OTHER	REG. NO	STATE	YEAR	MAKE	MODEL	BODY TYPE
	COLOR(S)	VIN				

INJURY DIAGRAM Please mark areas of reported injury to the victim or suspect Circle "S" or "V"

Mark & Comment
About injury here:

V. S.? 	
PLEASE DRAW ON DIAGRAM(S) THE LOCATION OF ANY INJURIES.	
V. S.? 	

Mark & Comment
About injury here:

Medical Release of Records

(Please have the Victim or Suspect sign below if they are to be medically treated)

TO ALL HEALTH CARE PROVIDERS/ KEEPER OF THE RECORDS:

You are hereby authorized to release a certified copy of all medical, hospital and outpatient records concerning the diagnosis and treatment of (Print name) _____ (DOB) _____ to

Law Enforcement Officers and the Middlesex County Office of the District Attorney.

You are further authorized to speak with Law Enforcement Officers and representatives of the Middlesex County Office of the District Attorney concerning the above patient's medical diagnosis and treatment.

Please include copies of all records, including but not limited to physician notes/medical notes and orders, nurses' notes, social service notes, reports, memoranda, radiological tests, bone scans, MRI'S and laboratory tests, regarding the above patient.

Signature of person consenting to release of records

or Parent/Guardian

Date: _____

NARRATIVE

_____ of _____

Lined area for writing the narrative report.

Officer's Signature

Date

Reviewed by

Date

Are there children living in the victim's household? Y N If, yes complete below, even if 51A not filed

CH19 S51A Department of Social Services, Commonwealth of Massachusetts **CH19 S51A**

Report of Child(ren) Alleged to be Suffering from Serious Physical or Emotional Injury by Abuse or Neglect

Children Present? yes no When Checked "Yes" this requires a 51A REPORTING PROCEDURE

Was DSS notified by phone? (must be done immediately) | Identify each below & include any statements in narrative!

yes no Who at DSS? | This part of the report is the written 51A as required by law

DATA ON CHILDREN REPORTED OR LIVING IN VICTIMS HOUSEHOLD

Name(s) of Children (below) (Check boxes that best describe the children present!)

Name of Child: | DOB: | Male Female Present

Relationship to: Victim: Son Daughter other: _____ to Suspect: Son Daughter other: _____

Afraid Calm Crying Nervous Sleeping Excited Upset Other:

Name of Child: | DOB: | Male Female Present

Relationship to: Victim: Son Daughter other: _____ to Suspect: Son Daughter other: _____

Afraid Calm Crying Nervous Sleeping Excited Upset Other:

Name of Child: | DOB: | Male Female Present

Relationship to: Victim: Son Daughter other: _____ to Suspect: Son Daughter other: _____

Afraid Calm Crying Nervous Sleeping Excited Upset Other:

Name of Child: | DOB: | Male Female Present

Relationship to: Victim: Son Daughter other: _____ to Suspect: Son Daughter other: _____

Afraid Calm Crying Nervous Sleeping Excited Upset Other:

DATA ON MALE GUARDIAN OR PARENT Victim* Suspect* Other (list below)

* when checked, no need to fill out this area, DSS see pages of this report for information on parent or guardian who is the victim or suspect

Name: | DOB: | SS#

Address: | Phone #

DATA ON FEMALE GUARDIAN OR PARENT Victim* Suspect* Other (list below)

* when checked, no need to fill out this area, DSS see pages of this report for information on parent or guardian who is the victim or suspect

Name: | DOB: | SS#

Address: | Phone #

DATA ON REPORTER/REPORT ⇒ I am a Mandatory Reporter. ⇒ Report Date (Please, see first page)

⇒ Reporter is the investigating officer as listed in this report.

What is the nature and extent of injury, abuse, maltreatment, or neglect, including prior evidence of same? (Please, cite the source of this information if not observed firsthand)

⇒ Answer: The investigating officer request you see the narrative in this report.

What are the circumstances under which the reporter became aware of the injuries, abuse, maltreatment, or neglect?

⇒ Answer: The investigating officer request you see the narrative in this report.

What action has been taken thus far to treat, shelter or otherwise assist the child(ren) to deal with the situation?

⇒ Answer: The investigating officer request you see the narrative in this report.

Please give other information that you think might be helpful in establishing the cause of the injury and/or persons(s) responsible for it. If known, please provide the names of the alleged perpetrator(s)?

⇒ Answer: The investigating officer request you see the narrative in this report.

Comments by the investigator:

INFOLINK: DOMESTIC VIOLENCE-- SAFETY-PLAN GUIDELINES

These safety suggestions have been compiled from safety plans distributed by state domestic violence coalitions from around the country. Following these suggestions is **not a guarantee** of safety, but could help to improve your safety situation.

Personal Safety with an Abuser

Identify your partner's use and level of force so that you can assess danger to you and your children before it occurs.

Try to avoid an abusive situation by leaving.

Identify safe areas of the house where there are no weapons and where there are always ways to escape. If arguments occur, try to move to those areas.

Don't run to where the children are as your partner may hurt them as well.

If violence is unavoidable, make yourself a small target; dive into a corner and curl up into a ball with your face protected and arms around each side of your head, fingers entwined.

If possible, have a phone accessible at all times and know the numbers to call for help. Know where the nearest pay phone is located. Know your local battered women's shelter number. Don't be afraid to call the police.

Let trusted friends and neighbors know of your situation and develop a plan and visual signal for when you need help.

Teach your children how to get help. Instruct them not to get involved in the violence between you and your partner. Plan a code word to signal to them that they should get help or leave the house.

Tell your children that violence is never right, even when someone they love is being violent. Tell them that neither you nor they are at fault or cause the violence, and that when anyone is being violent, it is important to keep safe.

Practice how to get out safely. Practice with your children.

Plan for what you will do if your children tell your partner of your plan or if your partner otherwise finds out about your plan.

Keep weapons like guns and knives locked up and as inaccessible as possible.

Make a habit of backing the car into the driveway and keeping it fueled. Keep the driver's door unlocked and others locked – for a quick escape.

Try not to wear scarves or long jewelry that could be used to strangle you.

Create several plausible reasons for leaving the house at different times of the day or night.

Call a domestic violence hotline periodically to assess your options and get a supportive understanding ear.

Getting Ready to Leave

Keep any evidence of physical abuse, such as pictures, etc.

Know where you can go to get help; tell someone what is happening to you.

- Welfare identification; and
- Valued pictures, jewelry, or personal possessions.

Create a false trail. Call motels, real estate agencies, schools in a town at least six hours away from where you plan to relocate. Ask questions that require a call back to your house in order to leave phone numbers on record.

After Leaving the Abusive Relationship

If getting a restraining order and the offender is leaving:

Change locks and phone number;

Change work hours and route taken to work;

Change route taken to transport children to school;

Keep a certified copy of your restraining order with you at all times;

Inform friends, neighbors and employers that you have a restraining order in effect;

Give copies of restraining order to employers, neighbors, and schools along with a picture of the offender.

Call law enforcement to enforce the order.

If you leave:

Consider renting a post office box for your mail or using the address of a friend;

Be aware that addresses are on restraining orders and police reports;

Be careful to whom you give your new address and phone number;

Change your work hours if possible;

Alert school authorities of situation;

Consider changing your children's schools;

Reschedule appointments that offender is aware of when you leave;

Use different stores and frequent different social spots;

Alert neighbors and request that they call the police if they feel you may be in danger;

Talk to trusted people about the violence;

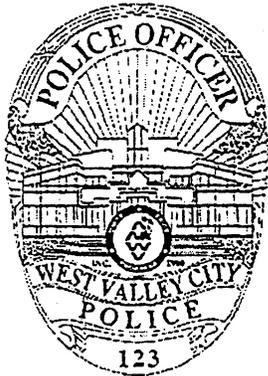
Replace wooden doors with steel or metal doors. Install security systems if possible;

Install a lighting system that lights up when a person is coming close to the house (motion sensitive lights);

Tell people you work with about the situation and have your calls screened by one receptionist if possible;

Tell people who take care of your children which individuals are allowed to pick up your children. Explain your situation to them and provide them with a copy of the restraining order;

Call the telephone company to request caller ID. Ask that your phone be blocked so that if you call, neither your partner or anyone else will be able to get your new, unlisted phone number.



West Valley City Police Department Domestic Violence Enforcement Unit

DOMESTIC VIOLENCE: INVESTIGATION AND ENFORCEMENT

THE EVIDENCE BASED INVESTIGATION

Why an evidence based investigation??

- ✓ Assume the victim will recant
- ✓ Assume the children will recant
- ✓ Assume that any injury will be healed before court
- ✓ Assume that anything broken will be fixed or thrown out
- ✓ Assume that anything not photographed will be denied
- ✓ Assume that the suspect will contact the victim before the prosecutor does

1. PHOTOGRAPHS

- ✓ Victim (with or without injury)
- ✓ Suspect (with or without injury)
- ✓ Damaged property
- ✓ Weapons
- ✓ Condition of scene
- ✓ Any and all evidence whether it is to be booked or not
- ✓ All injuries:
 - Determine mechanism of injury
 - Defensive vs. Offensive
 - Defensive wounds often include: scratches and bite marks
 - NOTE: A credible symptom of an internal injury can be used to build probable cause.
 - Check for multiple injuries and various stages of healing
- ✓ Children
- ✓ **PHOTOS, PHOTOS AND, MORE PHOTOS**

2. WITNESS STATEMENTS

The collection of witness statements is critical to your case!

Considerations during witness statement gathering:

- ✓ Sight and sound separation of the involved parties
- ✓ Be careful not to judge victim, witnesses, suspects etc..
- ✓ Be flexible. Recorded interviews, dictated statements to a third party, video taped interviews may be used in lieu of written statements.
- ✓ Avoid influence based upon race, sexual orientation, religion, personality, appearance, socio-economic status, emotional state etc.
- ✓ Do not side with the suspect as an investigative technique
- ✓ Remember, police officers are independent finders of fact

Collect witness statements from the following:

- ✓ Victim
Note: If victim is reluctant, ask yourself "Why doesn't the victim trust me?"
- ✓ Children
- ✓ Complainant
- ✓ Hidden witnesses such as neighbors, relatives, friends etc.
- ✓ Any other witness to your investigation
- ✓ Suspect (does Miranda apply?)

3. DOCUMENT SPONTANEOUS STATEMENTS AND EMOTIONAL STATE

- ✓ Check the boxes on the Domestic Violence Supplemental Form
- ✓ Document spontaneous statements and emotional state in your police report. Use quotes ("") when appropriate.

WHY?

- ✓ Thorough documentation of spontaneous statements, emotional state, said statements, witness statements, etc. may be admitted at trial under the following hearsay exceptions:
 - Utah Rules of Evidence, Rule 803; Excited utterance
 - Utah Rules of Evidence, Rule 804; Declarant unavailable

4. DOCUMENT PRIOR HISTORY

- ✓ Key Question: "How many times has this happened before?"
- ✓ Length of relationship
- ✓ Children

Note: If children were witnesses, document prior events where children were witness to violence. Enforce 76-5-109.1 if applicable. One count per child.

- ✓ Documented or undocumented events
- ✓ Remember: Prior history can be used to determine predominant physical aggressor of the incident you are investigating.

5. EVIDENCE COLLECTION AND DOCUMENTATION

- ✓ Document crime scene
- ✓ Photographs
- ✓ Clothing
- ✓ If possible, collect and book evidence

6. DOMESTIC VIOLENCE SUPPLEMENTAL REPORT

- ✓ Fill out completely
- ✓ Have medical waiver signed

7. DISPATCH INFORMATION

- ✓ Document information received by dispatch
- ✓ Request 911 tape if applicable
- ✓ Verify if originally received as a 911 hang up

8. CHILDREN

- ✓ Take time to speak to the children
- ✓ Tell the children "It's not your fault" and, "We are here to help"
- ✓ "Time out" analogy

9. WEAPONS

- ✓ Seize if evidence of a crime
- ✓ Review case for a possible referral to ATF for investigation into violations of federal weapons laws
- ✓ Check state concealed firearm permit files for possible revocation

10. FOLLOW UP PHOTOGRAPHS

- ✓ Many injuries may manifest themselves over time

11. DOMESTIC VIOLENCE RESOURCE PAMPHLET

- ✓ UCA 77-36-2.1 requires that victim receive the information contained in this pamphlet.
- ✓ When victim services responds to your call, they will give the victim this information as well as other resource and referral information; however, it is the officer's responsibility to ensure that this information is distributed

BENEFITS OF THE EVIDENCE BASED INVESTIGATION

What is to be gained by conducting an evidence based investigation?

- ✓ Increased conviction rate due to a thorough investigation
- ✓ Case is no longer dependent on victim and/or witness testimony alone
- ✓ Reduced liability to the officer through compliance with state law and, department policy
- ✓ Aids the officer in determining the predominant physical aggressor; reduces the likelihood that the victim will be arrested

THE DOMESTIC VIOLENCE POLICE REPORT

- A domestic violence incident report should include the following:
- Information provided by dispatch (the officer should consider the evidentiary value of the 9-1-1 call);
 - Descriptive information regarding the victim and suspect, including the demeanor of each;
 - Written and oral statements obtained from the victim and suspect including excited utterances and their approximate time frame and, an explanation if written witness statements were not obtained;
 - A list of witnesses and their statements including excited utterances and their approximate time frame and, the identities of all officers on the scene;
 - A description and location of observed injuries, description of medical treatment rendered and, a statement about whether an offer for medical treatment was refused;
 - The name of the medical treatment provider(s) and the names of any other health care providers, including EMS personnel;
 - A description of all other physical evidence including photographs taken and of what;
 - A description of the steps taken to locate the suspect if s/he was not at the scene;
 - A list of indicators of threats of future victim and child safety (e.g. threats made, including history of abuse, killing of pets, use of substances, or other unusual behavior);
 - Information regarding whether children were present and how they were cared for;
 - Information regarding whether an order for protection is in effect and, if it is, refer to this order and attach a copy if possible;
 - A statement regarding any special needs (including language barriers, disabilities etc.) of the parties involved;
 - An indication that the victim received a domestic violence resource pamphlet
 - If no arrest was made, an indication that the officer advised the victim of the reasons why an arrest was not made, and their right to initiate criminal proceedings ;
 - The name and phone number of a person (e.g. family member, employer) who can contact the victim.
- In addition to the police report, the West Valley Police Domestic Violence Supplemental report must be completed (see attached)

FOLLOW UP INVESTIGATION SUPPLEMENTAL REPORT

- Although not always required, a follow up investigation is frequently necessary because new or different evidence may surface subsequent to the domestic violence incident. Certain types of injuries may take time to develop or become obvious.
- A follow up investigation could include:
 - Interviewing a victim who was physically or emotionally unable to be properly interviewed or to provide a statement. The victim should be contacted for this purpose or to obtain additional details relevant to the investigation;
 - Taking photographs of the victims's injuries that may not have been apparent/visible at the time of the initial report;
 - Interviewing neighbors or other potential witnesses;
 - Ascertaining if the suspect is on parole, probation and/or pretrial release and obtaining the name and phone number of the appropriate probation/parole/pretrial officer.
- In the follow-up report, the investigating officer shall document the steps of the investigation. This will include documenting interviews and any other tasks performed pertinent to the investigation.
- If an arrest warrant is issued, an attempt to serve or to effect service of the warrant should occur as soon as possible.

VICTIM ASSISTANCE AND RELATED ISSUES

- Support is not only the appropriate service to provide to victims but, can have strong, positive ramifications for reducing crime and for the successful prosecution of the perpetrator.
- A number of victim assistance issues which police officers must do are mandated by law in UCA 77-36-2.1 *Duties of law enforcement officers-notice to victims*.

NEGATIVE VICTIM INTERACTION

- Police officers should not lecture the victim with statements such as “Why do you stay” or, “Why don’t you just leave”. Officers must recognize that there are a number of complex reasons why a victim remains in an abusive relationship. These include:
 - Financial reasons
 - Children
 - Threats made to victim if there is an attempt to leave the relationship
 - No place to go if the victim leaves
- Officers should not threaten to arrest the victim in an attempt to discourage intervention by police. This conduct is prohibited by law. (UCA 77-36-2.2 (5)(b))
- Officers should not blame the victim by making statements such as, “What did you do to make him hit you?”.
- Officers should not ask questions of the victim about their willingness to participate in prosecution, attend court hearings, etc.
- Officers should not become complacent about an investigation through the notion that if the victim doesn’t care, neither should the officer.
- The following statements illustrate the impact on victims when officers neglect them. These statements were made by victims in response to a satisfaction survey :
 - “Sometimes they [officers] need to look at facts and not try so hard to be judge and jury.”
 - “I trust the victim advocate program more than I trust the courts and police.”
 - “They [officers] could have made suggestions or explained more clearly.”
 - “The police and detectives made me feel like it was a waste of their time.”
 - “I felt officers weren’t doing all they could to protect me and my children.”
 - “The police were very rude to me.”
 - “My only complaint is how the officers treated me.”

- “The officer was very rude and cocky.”
 - “Had a couple of mean unhelpful officers.”
 - “They [officers] should have taken the abuser to jail instead of letting him drive away.”
- The officer’s conduct may extend beyond the victim to impact many other persons involved with the investigation. These may include:
- **Victim Advocates**
Advocates are typically the first persons to hear about the victim's frustration with police. This creates a superfluous hurdle that the advocates must overcome in an already uphill battle.
 - **Law Enforcement**
May promote distrust in the police department which may include the victim not reporting future incidents of domestic violence.
 - **Prosecutor**
May promote distrust with the prosecutor and/or the criminal justice system as a whole.

POSITIVE VICTIM INTERACTION

- Officers have a tremendous potential to impact victims in a positive, constructive fashion.
- Officers should attempt to gain the victim’s trust and confidence by showing understanding, patience and respect for personal dignity and using language appropriate to the age, education level and emotional condition of the victim.
- Officers should convey to the victim concern for his/her safety.
- Officers should advise the victim of what to expect in the near future with regard to the processing of the case by the system, including an assessment of the probability that the accused may be in custody for only a short period of time.
- Officers should advise the victim that he/she should be notified upon the suspects release from jail.
- Officers should tell the victim that domestic violence is a crime and that the sole responsibility for decisions regarding whether charges are filed is with the state and not the victim.
- Officers should encourage the victim to notify law enforcement of any new additional incidents or new information.

CASE	WEST VALLEY CITY POLICE DEPARTMENT			CASE: _____
	DOMESTIC VIOLENCE SUPPLEMENTAL			Page _____ of _____
	DESCRIBE ALL CONDITIONS OBSERVED			Ofc: _____ IBM
	(Crime scene, Emotional, Physical)			Date: _____ Time: _____
				911 tape available <input type="checkbox"/>
Time Lapse (between incident and Officer Observation)				
VICTIM NAME		SUSPECT NAME		
Angry	Compl. of pain	Angry	Compl. of pain	
Apologetic	Bruise(s)	Apologetic	Bruise(s)	
Crying	Abrasion(s)	Crying	Abrasion(s)	
Fearful	Minor Cut(s)	Fearful	Minor Cut(s)	
Hysterical	Laceration(s)	Hysterical	Laceration(s)	
Calm	Fracture(s)	Calm	Fracture(s)	
Afraid	Concussion(s)	Afraid	Concussion(s)	
Irrational	Drugs/Alcohol	Irrational	Drugs/Alcohol	
Nervous	Other (explain)	Nervous	Other (explain)	
Threatening		Threatening		
RELATIONSHIP BETWEEN VICTIM AND SUSPECT (Mark all that applies)				
Spouse	Former Spouse	Length of Relationship _____ yr(s) _____ mth(s)		
Cohabitants	Former Cohabitants	If applicable: Date relationship Ended _____		
Parent/Adlt child	Child in common (Vict/Susp)	Prior history of Domestic Violence <input type="checkbox"/> Yes <input type="checkbox"/> No		
Related by blood	Related by marriage	Prior history of violence documented <input type="checkbox"/> Yes <input type="checkbox"/> No		
Other states lived in:		Number of prior incidents _____ <input type="checkbox"/> Minor <input type="checkbox"/> Serious		
		Court or Jurisdiction		
MEDICAL TREATMENT		Medical at scene <input type="checkbox"/> Yes <input type="checkbox"/> No	Hospital	
None	Medical agencies	Admitted <input type="checkbox"/> Yes <input type="checkbox"/> No		
Will seek own doctor	Medical Case #	Attending Physician(s)		
First aid		Nurse(s)		
Paramedics				
Hospital	Name(s) & ID#(s)			
Refused Medical Aid				
EVIDENCE COLLECTED		DESCRIBE ALL EVIDENCE AND DISPOSITION		
FROM: <input type="checkbox"/> Crime scene <input type="checkbox"/> Hospital <input type="checkbox"/> Other (explain)				
PHOTOS: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> 35mm <input type="checkbox"/> Polaroid <input type="checkbox"/> Digital				
TAPES: <input type="checkbox"/> Audio <input type="checkbox"/> Video <input type="checkbox"/> Answering Machine				
PHOTOGRAPHS Taken by:				
Victim's injuries: <input type="checkbox"/> Yes <input type="checkbox"/> No				
Suspect's injuries: <input type="checkbox"/> Yes <input type="checkbox"/> No				
Of Children Present: <input type="checkbox"/> Yes <input type="checkbox"/> No				
Weapon Used: <input type="checkbox"/> Yes <input type="checkbox"/> No Type				
Weapon Recovered: <input type="checkbox"/> Yes <input type="checkbox"/> No				
Firearm impounded for safety: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> n/a		Continued <input type="checkbox"/>		
TO ALL HEALTH CARE PROVIDERS: Having been advised of my rights to refuse, I hereby consent to the release of medical records to Law Enforcement, Salt Lake County District Attorney's Office, and West Valley City Attorney.				
Signature of victim: _____		Witness: _____		
Date: _____		Time: _____		

CASE # _____

WRITTEN STATEMENT

OFFENSE _____
ADDRESS OF OCCURRENCE _____
STATEMENT LOCATION _____
NAME _____ D.O.B. _____
ADDRESS _____
TELEPHONE _____ HM _____ WK _____ EMERGENCY _____
EMPLOYMENT INFORMATION _____

THIS STATEMENT IS GIVEN FREELY AND VOLUNTARILY AND NOT UNDER COERCION, DURESS, OR THREATS OF ANY NATURE. YOU ARE NOTIFIED STATEMENTS YOU ARE ABOUT TO MAKE MAY BE PRESENTED TO A MAGISTRATE OR JUDGE IN LIEU OF YOUR SWORN TESTIMONY AT A PRELIMINARY EXAMINATION. ANY FALSE STATEMENT YOU MAKE AND YOU DO NOT BELIEVE TO BE TRUE MAY SUBJECT YOU TO CRIMINAL PUNISHMENT AS A CLASS A MISDEMEANOR.

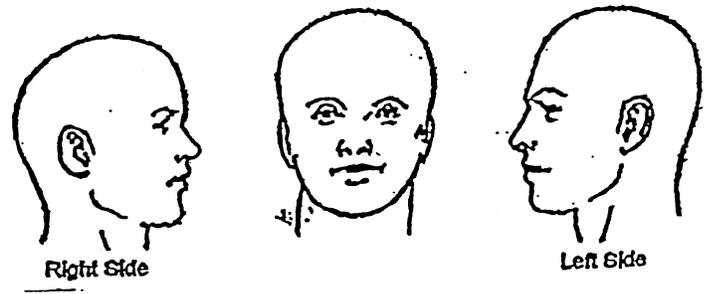
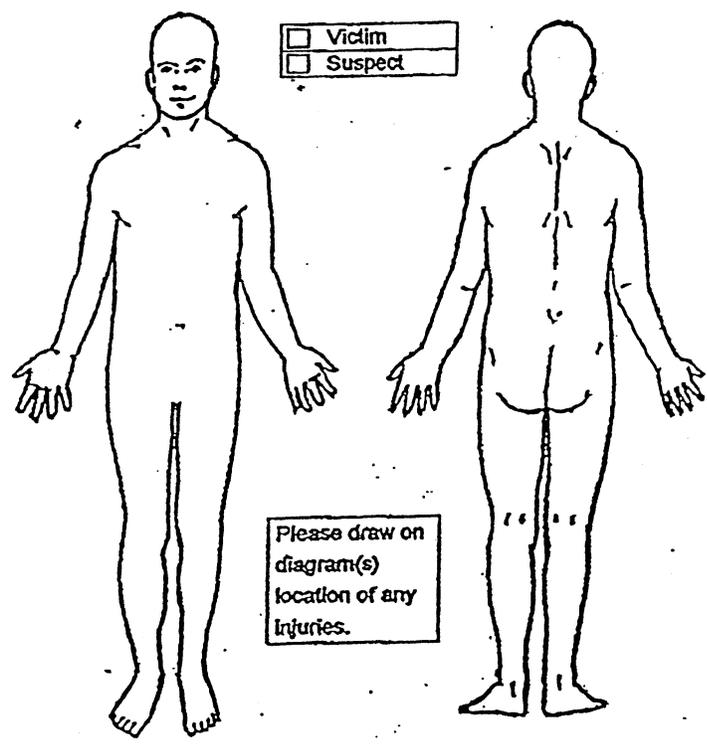
STATEMENT _____

SIGNED BY: _____ DATE: _____ TIME _____
WITNESSED BY: _____ DATE: _____ TIME _____

NAME _____ CASE # _____

STATEMENT _____

WITNESSES/CHILDREN	
NAME:	
	Apologies
	Afraid
	Angry
	Calm
	Calmed Down
	Tearful/Crying
	Hysterical
	Irrational
	Nervous
	Upset
	Threatening
	Other- Explain
	Injured
WITNESSES/CHILDREN	
NAME:	
	Apologies
	Afraid
	Angry
	Calm
	Calmed Down
	Tearful/Crying
	Hysterical
	Irrational
	Nervous
	Upset
	Threatening
	Other- Explain
	Injured
WITNESSES/CHILDREN	
NAME:	
	Apologies
	Afraid
	Angry
	Calm
	Calmed Down
	Tearful/Crying
	Hysterical
	Irrational
	Nervous
	Upset
	Threatening
	Other- Explain
	Injured



TO ALL HEALTH CARE PROVIDERS:

Having been advised of my right to refuse, I hereby consent to the release of my medical records to law enforcement, the County Attorney's Office, and the City Attorney's Office.

SIGNATURE _____ DATE _____

WITNESSES	Witnesses present <input type="checkbox"/> Yes <input type="checkbox"/> No	Written Statements <input type="checkbox"/> Yes <input type="checkbox"/> No	CASE
	Children present <input type="checkbox"/> Yes <input type="checkbox"/> No	Written Statements <input type="checkbox"/> Yes <input type="checkbox"/> No	Page of
	Names, Ages of ALL Children Present:		
	Witness information listed on initial forms? <input type="checkbox"/> Yes <input type="checkbox"/> No		

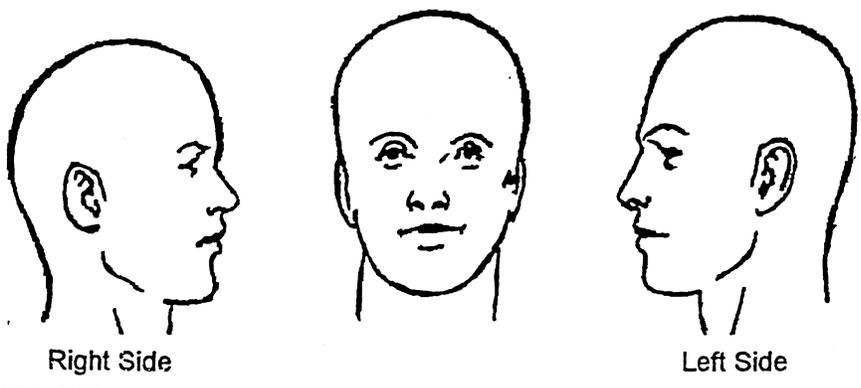
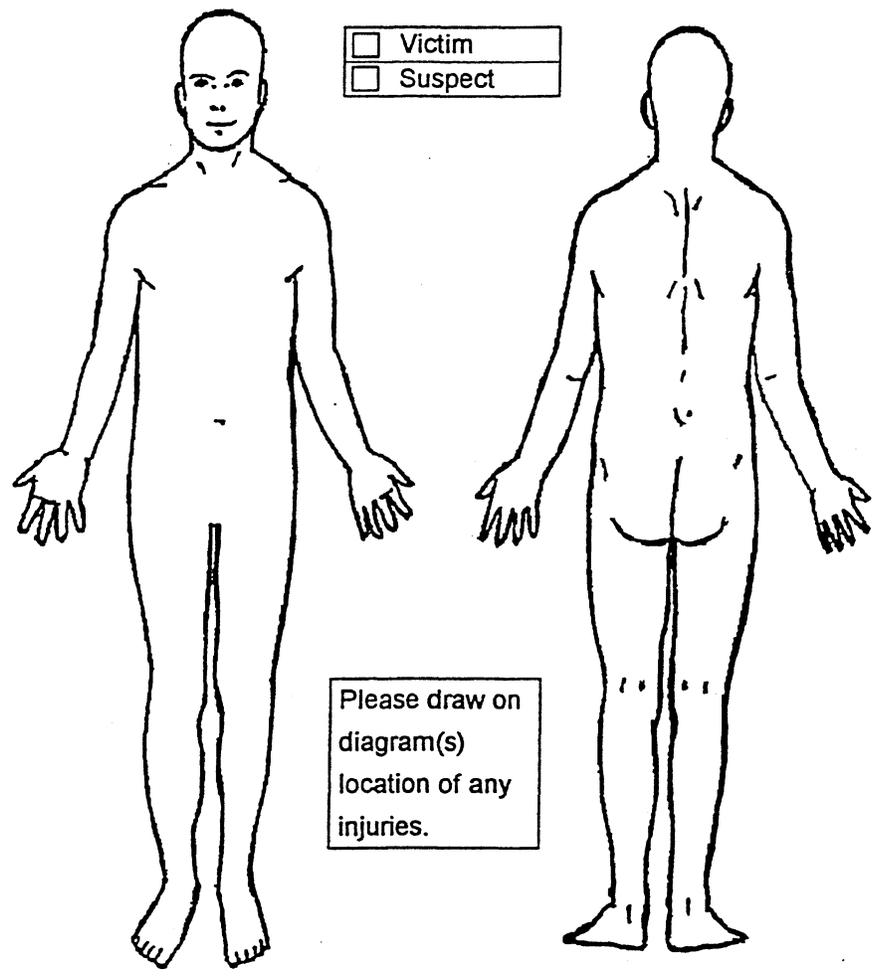
Protective order(s): <input type="checkbox"/> Yes <input type="checkbox"/> No	Served: <input type="checkbox"/> Yes <input type="checkbox"/> No	Victim Given the following:
Copy attached: <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Current <input type="checkbox"/> Expired	<input type="checkbox"/> Domestic Violence Pamphlet
Issuing court:	Judge:	<input type="checkbox"/> West Valley City Police Department Case Number
Order number:		<input type="checkbox"/> Domestic Violence Unit Phone # (801) 963-3293
Misc:		<input type="checkbox"/> Victim Advocate # (801) 963-3223

Victim Alternate Address: _____ Phone number(s) _____

WITNESSES/CHILDREN	
NAME:	
<input type="checkbox"/>	Apologies
<input type="checkbox"/>	Afraid
<input type="checkbox"/>	Angry
<input type="checkbox"/>	Calm
<input type="checkbox"/>	Calmed Down
<input type="checkbox"/>	Tearful/Crying
<input type="checkbox"/>	Hysterical
<input type="checkbox"/>	Irrational
<input type="checkbox"/>	Nervous
<input type="checkbox"/>	Upset
<input type="checkbox"/>	Threatening
<input type="checkbox"/>	Other- Explain
<input type="checkbox"/>	Injured

WITNESSES/CHILDREN	
NAME:	
<input type="checkbox"/>	Apologies
<input type="checkbox"/>	Afraid
<input type="checkbox"/>	Angry
<input type="checkbox"/>	Calm
<input type="checkbox"/>	Calmed Down
<input type="checkbox"/>	Tearful/Crying
<input type="checkbox"/>	Hysterical
<input type="checkbox"/>	Irrational
<input type="checkbox"/>	Nervous
<input type="checkbox"/>	Upset
<input type="checkbox"/>	Threatening
<input type="checkbox"/>	Other- Explain
<input type="checkbox"/>	Injured

WITNESSES/CHILDREN	
NAME:	
<input type="checkbox"/>	Apologies
<input type="checkbox"/>	Afraid
<input type="checkbox"/>	Angry
<input type="checkbox"/>	Calm
<input type="checkbox"/>	Calmed Down
<input type="checkbox"/>	Tearful/Crying
<input type="checkbox"/>	Hysterical
<input type="checkbox"/>	Irrational
<input type="checkbox"/>	Nervous
<input type="checkbox"/>	Upset
<input type="checkbox"/>	Threatening
<input type="checkbox"/>	Other- Explain
<input type="checkbox"/>	Injured



Children



Children

“The best way to protect the children is to protect their mother”

Seen, But Not Heard

- Children in homes where domestic violence occurs are physically abused or seriously neglected at a rate **1500 percent higher than the national average** in the general population.
- Older children may be **hurt while trying to protect their mother**.
- Children from violence homes have **higher risks** of drug/alcohol abuse and juvenile delinquency.
- Approximately **90 percent of children are aware** of the violence directed at their mother.
- Children are present in 41-55 percent of homes where police intervene in domestic violence calls.

*From Domestic Violence—A Guide for Health Care Professionals
State of New Jersey, Department of Community Affairs, March 1990*

- The US Advisory Board on Child Abuse suggests that domestic violence may be the single major precursor to child abuse and neglect fatalities in this country (US Advisory Board on Child Abuse and Neglect, US Department of Health and Human Services, *A Nation's Shame: Fatal Child Abuse and Neglect in the United States*; Fifth Report, 1995).
- Research has shown that children who see or hear a parent being battered by someone are traumatized as much as children who themselves are beaten or sexually abused (Petter Jaffe, et. Al, *Children of Battered Women*, 1990).
- These children display emotional and behavioral disturbances as diverse as withdrawal, low self-esteem, nightmares, self-blame and aggression against peers, family members and property (Peled, Inat, et. A, *Ending the Cycle of Violence: Community Responses to Children*, Sage Publications, 1995).
- In 50-75 percent of households with children where there is domestic violence, the children are abused as well (National Coalition Against Domestic Violence).
- Of boys ages 11-20 who commit homicide, 63 percent murder the man who was abusing their mother (National Coalition Against Domestic Violence).
- Of the children who witness domestic violence, 60 percent of the boys eventually become batterers and 50 percent of the girls become victims (National Coalition Against Domestic Violence).
- Children from violent homes are at a higher risk of truancy and school dropout, emotional distress, guilt, health problems, and delinquency, along with significant long-term effects such as Post-traumatic Stress Disorder, drug and alcohol abuse. These children exhibit six times higher risk for suicide and higher risk for intergenerational abuse as either victims or perpetrators of domestic violence (Edelson, J., *Journal of Interpersonal Violence*, 14, 839-870 “Children’s Witnessing of Adult Domestic Violence.” (1999)

Psychological & Generational Effects:

- First two years of life: slower to develop speech and motor skills, have frequent nightmares
- Ages two to five: begin to identify with the role of the abuser or the victim
- Ages six to twelve: manifest behavior patterned after the victim or the abuser
- National Coalition Against Domestic Violence reports 63% of boys ages 11-20 who commit murder, killed the man who abused their mother
- Ages twelve to eighteen have an increased risk of:
 - running away
 - becoming dependent on drugs and alcohol
 - committing suicide
 - becoming pregnant
 - marrying early to escape an abusive family
- Seventy-three percent of male abusers were abused as children, while men who watched their fathers hit their mothers are three times more likely to hit their wives

Types of Trauma:

- Child is the unintended victim when he or she attempts to intervene in an attack on a parent
- Child is accidentally struck by a blow directed at the victim
- Child may not actually witness the abuse--but may hear yelling, screaming, furniture breaking, bodies thrashing against walls, etc.
- Child may hear threats or actually witness the abuser injure a pet
- Child may witness the homicide of a parent

Acknowledge & Question the Children:

- May provide the officer with information that may assist in determining probable cause and/or primary aggressor
- May provide prosecution with corroborative statements of the incident should the victim recant or alter her story
- Reassure children the incident is not their fault and they are not the only family who has these kinds of things happen--can help lessen the child's fears, embarrassment, and possible guilt
- Can help to show the children that violence is wrong and the law will not tolerate it
- Take the child out of the line of vision of both the suspect and the victim prior to questioning the child
- Establish a rapport with the child
 - Take the child out in the patrol car and let the child flip the lights on and off
 - Explain to the child that the officer's job is to protect people, and you are there to see that your mommy/daddy and you do not get hurt anymore
 - Let the child take and keep a picture of the officer, then take the necessary photos of the victim, crime scene and even the children
 - If age appropriate, give the child a business card with officers phone number and tell the child its okay to call him/her if they have questions or don't feel safe

Suggested Questioning of Children May Include:

- Hi, I am officer _____ and my job is to protect people . . .
- Is _____ your mommy/daddy, stepfather/mother's boyfriend/father's girlfriend etc.?
- Can you tell me what you saw/hear today/tonight?
- Where were you when this happened?
- Does your mom/dad/etc. fight a lot?
- Did you try to help your mommy/daddy? Did you get hurt?
- Did any of your brothers/sisters get hurt?
- Do your mommy/daddy drink, smoke, do drugs? (*Questioning varies depending on age of child*)

Note: It is important to include in the report the state of mind of the children and all names and ages of the children. There is a fund called Crime Victim Reparations that provides financial assistance to victims and children for counseling. Providing the names helps speed up the process

- Also, since children who witness domestic violence are victims themselves, you must:
 - **notify CPS (Child Protective Services)** pursuant to Child Abuse Reporting Statute (§62A-4a-403)
 - intervene in the cycle of family violence--it is generational

Victim Advocates:

- Police agencies responding to domestic violence calls are mandated to provide or make available certain services to victims
- Advocates can assist in providing this information and in addition, can provide the emotional support to children who may have, in some way witnessed the incident
- Advocates can be called to respond and assist as soon as the scene has been made safe
 - Spend extra time with children
 - Help them understand that this is not their fault and they are not alone
- Advocates may also be used to assist in obtaining written statements from victims, photographs of injuries, and they can act as a source of contact between the victim and the follow-up investigator
- Many advocate programs provide counseling referrals for victims and their children and provide safety information for children in the form of coloring books, videos and/or tapes
- Advocates may be also available to prepare children for court should they be required to testify and to assist with child care during court

Protecting Children: Safety Strategies for Children Living in Violent Homes (Community Policing)

We all have a vested interest in protecting children and offering a life line of hope

- children are the hope of the future
- children can't protect themselves
- children model what they see in the home
- children from violent homes often become violent--violence begets violence
- our society is growing more and more violent
- we must intervene in the cycle of violence, protect the children and make them safe

Safety in the Home: Research on domestic violence reveals a range from 45% to 70% of battered women in shelters reporting the presence of some form of child abuse. Even if the more conservative estimate is accepted, these figures still indicate that child abuse is 15 times more likely to occur in families where domestic violence is present (Stacey, W., and Shupe, A. *The Family Secret*, Boston, MA: Beacon Press, 1983). Recent statistics show that roughly 50% of the children witnessing domestic violence are regularly physically abused also. 100% of the children in violent homes are psychologically abused.

Domestic violence service providers must:

- help women to recognize how their children might have been affected by the violence within the home
- make the link between domestic violence and child abuse explicit
- help the woman to place responsibility for the violence with the abuser, or accept the necessity of altering her own parenting if she is abusive with the children

Intervention with battered women takes the form of empowering mothers to seek new ways to protect themselves and their children.

Safety plans for children

- **must be age appropriate**
 - 4 to 6
 - 7 to 11
 - 12 to older
- **parent should be involved**
 - teach children to call 911 or a neighbor
 - use a code word or hand signal so they can call for help
 - use a signal to indicate there is a fight going on or a problem--means check on me, need help or stay away and get help
 - porch light
 - something hanging out the window
 - teach children to make a collect call if they get abducted
- **teach the child how to identify what a fight looks and sounds like**
 - are there patterns that might give clues that a fight is coming on
 - gets drunk every pay day
 - mother could arrange for a child to visit relatives or friends

- is cruel to animals first
- is verbally abusive
- threatens violence
- use of force during an argument
- how to recognize an emergency from a non-emergency
- **teach children the difference between physical and emotional abuse**
 - distinguish difference between discipline and abuse
 - based on reasonable person standard--*Appropriate v. Inappropriate*
- **help children realize the limits of their responsibility**
 - child is not responsible for the parent's behavior
 - child is not responsible for the abuse even if the fight is about them
 - children don't have to protect the parent
 - the child is responsible to keep themselves safe
 - older children can help younger children to be safe
 - older child is not responsible if the younger child gets hurt

Four Step Physical Safety Plan

- **Don't get in the middle of a fight**
 - child can be the unintended victim when he or she attempts to intervene in an attack on the parent
 - child can be accidentally struck by a blow directed at the victim
- **Call 911 and stay on the line**
 - child should be out of abusers view when calling 911
 - abuser could turn on the child for calling 911 or for telling a neighbor
- **Don't get trapped in a small room or a closet**
 - larger rooms give the child a chance to avoid an attack or to become the unintended victim
- **Get to a safe place**
 - go to a bedroom
 - another room in the house
 - go to a neighbors or relatives
 - *do it while the abuser isn't watching*

Four Step Psychological and Emotional Safety Plan

- **Find a safe adult to talk to about the family situation**
 - family violence feeds on secrecy
 - child needs an adult to talk to
 - adult should process the situation with the child
 - adult should reassure the child that abuse is wrong and they are not to blame for their parents behavior
 - the abuse is never the child's fault
 - there is not much the child can do about it
- **Find a healthy adult to use as a role model**
 - family members, friends, neighbors, teachers, church leaders, etc.
 - healthy people do not abuse
 - abuse is wrong--it is not normal
- **Use various coping skills to deal with the situation**
 - emotionally distance self from abuse
 - learn to disassociate

- learn about the cycle of abuse
- physically distance self from family
 - leave home when a fight is coming on
- be involved outside the home
- become financially independent as soon as possible
- **Set pro-social goals to avoid falling into the same family patterns**
 - to be different from family
 - to learn from the experience and do something about it
 - to develop other talents and gifts
 - sports, musical instruments, school, etc. may give an out or a way to focus on things other than family problems

Safety at School

- Tell the school about the problems at home
 - detection of high risk students and follow through
 - can understand why the child is having trouble concentrating or listening
 - can understand aggressive behavior and talk about violence and abuse
 - may give extra help with assignments or get another student to help
 - can get child into a mentoring program
 - teacher can be a safe adult for the child to talk to about the family situation
 - can help child process home life situation
 - may be able to involve the child in extra-curricular activities
 - can handle the situation with sensitivity
- Tell the school if there is a protective order against the abuser
 - who can and cannot pick up the child from school
 - establish a family code word--only allowed to go with those who know the code word
 - school may arrange for varied times for coming and going if there is fear of abduction
 - watch out for the child
 - protect safety of other children in the school
 - may need to home-school if need arises
- Schools can serve as resources to families trapped in violence
 - send information home with all children
 - education programs on violence prevention
 - self-esteem/well being programs
 - stress and anger management, conflict resolution
 - dating violence/date rape/self defense discussions
 - parenting support groups and classes
 - safety plans for victims
 - safety plans for children
 - overall promotion and awareness-building in the community
- Can provide quarterly community public awareness campaigns on the issues of violence and the solutions to violence

Safety in the Community

- Educate the community on the cycle of violence and what it does to children
 - pre-marriage counseling through churches
 - signs of abuse--what characteristics to look for
 - encourage perpetrator counseling before marriage
 - talk out against any type of abuse
 - physical
 - emotional
 - psychological
 - sexual
 - prenatal classes in the hospitals
 - teach about domestic violence
 - most women abused for the first time while pregnant
 - teach about connection between spouse and child abuse
 - provide domestic violence resources
 - parenting/education classes (*teen classes*)
- Adopt **violence free zones** in the community and develop an attitude of **zero tolerance** for any form of family violence--no spouse abuse, child abuse, or elder abuse
 - family members, neighbors and health care providers need to report abuse to law enforcement
 - law enforcement intervention of family violence
 - mandatory arrest
 - determine predominant aggressor--determine who the real victim is
 - refuse to arrest the victim
 - children know who the victim is
 - children know who the predominant aggressor is
 - children don't feel protected if the wrong person is arrested
 - children may self-protect if adults don't protect them
 - children may protect the victim if the law doesn't protect them
 - 63% of the boys ages 11 to 20 in prison are there for killing their mother's abuser. H. Acherman, *The War Against Women: Overcoming Abuse 2*, Hazelden Foundation, 1985.
 - officers need to take time to talk to the children
 - teach that violence is wrong
 - not the child's fault
 - tell the child they are there to protect them and the victim
 - tell the child it is okay to call if he or she has a question or does not feel safe
 - no-drop prosecution
 - hold the perpetrator accountable for crime
 - teaches children that violence doesn't work--will be punished for it
 - sentencing for crimes should be tough enough to stop further violence
- Community leaders need to do their job to protect children and make them safe
- All members of the community need to open their doors to the children living in violent homes
 - welcome them to play with your children
 - invite them to stay overnight or come over whenever there is a problem at home
 - invite them to go along on family outings
 - provide them with healthy role models
 - invite them over after school for cookies and milk

- divorces and working mothers may be a result of domestic violence
- take the sting away for latch-key kids
- ease their challenges
- nurture the children living in violent homes
 - victims may be too depressed to care for their children
 - you may be the only source of warmth this child has

**Remember: a Community Is Only as Good as it Is
To its Children--we All Rise and Fall Together.
We must Protect the Children and Make Them Safe.**

Child Abuse-Child Witnessing DV

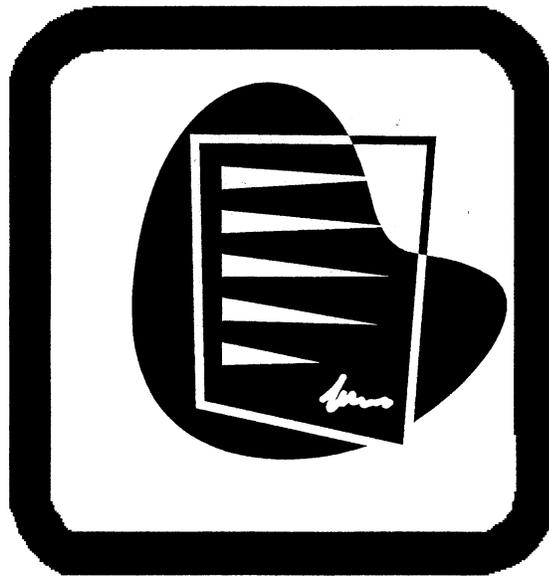
- Remember to recognize children as witnesses
- Remember to recognize children as victims
- Remember to notify DCFS (child abuse reporting 62A-4a-403 duty of police)
- Remember possible additional criminal offense
- Person can obtain protective order for child from juvenile court under Title 78-Chapter 3h

Child Abuse—Commission of Domestic Violence in the Presence of a Child (§76-5-109.1)

- As used in this section:
 - (a) “Domestic Violence” means the same as that term is defined in §77-36-1
 - (b) “In the presence of a child” means:
 - (i) in the physical presence of a child; or
 - (ii) having knowledge that a child is present and may see or hear an act of domestic violence
- A person is guilty of child abuse if he:
 - (i) commits or attempts to commit criminal homicide against a cohabitant in the presence of a child; or
 - (ii) commits aggravated assault against a cohabitant in the presence of a child
 - Violation is a third degree felony
 - or, (iii) under circumstances not amounting to a violation of Subsection (2)(a)(i) or (ii), commits an act of domestic violence in the presence of a child
 - Violation is a Class B Misdemeanor
 - And is designated a “dv” offense for enhancement purposes

**What we do to children
They grow up to do to the world**

Protective Orders



Protective Orders

Civil Protective Orders

Created in the Cohabitant Abuse Act

In 1995, 79% of protective orders obtained by the Legal Aid Society in Salt Lake City, resulted in no reported violations or reports of further abuse. In 1999, the Salt Lake YWCA undertook a study of protective orders issued in the Third Judicial District from September 1, 1998 to March 31, 1999 and found that 70% of the ex parte orders were dismissed, allowed to expire, denied at hearing or otherwise ended. The five major causes for dismissal or expiration were: 31.4% dismissed due to lack of service; 7.3% consolidated into an existing petition for divorce, paternity or other proceeding; 26% dismissed for failure of petitioner to appear at hearing; 28.9% dismissed because petitioner agreed to drop the petition (in 19 of the cases the order was granted and petitioner later returned to court to request dismissal); 4.3% were dismissed due to a lack of evidence.

Purpose

- **Provide protection for the victims of domestic violence**
- Involve civil legal system quickly
 - without a lawyer
 - keep abuser away from
 - home
 - employment
 - threats/harassment
 - contact
- Criminal system involved if order is violated

Differences Between Restraining Orders and Protective Orders

Restraining orders

- anyone can obtain; can restrain anyone
- hire attorney to sue (file a civil cause of action) and ask for a restraining order as part of the relief request; costs \$ to file, serve, etc.
- court enforces
- penalty = civil contempt

Protective orders

- only cohabitant or person interested in minor of cohabitant can obtain; can restrain only cohabitant
- can file it yourself; no \$ to file, serve, etc.
- police can enforce criminal portion and court can enforce civil portion
- penalty = class A misdemeanor for criminal portion/contempt for civil portion

Persons Eligible to Petition for a Protective Order

Must be a Cohabitant

- Any cohabitant who has been subjected to abuse or domestic violence or to whom there is a substantial likelihood of abuse or domestic violence can apply for a PO
- Petition shall be filed in
 - County where petitioner (victim) resides;
 - County where respondent (abuse) resides; or
 - County where abuse took place
- **Cohabitant** means
 - emancipated minor
 - <18 years of age
 - **and** married
 - **or** a person who is 16 years of age or older and who
 - is or was a **spouse** of the other party
 - is or was **living as if a spouse** of the other party
 - is **related by blood or marriage** to the other party
 - has **one or more children in common** with the other party
 - is the **biological parent** of the other's unborn child
 - **or** has **resided in the same residence** as the other party
- **does not** include the relationship of natural parent, adoptive parent, or step-parent to a minor or the relationship of minor siblings to each other

Must be a Victim of Abuse or Domestic Violence

- cohabitant has been subjected to abuse or domestic violence or to whom there is a substantial likelihood of abuse or domestic violence
 - abuse defined as intentionally or knowingly causing or attempting to cause a cohabitant physical harm or intentionally or knowingly placing a cohabitant in reasonable fear of imminent physical harm
- Domestic violence is defined as any criminal offense involving violence, physical harm or threat of violence or physical harm (includes attempts, solicitations or conspiracies to commit) by one cohabitant against another
- **also means commission or attempt to commit** any of the following offenses by one cohabitant against another
 - aggravated assault
 - assault
 - criminal homicide
 - harassment
 - telephone harassment
 - kidnaping, child kidnaping, or aggravated kidnaping
 - mayhem
 - sexual offenses
 - unlawful sexual intercourse
 - rape
 - object rape
 - sodomy--forcible sodomy

- forcible sexual abuse
- aggravated sexual assault
- sexual exploitation of a minor
- stalking
- unlawful detention
- violation of a protective order or ex parte protective order (§76-5-108 and §77-36-2.4)
- offenses against property (*arson, agg. arson, reckless burning, causing a catastrophe, criminal mischief, burglary, agg. burglary, vehicle burglary, possession of burglary tools, criminal trespass, interruption of a communication device, robbery, agg. robbery, etc.*)
- possession of a deadly weapon with intent to assault
- discharge of a firearm from a vehicle, near a highway, or in the direction of any person, building, or vehicle
- disorderly conduct if conviction result of a plea negotiation from original DV charge
- child witnessing domestic violence child abuse
- any other criminal offense involving violence or physical harm (*ie. threat against life or property, vulnerable adult abuse, witness tampering, etc.*)

Effect

- Court ordered separation
 - feeling of safety for the victim
 - space between parties to evaluate the relationship
 - protection by ordering no contact
- Criminal and civil sanctions: class A misdemeanor for violation of criminal portion and contempt for violating civil portion

Issued by

- District court

Venue

- Petitioner's residence
- Respondent's residence
- Location where incident took place

Enforcement

- Good statewide and nationwide
- mandatory arrest in Utah for violation of criminal portion of civil protective order (§77-36-2.4)

Three Steps of the Civil Protective Order Process

1. Filing of Verified Petition for Protective Order (§30-6-2)

- explanation of need for protection from abuse or danger of abuse
 - sworn to before court clerk, read by a judge
 - accepted or denied

2. Request for Ex Parte Protective Order

- court decides based on petition; only one party (petitioner) present
- relief available (§30-6-4.2(2)(a) -(g))
 - stop the violence
 - prohibit communication
 - order to stay away from premise(s)
 - no weapons
 - possession of automobile and personal effects
 - temporary custody
 - other relief necessary for safety
- issued without notice to respondent
- assigns a court date for a hearing on the petition/order, usually within 20 days
 - effective after proper service
 - certified copies
 - ex parte protective order (*two copies if possible*)
 - verified petition for protective order
 - return of service
- service procedure
 - sheriff's office, primary responsibility to serve without charge
 - police and constables can also serve without charge
 - verify authenticity of the order
 - certified copies
 - judge's signature on last page of each document
 - contact party to be served and explain
 - fill in blanks of service stamp
 - person served
 - location served
 - date, time
 - officer
 - agency
 - give respondent the ex parte order and verified petition
 - respondent must adhere to provisions in order
- retain remaining copies of ex parte order and return of service
 - update the statewide system to show the order is served
 - notification of service to agency responsible for service
- deliver documents to the issuing court

3. Protective Order hearing

- protective order granted after hearing
- provides same relief as available in ex parte order (§30-6-4.2.2 a-g) plus
 - child visitation
 - support

- remove from residence
- order can be granted whether respondent appears or not if
- there was proper service
 - proper service of ex parte protective order
 - or proper notice of a "hearing" (*no ex parte order issued*)
 - protective order can be granted after just proper notice of hearing
 - order ***in effect only***
 - upon acceptance of the order at the hearing
 - or proper service of order thereafter
 - **no lapse in protection, if court grants the protective order if ex parte order had been issued (§30-6-4.3)**
 - **the provisions of the ex parte protective order remain in effect**
 - **until proper service of the actual protective order**
 - covers situations where respondent fails to appear at the hearing
 - **however**, if no ex parte order is issued, protective order is not effective until served upon respondent
 - service by sheriff's office, constable or police at no cost to victim
 - documents needed
 - protective order (*two copies--if possible*)
 - return of service
 - service procedure
 - verify authenticity of the order
 - certified copies
 - judge's signature on last page of each document
 - contact respondent--follow same procedure as in ex parte protective order
 - suggestion--complete report detailing action you took
 - could be future court matter
- Court can prohibit contact, threats, violence, coming to petitioner's residence, possession of weapons, etc. (***criminal sanctions - class A misdemeanor***); can award temporary custody, support, and another order the court deems necessary to protect petitioner (***civil sanctions - contempt***)
- civil provisions last 150 days; criminal provisions last at least two years unless petitioner agrees to dismissal or divorce judge finds no need to continue (see new legislation effective 5/5/03: §30-6-15, §30-6-4.2(10))

Mutual Protective Orders (§30-6-4.5)

- each party must file independent petition
- both petitions must be served
- each party must show that abuse or DV has been committed by the other person
- each must demonstrate that the abuse or DV was not self-defense
- court must document circumstances justifying mutual protective orders
- the order should list each party as petitioner and as respondent in order to be criminally enforceable

Foreign Protective Orders

- protective order issued by another state, territory, possession, tribe, Puerto Rico, or Washington DC enforceable in Utah so long as in effect in issuing state (FULL FAITH AND CREDIT)
- violation of order subject to same penalties as if violence of Utah order (class A misdemeanor)
- officer can rely upon certified copy of order and on statement by petitioner that order still in effect and respondent was served with copy
- petitioner may file certified copy with clerk's office so that it can be put on statewide network (files affidavit)

Child Protective Orders

- Juvenile court has original exclusive jurisdiction (§78-3h-104(1)(d))
- any interested person, having first made a referral to DCFS, may file petition for PO on behalf of a child who has been
 - abused
 - sexually abused
 - neglected
 - abandoned or
 - is in imminent danger of being abused, sexually abused, neglected or abandoned
- ex parte orders
 - if court determines based on evidence and information presented, that minor has been abused, sexually abused, neglected or abandoned or is in imminent danger of being so
 - court may appoint Guardian ad Litem for child
 - hearing scheduled within 20 days
- protective order hearing
 - court shall provide opportunity for any person having relevant knowledge to present evidence or information and court may hear statements from counsel
 - standard of proof is preponderance of evidence
- court may order (in ex parte or in PO) as **criminally enforceable**
 - no threats to commit or commission of abuse or neglect
 - prohibit contact, direct or indirect
 - prohibit coming to school, home, employment, and other place
 - prohibit weapons
 - determine ownership and possession of physical property and direct police to supervise removal
 - **violation - class A misdemeanor, §77-36-2.4, §78-3h-104(1) mandatory arrest (§77-36-2.4)**
- court may order as **civilly enforceable**
 - temporary custody of minor
 - denial of parent time
 - parent time by third party
 - child support
 - any other relief deemed necessary
 - **violation - contempt of court**

- Duration
 - three years from entry of order; respondent may petition to dismiss criminal portion or order
 - may not be vacated within two years of issuance unless petitioner personally served with notice of hearing and personally appears and specifically consents to dismissal of criminal provisions
 - court sets date for review or expiration of civil portion
 - usually 150 days
 - order enforceable statewide and nationwide under VAWA full faith and credit provisions
- Service of ex parte PO and PO same as adult orders
- child PO entered onto statewide DV network (§78-3h-106)

How to Terminate a Protective Order

- Petitioner can return to court and request dismissal
- Petitioner can consent to respondent's request for dismissal
- Adult PO - after two years respondent can request dismissal, petitioner can object; or divorce court judge can dismiss if finds no need to continue
- Child PO - after three years respondent can request dismissal, or within two years if petitioner personally served and personally appears and specifically consents

Criminal Protective Orders

Difference between civil and criminal protective orders is **how** the order is obtained

- no application process
 - requirements to obtain an order
 - domestic violence offense committed
 - criminal process initiated
 - **arrest--jail agreement or "no contact order"**
 - **prosecution--pretrial order**
 - **sentencing--sentencing order**
 - last two orders are requested by the victim or by the prosecutor in behalf of the victim

Criminal orders only enforceable for the **period of time** in which the court holds jurisdiction over the arrestee/defendant

- victim supplied with a **copy** of the order
- criminal protective order should be **part of the criminal file**
- **statewide enforcement**/statewide domestic violence network
- not to be confused with the conditions of sentencing
 - some sentencing orders and conditions of probation can be mistakenly perceived to be a criminal protective order
 - violation of a condition of probation is a separate matter
 - absent clear issuance of a criminal protective order
 - document the incident
 - have follow-up personnel research the matter

Jail Agreement Order

also known as a "**No Contact Order**" (§77-36-2.5)

- short term--good until the **end of the next court day following the arrest**
 - if arrested Friday afternoon--order is good until 5:00 p.m. on Monday if regular court day
 - court days may vary, particularly in justice courts which may set one or two days per week from 6:00 - 9:00 p.m.
 - if arrested on Monday--next court day is Friday--order good until 9:00 p.m. Friday.
- orders are issued as a condition of release **following arrest**
 - as a condition of release (*bail, recognizance, or otherwise*), the court orders or the arrested person agrees in writing to the following **conditions**:
 - no contact with the victim
 - not threaten or harass the victim
 - not knowingly enter the premise(s) occupied by victim
- violation is a **class A misdemeanor** if the underlying arrest was a misdemeanor (§77-36-2.5)
 - violation is a **third degree felony** if the underlying arrest was a felony §77-36-2.5(B)(l)
- orders entered on the statewide system BY JAIL
 - signed copy actually a printed copy of what is viewed on statewide system
 - signed copy will be retained as per the issuing agency's procedure

- should be part of case file, **not thrown away**
- the victim can waive in writing, any or all of the release conditions
- if defendant arrested for violating this order, may not be released prior to first judicial appearance §77-20-1(3)
- mandatory arrest if violated §77-36-2.5(5)(a)

Pretrial Protective Orders §77-36-2.6(3)

- when formal charges filed by the prosecutor and defendant is arraigned and/or defendant appears before the court for arraignment or any time prior to trial
- request made by victim or by prosecutor
- separate written document and should be entered onto statewide DV network (forward to Ct. Admin office)
- court to provide certified copy to victim
- good until suspect is convicted, sentenced or acquitted
- violation is a class A misdemeanor if underlying charge filed is a misdemeanor
- violation is a 3rd degree felony if underlying charge filed is a felony

Sentencing Protective Orders §77-36-5(1)

- when the suspect has been convicted of a domestic violence offense
- separate written document, not simply a condition of probation agreement, should be entered onto statewide DV network (forward to Ct. Admin office)
- prosecutor to provide certified copy of order to victim
- good for as long as the court has jurisdiction over the defendant (*probationary period*)
 - violation is a class A misdemeanor--may also constitute a probation violation

Enforcement of Protective Orders

- violation of order is by definition a “**Domestic Violence**” offense (§77-36-1(2)(k) & 77-36-2.4)
 - mandatory arrest
 - a law enforcement officer shall, without a warrant, arrest an alleged perpetrator
 - whenever he has **probable cause** to believe that the alleged perpetrator
 - has violated any of the provision of an ex parte protective order or protective order (§77-36-2.4)
 - primary elements required to charge (§76-5-108)
 - there must have been an **intentional** or **knowing** violation
 - *determined by investigation*
 - *prove intent*
 - **and** there must have been proper service
 - *personal knowledge*
 - *check statewide warrants system*
 - **intent and proper service--probable cause for an arrest**

Protective Order Information Sheet

The protective Order is a judge's order, a court order; it is NOT an order between the people involved in this protective order. That means that only a judge can change the order. The person who requested the order CANNOT say that the order is terminated or that the other person can have contact with him/her. Please read the order carefully. If it says "no contact"..

NO CONTACT includes:

- you cannot live with the person listed in the order
- no physical contact - you must stay so many feet/yards away from the person and any children in the order
- no phone calls
- no letters, no e-mails, no faxes
- no flowers
- no boxes of candy
- no presents of any kind
- no messages through friends, relatives, neighbors or acquaintances
- no contacting the person in any other way

IMPORTANT THINGS TO KNOW;

- a protective order is a civil order but a violation of the order is a criminal offense. It is punishable by up to one year in jail and/or a fine of up to \$2,500. If someone is arrested and found guilty for this crime, s/he can be placed on probation or incarcerated. It is a mandatory arrest for the police if they arrive and have probable cause to believe that a protective order was violated
- criminal charges will be screened for prosecution if there are any violations

- reported including phone calls in a protective order
- a criminal conviction on a domestic violence case, can affect your ability to get a job in human services, public housing or citizenship. It can result in a person being deported.
- if the person who requested the protective order wants to change or vacate the order, s/he can come to court Mon - Fri 8:00 am to 4:30 pm and file a request asking the judge to change or terminate the order. *The order can only be changed or terminated by a JUDGE.*

WHAT YOU CAN DO TO AVOID PROBLEMS

- avoid places where you know the person goes
- leave a building, restaurant, store or place if you realize the person is there
- hang up the phone immediately if the person calls you
- do not send letters, e-mails or faxes to the person or respond to letters, e-mails or faxes from the person
- avoid contact with the person's family, friends, neighbors
- do not get into arguments or confrontations with the person's family or friends. Walk away!
- if the person comes to your house, DO NOT let him/her in (don't open the door until you know who is there.)

EXAMPLES OF WHAT TO DO WHEN THERE IS A PROTECTIVE ORDER

- if you see the person walking towards you on the street, cross the street and

- go in a different direction you are eating dinner in a restaurant or attending a movie and the person walks in. You need to avoid any contact with him/her, get up, pay the bill and leave.
- the person calls and invites you over to dinner for a special day or "to work things out". DO NOT GO! First you should hang up immediately before any information is given. Do not violate the order by talking to the person
- if the person calls you and you can tell the judge what the person said, YOU have violated the order. You should have hung up as soon as you heard the person's voice.
- if you receive an e-mail from the person and respond to it, YOU have violated the order. You should not send or respond to faxes or e-mails from the other person
- if you are told that the protective order has been changed or vacated and you can have contact, FIRST check with the court that issued the order. Unless court personnel confirm that or you see a court paper with that information on it, DO NOT have any contact with the person

NO CONTACT AGREEMENT
Issued Pursuant to Section 77-36-2.5, Utah Code Ann.

Name: _____
(Last) (First) (Middle)

Address: _____ City: _____ State: _____ Zip: _____

SSN: _____ - _____ - _____ DL#: _____ Phone: (____) _____ - _____

Birth Date: ____ / ____ / ____ Sex: ____ Hgt: ____ Wgt.: ____ Eye: ____ Hair: ____ Race: ____

Alleged Victim Cohabitant Name: _____
(Last) (First) (Middle)

Address: _____ City: _____ State: _____ Zip: _____

Agency: _____ Case#: _____ Booking#: _____

Having been arrested for a crime of Domestic Violence, I agree to abide by these conditions until the close of the next court day, _____ : _____ a.m/p.m..

- _____ 1. I WILL HAVE NO PERSONAL CONTACT WITH THE ALLEGED VICTIM.
- _____ 2. I WILL NOT THREATEN, HARASS THE ALLEGED VICTIM.
- _____ 3. I WILL NOT KNOWINGLY ENTER ONTO THE PREMISES OF THE ALLEGED VICTIM'S RESIDENCE OR ANY PREMISES TEMPORARILY OCCUPIED BY THE ALLEGED VICTIM.

I understand that if I knowingly violate this No-Contact Order I will be guilty as follows:

- 1. If the original arrest was for a felony, a violation of the No-Contact Agreement is a third degree felony.
- 2. If the original arrest was for a misdemeanor, a violation of the No-Contact Agreement is a Class A misdemeanor.

Arrested Person _____ / ____ / ____
Date

Releasing Officer _____ / ____ / ____
Date

Date and time of release _____ / ____ / ____ : ____

Jail or Arresting Agency Notification _____ / ____ / ____ : ____

Distribution of Document: _____ Defendant _____ Jail _____ Dispatch
_____ Court _____ CA Office

_____ Entered onto Statewide Network

DOMESTIC VIOLENCE
VICTIM'S WAIVER OF RELEASE AGREEMENT

Pursuant to Section 77-36-2.5, Utah Code Ann.

I, _____, state I am the alleged victim of a domestic violence offense for which _____ was arrested on _____, at _____, at _____.
(address of occurrence) *(date)*

I understand that the law requires him/her to be held unless release is ordered by the Court or he/she agrees to the requirements of the **No-Contact Agreement** the conditions of which are as follows:

- 1. Have no personal contact with the alleged victim.
- 2. Not threaten or harass the alleged victim.
- 3. Not knowingly enter onto the premises of the alleged victim's residence or premises temporarily occupied by the alleged victim.

I hereby waive only the above conditions which are initialed by me as terms of release for the arrested person.

By waiving any or all of these requirements I understand that the arrested person in this case will not have to abide by those particular terms as a condition of his/her release and will not be subject to prosecution for violating any of the terms I have initialed.

(Signature of Alleged Victim)

(Date)

(Witness Signature)

(Case Number)

IN THE _____ COURT, STATE OF UTAH
_____ COUNTY, _____ DEPARTMENT

STATE OF UTAH, :
Plaintiff, : **DOMESTIC VIOLENCE**
v. : **PRE-TRIAL CRIMINAL**
 : **PROTECTIVE ORDER**
DOB: :
Defendant. : Case No.

THIS ORDER TAKES PRECEDENCE OVER ANY PRIOR COURT ORDER

PERSON TO BE RESTRAINED/DEFENDANT (Name): _____					
Sex:	<input type="checkbox"/> M	<input type="checkbox"/> F	Ht: _____	Wt.: _____	Eye color: _____ Age: _____
DOB:	_____ Race: _____				
<input type="checkbox"/> The defendant is a police officer or is in the military					

Based upon the request of the prosecuting attorney or the alleged victim/cohabitant _____, the defendant having been given an opportunity for hearing on the matter and good cause there appearing, the court hereby determines that it is necessary to impose a pre-trial criminal protective order in this case pursuant to §77-36-2.6 Utah Code Ann.. The defendant has been charged with having committed the following type of criminal offense against a cohabitant :

___ felony ___ misdemeanor

The court finds that the defendant presents a credible threat to the physical safety of the victim/cohabitant

It is hereby ordered: (initialed boxes only)

1. ___ that the defendant is to have no personal contact with the alleged victim/cohabitant.
2. ___ that the defendant is not to threaten the alleged victim/cohabitant.
3. ___ that the defendant is not to knowingly enter onto the premises of the alleged victim/cohabitant's residence or any premises temporarily occupied by the alleged victim/cohabitant.
4. ___ that the defendant is enjoined from threatening to commit or committing acts of domestic violence or abuse against the alleged victim/cohabitant and the following designated family or household member(s) :

5. ___ that the defendant is prohibited from harassing, telephoning, contacting or otherwise communicating with the alleged victim/cohabitant, directly or indirectly.
6. ___ that the defendant is removed and excluded from the residence of the alleged victim/cohabitant and shall not knowingly go or remain within 500 feet of the victim/cohabitant at any time.
7. ___ that the defendant is to stay away from the residence, school, place of employment of the alleged victim cohabitant and the following specified place(s) frequented by the alleged victim/cohabitant and any designated family member: _____

8. _____ the following relief is determined to be necessary to protect and provide for the safety of the victim/ cohabitant and any designated family or household member:

This order is effective until dismissed or modified by the court.

Violation of this order may result in a charge of a third degree felony if the defendant's underlying charge is a felony and/or a class A misdemeanor if the underlying charge is a misdemeanor. Violation of this order shall result in the revocation or modification of your release status.

This Order is given under the authority of this Court and is directed toward the defendant. The victim cannot waive, alter or dismiss this Order. Only the Court has the authority to enter, modify or revoke this Order.

Dated this _____ day of _____, 20__.

JUDGE

Served on defendant this _____ day of _____ 20__.

By _____
Law Enforcement Officer

Respondent was afforded both notice and opportunity to be heard in the hearing that gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322, 108 Stat. 1976, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of Columbia, tribal lands, and United States Territories.

_____ JUDICIAL DISTRICT COURT OF _____, STATE OF UTAH

____ STATE OF UTAH, :
____ CITY OF _____ :
Plaintiff, :
v. :
Defendant. :
Case No. _____
Judge: _____

THIS ORDER TAKES PRECEDENCE OVER ANY PRIOR COURT ORDER

DEFENDANT (Name): _____
Sex: <input type="checkbox"/> M <input type="checkbox"/> F Ht: _____ Wt.: _____ Eye color: _____ Age: _____
DOB: _____ Race: _____

The defendant having been convicted of a domestic violence offense, the Court hereby determines that it is necessary to impose a sentencing criminal protective order for the protection of the victim cohabitant _____ in this case pursuant to § 77-36-5 Utah Code Ann. after having given the defendant an opportunity for hearing on this matter,

The court finds that the defendant presents a credible threat to the physical safety of the victim/cohabitant

IT IS HEREBY ORDERED: (initialed items only)

1. ____ that the defendant is to have no personal contact with the victim cohabitant.
2. ____ that the defendant is not to threaten the victim cohabitant.
3. ____ that the defendant is not to knowingly enter onto the premises of the victim cohabitant's residence or any premises temporarily occupied by the victim cohabitant.
4. ____ that the defendant is enjoined from threatening to commit or committing acts of domestic violence or abuse against the victim cohabitant and the following designated family or household member(s) :

5. ____ that the defendant is prohibited from harassing, telephoning, contacting or otherwise communicating with the victim cohabitant, directly or indirectly.
6. ____ that the defendant is removed and excluded from the residence of the victim cohabitant and shall not knowingly go or remain within 500 feet of the victim/cohabitant at any time.
7. ____ that the defendant is to stay away from the residence, school, place of employment of the victim cohabitant and the following specified place(s) frequented by the victim cohabitant and any designated family member:

8. _____ the following relief is determined to be necessary to protect and provide for the safety of the victim cohabitant and any designated family or household member:

This order shall remain in effect during the entire duration of the defendant's probationary period or unless otherwise modified by this Court. This Order is given under the authority of this Court and is directed toward the defendant. The victim cannot waive, alter or dismiss this Order. Only the Court has the authority to enter, modify or revoke this Order.

VIOLATION OF THIS ORDER MAY RESULT IN A CHARGE OF VIOLATION OF A PROTECTIVE ORDER, A CLASS A MISDEMEANOR. VIOLATION OF THIS ORDER MAY RESULT IN A VIOLATION OF YOUR PROBATION.

Upon successful completion of all probationary requirements, Defendant's probation and this Order shall expire on _____ day of _____, _____.

Dated this _____ day of _____, 20____.

JUDGE

Served on defendant this _____ day of _____ 20____.

By _____
Law Enforcement Officer

Respondent was afforded both notice and opportunity to be heard in the hearing that gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322, 108 Stat. 1976, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of Columbia, tribal lands, and United States Territories.

CERTIFICATE OF SERVICE TO VICTIM

I hereby certify that on _____, a certified copy of the foregoing DOMESTIC VIOLENCE SENTENCING CRIMINAL PROTECTIVE ORDER was mailed and/or delivered to the victim/cohabitant.

Prosecutor

**Full Faith And Credit Provisions of
The Violence Against Women Act
18 U.S.C. §§ 2265 - 2266 (2000)**

§ 2265 Full Faith and Credit Given to Protection Orders

(a) **FULL FAITH AND CREDIT.** - Any protection order issued that is consistent with subsection (b) of this section by the court of one State or Indian tribe (the issuing State or Indian tribe) shall be accorded full faith and credit by the court of another State or Indian tribe (the enforcing State or Indian tribe) and enforced as if it were the order of the enforcing State or tribe.

(b) **PROTECTION ORDER.** - A protection order issued by a State or tribal court is consistent with this subsection if -

(1) such court has jurisdiction over the parties and matter under the law of such State or Indian tribe; and

(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State or tribal law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(c) **CROSS OR COUNTER PETITION.** - A protection order issued by a State or tribal court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if -

(1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

(2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

(d) **NOTIFICATION AND REGISTRATION.** -

(1) **NOTIFICATION.** - A State or Indian tribe according full faith and credit to an order by a court of another State or Indian tribe shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in that enforcing State or tribal jurisdiction unless requested to do so by the party protected under such order.

(2) **NO PRIOR REGISTRATION OR FILING AS PREREQUISITE FOR ENFORCEMENT.** - Any protection order that is otherwise consistent with this section shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State or tribal jurisdiction.

(e) **TRIBAL COURT JURISDICTION.** - For purposes of this section, a tribal court shall have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe.

§ 2266 Definitions

(5) **PROTECTION ORDER.** - The term "protection order" includes any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil and criminal court (other than a support or child custody order issued pursuant to State divorce and child custody laws, except to the extent that such an order is entitled to full faith and credit under other Federal law) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition or motion filed by or on behalf of a person seeking protection.

(8) **STATE.** - The term "State" includes a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States.

Prosecution



Prosecution

Screening (§77-36-1 et. seq.)

Report

- Police to get report to prosecutor w/in 5 days after complaint of DV occurs (§77-36-2.2(6)(c))

Prosecutor's Duty

- Notify V w/in 5 days of screening decision if V requests (§77-36-7)
 - must advise V of other alternatives, civil and criminal

Elements

- Does it involve "**cohabitant**"? (§30-6-1)
 - emancipated person (<18 and married or 18 or older, §15-2-1) or person 16 years of age or older **and**
 - is or was **married** to the other party;
 - is or was **living with/resided with** the other party (*roommates, same sex relationships*);
 - has **child in common** with other party; **or**
 - is **related by blood or marriage** to the other party (*relative, in-law, elder parent*);
is the **biological parent** of the other's unborn child
- does not include relationship of natural, adoptive or step parent to a minor, or the relationship of minor siblings to each other
- Does it involve **DV offense**?
- list of offenses (§77-36-1):
 - *aslt./ agg. aslt*
 - *homicide (all classifications)*
 - *harassment/ telephone harassment*
 - *all kidnaping/ unlawful detention*
 - *mayhem*
 - *sexual offenses under §76-5-401 et al and §76-5a-1 et al (specifically: unlawful sexual intercourse, rape, object rape, sodomy, forcible sodomy, forcible sexual abuse, agg. sexual aslt., sexual exploitation of a minor)*
 - *stalking*
 - *property offenses under §76-6-101-106, §76-6-201-206 and §76-6-301-302 (specifically: arson, agg. arson, reckless burning, causing a catastrophe, criminal mischief, interruption of a communication device, burglary, agg. burglary, vehicle burglary, poss. of burglary tools, criminal trespass, robbery, agg. robbery)*
 - *possession of deadly weapon with intent to assault*
 - *discharge firearm under §76-10-508;*
 - *child witnessing domestic violence child abuse under §76-5-109.1; OR*

- any other criminal offense involving violence or physical harm (consider statutes on vulnerable adult abuse/elder abuse §76-5-111; threat against life or property; witness tampering; etc.); **OR**
- any attempt, conspiracy or solicitation to commit those listed above; **OR**
- protective order violation (§77-36-2.4(2)(a), §76-5-108)
 - verify protective order and service (statewide network, clerk's office or sheriff's office)
 - full faith and credit to other state's orders (§30-6-12, §76-5-108)
 - if ex parte served but P.O. hasn't yet been served, the ex parte is in effect until PO served (see §30-6-4.3(c))

Considerations

- **penalty enhancements** (§77-36-1.1)
 - enhance charge and penalty
 - can use prior DV convictions (*felony or misdemeanor*) w/in 5 year period prior to current charge
 - **enhance DV misdemeanors only**
 - plea in abeyance = conviction
 - safe to assume it is a conviction only as long as the plea is being "held in abeyance;" after that, a dismissal is a dismissal. However, some trial courts in Utah have held otherwise.
 - highest charge possible with enhancement is a 3rd degree felony (enhancing a class A)
 - see State v. Hunt 906 P2d 311 (Utah 1995) on enhancing charges in same information
- **weapons enhancements** on felonies (§76- 3-203)
- include **enhancement** on the information (to meet *notice* requirement)
- any possible federal charges
 - firearms possession, stalking, dv, protective orders, etc. (see section on federal laws)

Protective order violations (*civil and criminal orders*)

- **civil orders - adult and child**
 - Ex Parte protective order (§30-6-4.2, §78-3h-104)
 - intentional or knowing violation is criminal offense (§76-5-108)
 - Protective Order
 - criminal portion of civil PO = class A misdemeanor/ **handled by prosecutor as it is considered a criminal violation** (§30-6-4.2(2)(a) through(e), §30-6-4.2(5)(a)(i), §78-3h-104(1)(a)-(e))
 - no threats to commit or commission of DV or abuse
 - no harassment, telephone, contact, communication directly or indirectly
 - exclusion from residence, premises, school, employment, specified places
 - restricts possession, purchase, or use of weapon
 - poss. of car, residence, personal property
 - civil portion of civil PO = OTSC in civil hearing / **handled by party (with or without a private atty) as it is considered a civil matter** (§30-6-4.2(2)(f)-(h); §30-6-4.2(5)(a)(ii); §78-3h-104(2)(a)-(d))
 - temporary custody of children
 - child support, spousal support, visitation
 - other relief ordered by the court

- **criminal orders**

- jail "no contact" (§77-36-2.5(5))
 - violation = 3rd degree felony if underlying arrest is felony
 - violation = class A misdemeanor if underlying arrest is misdemeanor
 - If D violates jail "no contact," cannot be released again from jail until sees judge §77-20-1(3)
- pre-trial (§77-36-2.7(3))
 - violation = 3rd degree felony if underlying charge is felony
 - violation = class A misdemeanor if underlying charge is misdemeanor
- sentencing (§77-36-5(1), 76-5-108)
 - violation = class A misdemeanor and/or = violation of probation

Authority

- city atty. can prosecute
 - class A misdemeanor criminal protective order violations (*jail "no contact" violations, pre-trial and sent. orders*) (§77-36-10)
 - DV offenses enhanced to class A misdemeanor (§77-36-10)
 - violations of civil protective orders which are class A misdemeanors (§30-6-14)
 - general authority re: infractions and misdemeanors (§10-3-928)

Defendant's status

- is D on probation or parole?
 - if parole or formal probation: notify APP, particularly if felony (*affects custody status, i.e. may be "felony on a felony" under §77-20-1(1)*)
 - informal probation: file OTSC (*or notify appropriate prosecuting entity to file*)

Evidence

- V statement(s)
 - written/audio/video
 - excited utterances (URE 803(2)) / statements of physical condition (URE 803(3))
- independent corroboration (*testimonial/physical/demonstrative*)
 - W statements
 - kids/ neighbors/ others
 - what see/what hear
 - medical reports
 - current/previous incidents
 - 911 tape (*get immediately as they are regularly destroyed or recycled*)
 - diaries
 - photos
 - of victim
 - day of incident
 - and days later
 - of scene
 - prior reports/ incidents/ history
 - D's statements/ admissions/ incriminating statements/ alibis
 - Criminal history of D in state and nationwide
 - physical evidence seized

(clothing, blood-stained or broken items, etc)

- weapons
- diagrams of injuries or of scene
- police descriptions of physical condition and demeanor of V/ D/ and Witnesses
- photos of D *(injuries or lack of injuries)*
- threats prior to, during or after incident
 - contact, direct or indirect after incident
- certified copy of PO and proof of service
- crime lab reports

Meeting with victim as part of screening process

- allows prosecutor to assess V's cooperation/ provides support/ may increase V's cooperation/ avoids surprises at hearing.

Can you prove case w/o V? If so, then FILE!

If you can't, is V cooperative? If so, then FILE!

Consider whether or not you can obtain sufficient background info/corroborative evidence/ does V have good support system? (because that will certainly help victim through the "system")

If not.... DON'T FILE! ...There will be a next time

Filing

Arrest

- approving warrant of arrest
 - consider danger to victim
 - violation of PO--**ISSUE WARRANT OF ARREST**
 - mandatory arrest per §77-36-2.4, §77-36-2.5(5) (*mandatory arrest based upon officer's probable cause that a violation of a PO has occurred.....prosecutor files charges based at least upon probable cause*)
- filing after warrantless arrest by police
- **D must appear in person in court w/in 1 judicial day of arrest (§77-36-2.6 (1))- appearance cannot be waived (§77-36-2.6(4))**

Rationale: V has been protected by jail "no contact" order which is good only until the end of the next court day...therefore, in order for the V to have those protections extended, the defendant must appear in court so that the V or prosecutor has the opportunity to request a pre-trial criminal PO

Citation- appearance cannot be waived (§77-36-2.6(4))

- **D must appear in person in court w/in 14 days after the next day the court is in session following the issuance of the citation (§77-36-2.6 (2))**

Summons-appearance cannot be waived (§77-36-2.6(4))

- **D must appear in person in court within 14 days of filing after the next day the court is in session following the filing of the information (§77-36-2.6 (2))**

Information

- note "*Domestic Violence*" on information for court tracking purposes (§77-36-2.7(1)(d))

No drop policy (§77-36-2.7)

- unless court finds reasonable cause to believe in best interest of V
- legislative intent language for "no drop", not statutory mandate
- good public policy on domestic violence cases

Victims

- Victim's Rights in felony cases
 - prosecutor to send notice to V of crime charged w/in 7 days of filing,
 - prosecutor to provide info to V re: requesting further notifications
 - notification of important dates and times (§77-37-3 and §77-38-3 et al)
 - electronically, orally, by telephone, letter or form
- victim impact statement to V
- CVR (*Crime Victim's Reparations*) forms to V
- Victim **does not have a right** to "drop charges"
 - **police**, not victim, responsible for arrest
 - **prosecutor**, not victim, responsible for filing charges
 - **trier of fact**, not victim, responsible for adjudicating the case
 - **judge**, not victim, responsible for sentencing

- *Rule 4-601, Utah Rule of Judicial Administration, applies to felony and misdemeanor cases where V has sustained personal injury*
 - *at time of arraignment or PH, prosecutor must provide written verification to court that all V's and subpoenaed W's have been informed of responsibilities and proceedings have been explained in understandable language, etc.*

Bail Issues/Release Conditions

No bail

- **felony**
 - D arrested for DV felony, released and re-arrested for new felony (§77-36-2.5(6) "felony on felony" status, Art. 1. Sec. 8 Utah Constitution)
 - substantial evidence to support new felony charge
 - D arrested (§77-20-1)
 - for capital offense and substantial evidence to support charge (Art. 1 Sec. 8(1)(a) Utah Constitution)
 - for felony committed while on probation or parole and substantial evidence to support new charge (Art. 1 Sec. 8(1)(b) Utah Constitution)
 - for felony while free on bail for previous felony and substantial evidence to support new charge (Art. 1 Sec. 8(1)(b) Utah Constitution)
 - for felony (Art. 1 Sec. 8 (1)(c) Utah Constitution) and
 - **substantial evidence** to support charge **and**
 - court finds by **clear and convincing evidence**
 - D constitutes substantial danger to any other person **or**
 - D constitutes a substantial danger to the community **or**
 - D is likely to flee jurisdiction if released
 - and charged with a felony and the court finds there is substantial evidence to support the charge and it finds by clear and convincing evidence that the person violated a material condition of release while previously on bail.

DV felony or misdemeanor (§77-36-2.5(8) , Art. 1 Sec. 8 (1) (c) Utah Constitution)

- legislative intent
 - unique and highly emotional nature of DV crimes
 - high recidivism rate of violent offenders
 - demonstrated increased risk of continued violence after release of offender arrested for DV crime
- requirements
 - **substantial evidence** to support charge **and**
 - **clear and convincing evidence** that D constitutes substantial danger to victim

Arrest for violation of jail no contact agreement/order (§77-36-2.5)

- cannot be released prior to first judicial appearance (§77-20-1(3))

Bail or Recognizance

- Any person who may be admitted to bail may likewise be released either on his own recognizance or without posting a bond upon posting bail, on condition that he appear in court for future court proceedings in the case, and on any other conditions imposed in the discretion of the magistrate or court that will reasonably:
 - (a) ensure the appearance of the accused;
 - (b) ensure the integrity of the court process;
 - (c) prevent direct or indirect contact with witnesses or victims by the accused, if appropriate; and
 - (d) ensure the safety of the public.

Electronic monitoring

- court may order as condition of release plus costs (§77-36-2.5(2)

Considerations when requesting “no bail,” higher bail or restrictions on release

- lethality or risk assessment
 - *history of abuse, violence*
 - *documented by reports, convictions, etc.*
 - *seriousness of offense*
 - *frequency of violence, escalation*
 - *death threats, threats of retaliation to V or children or other support persons of V (parents, siblings, friends, etc)*
 - *substance abuse*
 - *use of weapon or threat to use*
 - *victim's fears and reasonableness of those fears*
 - *D's mental and physical health*
 - *D's threats of suicide*
 - *D's access to V*
 - *return to same residence*
 - *child visitation arrangements (*often overlooked)*
 - *has D gone to V's workplace*
 - *threatened V or co-workers*
 - *is D a danger to V, family, co-workers, public*
 - *threats to 3rd party in visitation arrangement*
 - *D's prior criminal history*
 - *D's history of violence*

Bail procedure (§77-20-1)

- conditions of release on OR (own recognizance) or w/o bond within the discretion of the court
- initial order denying or fixing amount of bail shall be issued by
 - *the magistrate or court issuing warrant of arrest OR*
 - *magistrate or court presiding over D's first judicial appearance*
- court may rely upon
 - *indictment or information*
 - *sworn PC statement*
 - *info from pre-trial services agency*
 - *any other reliable record or source*
- motion to modify **initial order**

- *may be made by any party*
 - *at any time*
 - *with notice to opposing party with sufficient time*
 - *to prepare for hearing **AND***
 - *to notify any V of hearing so can be present*
- *may be held in conjunction with PH or other pretrial hearing*
- *court may rely upon*
 - *indictment or information*
 - *sworn PC statement*
 - *info from pretrial services agency*
 - *any other reliable record or source*
 - *evidence provided at PH or other pretrial hearing*
 - *as long as each party afforded opportunity to present additional evidence or information relevant to bail*
- *Subsequent motions to modify*
 - ***made only upon showing a material change in circumstances***

Arraignment

Pre-trial criminal protective order (§77-36-2.7(3); §77-36-2.6(3))

- prosecutor (or victim) must show court necessity for imposition
- court must state findings and put order in writing
- court provides certified copy to V
- **order should be put on statewide network** (copy can be sent to Admin Office of the Courts to put on)
- prosecutor can request even over the objection of the victim in order to keep defendant from victim during pendency of proceeding

Victim's location (§77-36-2.7(1)(c))

- court can waive disclosure of V's whereabouts except as to D atty
 - upon showing of any possibility of further violence
 - court can order D atty not to disclose to client

Dismissal (§77-36-2.7(1)(e))

- **court cannot dismiss at request of V unless**
 - prosecutor stipulates to it
- must be recorded in court file (§77-36-2.7(4))
- must be put on statewide network by court (§77-36-2.7(4))

BEWARE

- Note from Scottsdale, AZ: a woman who claims to be DV victim is taking Scottsdale and one of its prosecutors to fed ct for violating Victim's Bill of Rights for dismissing victim's case without victim's knowledge two days before trial date (Arizona Republic Newspaper 4/24/03)

DIVERSION NOT ALLOWED (§77-36-2.7(6))

Plea in abeyance ((§77-36-2.7(2),§77-2a-1 thru 4)

- eventual dismissal or reduction in charge
- should be used in limited circumstances
- use to fit circumstances
- use for first time offenders, not habitual offender, and should not be regular tool for handling cases
 - *consider a lethality assessment first [*see "Negotiations, Considerations" under Pre-trial section], when evaluating appropriateness for plea in abeyance*

Pre Trial

Prosecution goals

- **stop the violence**
 - uphold and enforce the laws
 - increase likelihood of convictions
 - *use advocates to support V through court process*
 - *use crim. protective orders to shield V from D's influence*
 - *implement "no drop" policy unless insufficient evidence to go forward*
 - *recommend a DV education group to V during court process*
- **protect the victim**
 - discuss all negotiations or dispositions with V (see Rules of Judicial Administration Rule 4-601(8))
 - be sensitive to V's concerns
 - *emotional ties to D*
 - *victims of DV must deal w/ their experiences in light of their relationship w/ the perpetrator unlike victims of other crimes*
 - *fear of losing relationship*
 - *fear and risk of "retaliation" i.e. losing custody of kids, personal safety of friends or relatives, etc.*
 - obtain pre-trial crim. PO for V
 - **explain** the order to V
- **hold perpetrator accountable**
 - send consistent message to D that violence is not justified
 - *stress level - no excuse*
 - *economic situation - no excuse*
 - *family situation - no excuse*
 - *actions of partner - no excuse*
 - *alcohol/drug abuse - no excuse*
 - *actions of V's relatives or kids or anyone other than D - no excuse*
 - keep **focus on D and D's conduct** throughout judicial process
 - *your focus*
 - *court's focus*
 - *jury focus (especially in opening and closing statements)*
 - be aware of abuser characteristics
 - *abusers are externally motivated*
 - *they are prone to deny responsibility for behavior*
 - *they minimize the violence*
 - *they intend on establishing control over V*

- *they are likely to blame V for the violence*
- *they are likely to increase the use of violence if V seeks to leave or change the relationship*
- require rehabilitation
 - *it is a long term process*
- maximize ability of court to place controls on D and to deter continued use of violence
 - **obtain convictions**
 - *avoid conditional pleas unless extraordinary circumstances*
 - **proceed w/ as few continuances as possible**
 - *increases likelihood of conviction*
 - *decreases opportunity for D to pressure V*
 - *the longer it takes to proceed w/ the case, the more likely the victims will perceive the "system" as being indifferent to them*
 - **filing up to prosecutor, NOT VICTIM**
- **consistent uniform response**
 - probability that violence in DV cases will escalate in severity and frequency warrants rigorous effort towards achieving consistency
 - establish community standard of **zero tolerance of violence**

Negotiations

- considerations
 - *keep prosecutor goals in mind*
 - *stop the violence*
 - *protect the V*
 - *hold D accountable*
 - *V's cooperation or lack of it*
 - *V's needs and desires*
 - *possibility of prosecution w/o V*
 - *How dangerous is D? (lethality assessment)*
 - *length of time in relationship; commitment/ entrenchment*
 - *how long violence gone on/ escalation in frequency and severity*
 - *violence towards others in family or household (including pets)*
 - *animal cruelty*
 - *assaultive behavior towards others*
 - *use of or threats to use weapons*
 - *importance to D of image to outside world*
 - *alcohol and drug problems V & D*
 - *mental health problems V & D*
 - *criminal history of D*
 - *may lessen D's fear of "system" or*
 - *D may not want to go back*

Victim considerations for the prosecutor

- understand the psychology behind the cycle of violence
 - *what victims experience*
 - *patterns of victims responses to violence*
 - *fear/ retaliation/ resistance/ escape/ avoidance/ etc.*
- learn to prosecute w/o V..... **focus on D's conduct!**
- V needs to be told

- *prosecution can proceed w/o cooperation*
- *responsibility for case is the prosecuting entity's (city, state, county, municipality), not the victim's*
- *right to prosecute lies with the prosecuting entity (city, county, municipality or state)*
- *V is **NOT** responsible*
- frequent contact w/ V leads to V's cooperation
 - *early contact and support services critical*
- ensure speedy prosecution
 - *delay through continuances puts V at risk of further violence and increases likelihood of becoming reluctant witness*
- explain criminal justice process to V
 - *V should know possible outcomes if convicted*
 - *sentencing options*
 - *plea negotiations*
 - *crim. PO*
- be familiar w/ available resources
 - *counseling for V and kids*
 - *Crime Victims Reparations (CVR)*
 - *local shelters*
- notify V if D released from custody/ furloughed/ escaped/ bailed out/ etc.
- notify V of all court dates and outcomes
 - *give V phone number to call to find out*
- perceptual reality vs. actual reality
 - *V must know weaknesses as well as strengths of system*
 - *what the system CAN and CANNOT DO*

Ultimately, the will to protect herself and to protect her children must come from the woman. There's a limit to what we can do.

William O'Malley - Plymouth County District Attorney, Massachusetts

Voir Dire

Purpose

- **educate**
 - domestic violence
 - *expert testimony re: subjects such as Battered Spouse Syndrome*
 - *experience, knowledge, attitudes, biases*
 - *anticipate defenses and head off*
 - *“extreme emotional disturbance”*
 - *must be objectively reasonable under the circumstances*
 - *desire to control another is not reasonable in civilized society*
 - *anticipate weaknesses in your case and head off*
 - *purpose of criminal trials is to prosecute crimes....and offenses against spouses are crimes*
 - **specific areas to focus on**
 - *violence is a deliberate choice of action by batterer--other choices were/are available*
 - *provocation is no excuse for choice of violence--individual responsible for choice of actions*
 - *even though behavior may be impulsive, intent is deliberate and rational*
 - *why does she stay?*
 - *“Just World” Theory--people get what they deserve and deserve what they get*
 - *some people believe this and you need to explain that bad things happen to good people in spite of the “Just World” theory*
- **eliminate**
 - Rule 18, URCrP
 - *challenge for cause*
 - *peremptory challenges*
 - *capital felony - 10 each*
 - *felony - 4 each*
 - *misdemeanor - 3 each*
 - *if more than one D, court may allow defendants additional peremptory challenges; court can permit challenges to be exercised separately or jointly*
 - *additional peremptory for each side for each alternate juror*

Sample Voir Dire Questions

Belief system

- Do you have any religious, social or personal beliefs that men are in a position of control over women---that they have a God given right to rule women?
- Do you have any religious, social or personal beliefs that men are superior to women?
- Do you have a belief or opinion that a woman should not leave a violent relationship for the sake of preserving the family?
- Do you have any religious, social or personal beliefs or opinions that it is the abused person's fault or responsibility for provoking the situation and therefore they deserve what they get?
- Do you believe that an individual is responsible for his/her own actions and behavior?
- Do you believe that violence is an acceptable response to a problem in the relationship?

- With domestic violence being the number one cause of injury to women, do you believe that the (state, city, county) should decide to intervene even if the victim does not want us to?

Experience

- Do you have any personal experience regarding domestic violence? If so, please explain.
- Have you known people who have been involved in domestic violence relationships?
 - as an abuser?
 - as a victim?
 - as children in family?
 - what are your feelings about that?

Choice

- Would you agree that feeling anger from time to time is normal?
 - have you ever been angry with your boss/ your friend/ your kids/ your partner or spouse?
- Would you agree that people can choose to express their anger in different forms?
 - some keep their anger inside and stay silent
 - some go for walks until they cool down and can discuss the problem
 - some yell
- Would you agree that some people choose to express their anger through violence?
- Would you agree that there is a difference between being angry and being violent?
 - that you can be angry without being violent?
- Have you heard of people "losing control" when they get angry?
 - Have you ever considered the fact that they gain "total control" by being so violent?
- Would you agree that violence can be a way to get what you want?
 - power/ self-importance/ respect/ dominion
- Would you agree that some people choose violence as a method of dealing with their problems?
- Have you ever seen a child in a store throw a temper tantrum because the parent said the child couldn't have something?
 - Would you agree that the child throws the tantrum in order to force the parent to give in and give the child what he/she wants...and that some parents give in...therefore, the tantrum was effective
 - would you agree that the same can be said about violence...that it can be an effective choice of behavior to get what you want?
- Would you agree that violence is not an **acceptable** choice?

Provocation/Choice

- Do you believe that another person has a right or responsibility to control your behavior?
- Do you believe that it is a woman's responsibility to control her partner's violent behavior?
- Do you believe that a person always has a choice on how to act when provoked?

Rational Thought/ Impulsive Behavior

- Have you ever lied to your parents when you were a kid? You knew you could get caught, but chose to lie instead. That was a deliberate action---the thinking process was quick, but intentional and rational, and the lying behavior was impulsive, but you still took that risk. And when you got caught, you felt ashamed and got punished.

- Would you then agree that a person who chooses to act violently, may be acting impulsively, but has made an intentional and rational choice to engage in that behavior?

Why Does She Stay?

- Would you agree that sometimes people stay in bad situations even though they don't want to or because they think they have to?
- Have you (or have you known anyone who) stayed in a job you didn't like because you needed the income?
 - maybe you had a boss who was difficult to work for, he/she yelled and screamed, the pay wasn't very good and you didn't think you had any other options but to stay and "make the best of things."
 - How did you begin to feel about yourself--worthless, hopeless
 - And if people told you "just quit the job; there are plenty of other jobs out there;" "I wouldn't put up with that hassle from anyone;" "Was it that easy to just quit?"
- *Have you ever been in a relationship that eventually "broke up?"*
 - was it easy to leave?...was it hard to leave?...did you try to keep the relationship together even though you knew it probably wasn't the best?...why?
 - love, fear of the unknown, hope relationship can change, religion, no place to go, fear of being alone, blame, children, economic reasons, social stigma
- Would you agree that a person in a violent relationship may have those same feelings and concerns?
- Would you agree that some people have learned violence is normal and may not react to it in the same manner you or I would?
- Would you agree the fact that a person has become desensitized or "used" to violence, does not make the use of violence acceptable?
- Would you agree that violence impacts those who are victims as well as those who watch or hear it? Would you agree that the children are also victims in that situation? (For use when children are present and victim may not be cooperative or sympathetic)
- *Would you agree that it is not the abused person's fault for the violence in a relationship?*

"Just World" Theory

- *Do you believe that a person gets what he/she deserves and deserves what he/she gets?*
- Do you believe that in spite of that belief, sometimes, bad things happen to good people and they don't deserve what they get?
- Do you believe that a person stays in a relationship, he/she **deserves** the violence?
- Do you agree that it is our responsibility to say that violence is not acceptable in homes/families/relationships?
- Do you agree that it is our responsibility to say the violence will not be tolerated?

Trial Issues

Focus

- on proving crime
- on Defendant's conduct
- prevent focus on V (**common defense strategy*)

Spouse Privileges

Compel to testify (*commonly referred to as Spousal Privilege*)

- *Art. 1 Sec 12 Utah Constitution*
 - *a wife shall not be compelled to testify against her husband nor a husband against a wife*
 - *§77-1-6(2)(d) (statutory enactment of Constitutional provision)*
 - *Rule 502 URE (language put into rule of evidence)*

Privileged communication

- *statutory - §78-24-8(1)(a)*
 - *spouse, during or after marriage, w/o consent of other spouse, cannot be examined as a witness re: communications made during marriage*
 - *does not apply to crim. action for crime committed by one spouse against the other (§78-24-8(1)(b)(ii))*
 - *or to crim. proceeding for abuse or neglect of child of either spouse (§78-24-8(1)(b)(iv))*
 - *or as otherwise specifically provided by law (§78-24-8(1)(b)(v))*
- *rule - URE 502*
 - *no privilege*
 - *if spouses are adverse parties*
 - *if made in furtherance of a crime*
 - *in crim. proceeding where spouse charged w/ crime against the other*

Hearsay exception - Unavailable witness -URE 804(b)(5)

- **witness unavailable**
 - *due to privilege*
 - *refuses to testify*
 - *lacks memory*
 - *unable to attend*
 - *witness absent and prosecutor unable to procure witness' attendance by process or other reasonable means*
 - **see (§77-36-2.7(5) which says that if privilege or confidential communication raised, DV victim shall be considered "unavailable" under the Rules of Evidence**
- **statement of witness is**
 - *more probative than other evidence that prosecutor can procure by reasonable efforts*
 - *offered as evidence of a material fact*
 - *statement has circumstantial guarantees of reliability*
 - *surrounding the making of the statement*
 - *that renders the declarant particularly worthy of belief*
 - *reliability is measured under a totality of the circumstances test (see Idaho v. Wright, 110 S.Ct. 3139(1990))*

- *factors re: reliability*
 - *spontaneity*
 - *whether the statement was elicited by questioning*
 - *whether the questioning was leading*
 - *consistency with other statements*
 - *motive to fabricate*
 - *relating idiosyncratic detail*
 - *level of certainty and detail*
 - *mental state of declarant*
- *general purpose of rules and interest of justice will be served if admitted*
- **must provide notice to defendant** (*do so immediately to preserve options later*)
 - *intention to offer statement*
 - *particulars of statement*
 - *name of declarant*
 - *address of declarant*

Expert Testimony

Disclosure required (§77-17-13)

- *applies to both prosecution and defense*
- *if intend to use at felony trial or any hearing except PH*
 - *mental health expert*
 - *crime lab expert*
 - *any other expert*
- *notice to opponent 30 days prior to trial / 10 days prior to hearing*
 - *must include name, address, curriculum vitae and copy of report*
- *testimony of expert at prelim constitutes notice of expert, qualifications-report of proposed testimony*
 - *party who called expert shall provide expert's curriculum vitae upon request*

Foundation

- URE 702
 - *qualified as expert by knowledge, skill, experience, training or education*
 - *formal training or ed. not prerequisite to giving expert opinion*
 - *a witness may qualify as expert by virtue of experience or training*
 - *specialized knowledge will assist the trier of fact to understand the evidence or determine a fact in issue*

Educate trier of fact

- *myths and misconceptions about battered women*
- *why they stay*
 - *Battered Spouse Syndrome*
 - *Cycle of Violence (L. Walker, The Battered Woman Syndrome, 1984)*
 - *tension building stage*
 - *acute battering stage*
 - *loving-contrite stage*
 - *Learned Helplessness theory/ Survivor theory*
 - *repeated abusive episodes and V believes V has no control over what happens ----*
---->leading to
 - *a belief of helplessness ----->leading to*

- the perception becoming reality ----->leading to
- V becoming passive, submissive, helpless
- Post Traumatic Stress Disorders, generally
 - see *US v Winters*, 729 F.2d 602 (9th Cir. 1984)
 - Stockholm Syndrome (psychological phenomenon where hostage develops positive feelings for captor
 - see *US v. Peralta*, 941 F2d 1003 (9th Cir. 1991) Ct. affirmed admissibility to explain V's actions or inactions
- Other reasons
 - survival (fear of being killed)
 - 75% higher risk of serious bodily injury or death
 - knows abuse will not stop even if leaves
 - threats of harm to children, V or suicide threats
 - V has high tolerance for abuse due to childhood abuse (including witnessing DV of parents)
 - lack of job skills, financial resources or cannot realize life w/o batterer
 - religious beliefs
 - self blame, guilt, shame of failed marriage
 - belief children need to be with father
 - physical injuries or condition may prevent leaving
 - batterer's control analysis (*Ellen Pence, Duluth, MN*)
 - physical and sexual violence
 - isolation
 - emotional abuse
 - intimidation, threats, coercion
 - economic deprivation
 - lesser status (male privilege)
 - manipulation by using kids
 - blame, denial, minimization of abuse

Need for expert

- explain to trier of fact why battered women stay in abusive relationship
- explain why battered women behave in unexpected or conflicting ways
 - hiding abuse, denial, excuses, recants or retracts statements
 - minimizes, reports fewer events than actually occur
 - hostility as witness
- explain Battered Spouse Syndrome to help trier of fact understand V's contradictory behavior
 - provides alternative explanation for V's behavior for trier of fact to consider
 - battered women do not behave in ways the average non-battered adult behaves nor can the average adult readily understand a battered woman's seemingly contradictory behavior. Evidence of BSS enables the trier of fact to properly assess V's testimony fairly and the trier of fact can draw its own conclusion as to whether or not V's behavior is consistent with the behavior of other battered women
- expert testimony is only a tool for the trier of fact to understand the V's behavior; it is not to decide the ultimate issue and the jury, particularly, needs to know that is their job, not the expert's.

Case law re: admissibility of evidence about battered women

- *State v. Ciskie*, 751 P2d 1165 (Wash. 1988)
 - *intro'd evidence re: common behavior of battered women*
 - *intro'd after V testified to rehabilitate*
 - *V's credibility attacked on cross exam*
 - *directly*
 - *indirectly by inconsistencies*
 - *V's credibility attacked through cross exam of other prosecution witnesses*
 - *V's credibility attacked in defense case*
 - *see also State v. Riker*, 869 P2d 43 (1994) *expert testimony on BWS not admissible to explain defendant's actions outside battering relationship*
- *State v. Bednarz*, 507 NW2d 168 (Wis Ct. App. 1993)
 - *cycle of violence testimony used to explain V's recanting---alternative explanation of V's behavior for jury to consider*
- *Arcoren v US*, 929 F2d 1235, 49 CrL 1071 (8th Cir 1991)
 - *BSS expert testified as to tendency to recant as an alternative explanation of V's statements*

Victims' Rights Issues

Right to be present throughout trial

- *URE 615*
- *State v. Cosey*, 237 UAR 46
 - *Right for victim counselor to remain in courtroom while defense establishes counselor is a material witness (URE 615)*

Victim Fails to Respond to a Subpoena

Check to see if personal service

- *can you proceed w/o V?*
 - *did you file notice under URE 804?*
 - *use URE 804 (a)(5), URE 804(b)(5)*
- *request continuance to determine whether V's FTA due to threats, coercion, etc.*
- *treat FTA by V (several options, no easy answer)*
 - *same as you would treat non-DV personal crime V's FTA?*
 - *if file OTSC on those V's or witnesses who FTA on other personal crimes, treat DV FTA's similarly*
 - *if don't pursue OTSC or pursue on a limited basis depending upon the severity or violence of the crime on non-DV Vs or witnesses, use the same standard for DV V's*
- *treat differently because DV case?*
 - *don't want to re-victimize the victim*
- *V has to understand that if subpoenaed, a witness must appear and testify*
 - *yet V may truly be acting in a survival mode by avoiding violence which she anticipates but is not able to articulate because it's based upon her experience with the abuser*

Preliminary Hearing V. Waiver

Benefits of PH

- *preserves testimony (valuable if recants or is absent)*
- *may benefit V to confront D while still hurt and upset (if PH relatively soon after incident, V and D may have not reached "honeymoon stage" yet)*
- *once D sees V testify in open court, may facilitate negotiations*

Benefits of waiver

- *V may not be physically or emotionally prepared to testify*
- *V may have reached "honeymoon stage" and may be resistive to testifying, particularly if has no support services*

Prosecutor must evaluate on a case by case basis

Self Defense §76-2-402

Legislative intent

- *V's response to pattern of domestic violence or abuse should be considered in determining imminence or reasonableness and that the evidence be considered when useful in understanding perceptions or conduct of V*

Statutory considerations not limited to DV situations

Mutual combat defense

- *remaining in relationship does not = mutual combat*
- *entering or remaining in place where you have a right to be does not = mutual combat*
- *no duty to retreat from place you have a right to be and therefore failure to retreat does not = mutual combat*

imminence of danger and **reasonableness of belief of necessity** considerations (§76-2-402(5)(a)-(e)).

- *nature of the danger*
- *immediacy of the danger*
- *probability that unlawful force would result in death or serious bodily injury*
- *prior violent acts or propensities (with others)*
- *pattern of abuse or violence in relationship (with V)*

Evidence

Medical

- use to prove injury
- use to corroborate V testimony how injury occurred
- remember to file "notice of intent to use expert" (§77-17-13)
- **statements to med. personnel for purpose of med. diagnosis, URE 803(4)**
 - *statement must be made for purpose of med. diagnosis or treatment*
 - *statement must describe or relate med. history, past or present symptoms or pain or sensation or cause*
 - *statement reasonably related to diagnosis or treatment*
 - *incl. med. staff, see State v. Salazar, 504 NW2d 774; and Fed. Advisory Committee comments to Rule 803(4)*
 - *applies to psychiatrists or psychologists for purpose of med. diagnosis or treatment (see State v. Schreuder, 726 P2d 1215 (UT 1986))*
 - *sex. aslt..see US v. Iron Thunder 714 F2d 765*
 - *identity of perp included...see US v. Joe, 8 F3d 1488 (10th Cir 1993), DV homicide case where V had been in to see doctor earlier re: rape by D; State v. Moen, 786 P2d 111 (OR 1990); U.S. v. Renville, 779 F2d 430 (8th Cir. 1995); State v. Sims, 890 P2d 521 (Wash. 1995).*
- **medical record/business record, URE 803 (6)**
 - *admit through records clerk*
 - *see State v. Torres 589 P2d 83; State v. Graham, 641 SW 2d 102*
 - *if info in records likely to go to central issue of case, physician usually required to appear*
 - *foundation (see State v. Bertul, 664 P2d 1181 (Ut 1983))*
 - *record made in regular course of business which keeps record*
 - *record made at time or in close proximity to occurrence of act, condition or event recorded*
 - *evidence must support conclusion that document kept under circumstances to preserve its integrity*
 - *sources of info. from which entry made and circumstances of preparation indicate trustworthiness*

Hearsay Exceptions

Excited Utterance, URE 803(2)

- three prong test (see *West Valley City v. Hutto, 2000 UT App 188; State v. Kinross, 906 P2d 320 (Ut. App 1995); (unpublished opinion, Salt Lake City v. Hernandez, 2001 WL 311183 (Ut App))*)
 - *declarant experiences startling event*
 - *statement made about event while declarant still "startled" by the event*
 - *lapse of time between event and the declarant's utterance*

- *trauma from event can last long after: statement may qualify under theory of "rekindled" excitement.*
- *State v. Smith, 909 P2d 236, 280 UAR 6 (Ut. Sct. 1995)*
- *declarant's state of mind*
- *declarant's capacity to fabricate the utterance*
- *declarant's statement must relate to the startling event*

Present Sense Impression, URE 803(1)

- *timing is the key element*
 - *spontaneous statement made by declarant*
 - *while participating in or witnessing an event*
 - *before having time to gather his or her thoughts*
 - *State v. McMillan,, 588 P2d 162 (Ut 1978)*

Prior Incidents, URE 404(b)

- *notice of intent to use prior to trial; motion in limine to use*
- *rule not limited to criminal convictions*
 - *see State v. Kerekes, 622 P2d 1161, (UT 1980)*
- *use to prove any material fact except criminal disposition*
 - *Rule examples illustrative*
 - *motive*
 - *intent*
 - *preparation*
 - *plan*
 - *knowledge*
 - *identity*
 - *absence of mistake or accident*
 - *some purpose other than proof of D's character*
 - *When a person pleads "not guilty" to a charge, every element of the charge is put into issue*
 - *see State v. Teuscher, 883 P2d 922 (Ut. App. 1994), evidence admitted to show identity and intent of the perpetrator and that the injuries were not the result of an accident or mistake*
- *excluded only when sole reason offered is to prove bad character or to show person acted in conformity with that character*
 - *see State v. O'Neil, 848 P2d 694 (Ut. App. 1993)*
- *foundation*
 - *must show prior misconduct was committed by defendant*
 - *must prove logical relevance*
 - *evidence of prior bad act makes inference more probable than inference would be without the evidence*
- *court standard for assessing admissibility*
 - *see State v. Taylor, 818 P2d 561, (Ut App. 1991), "proximity in time combined with similarity in type of crime"*
 - *court has broad discretion (see Teuscher)*
 - *URE 402 relevance test*
 - *URE 403 balancing test*

- may be excluded if " its probative value is **substantially** outweighed by the danger of unfair prejudice" (see *Teuscher*)
 - two-step analysis
 - past abuse evidence must be unfairly prejudicial **and**
 - substantially outweigh the evidence's probativeness
- Utah cases: *State v. Holbert* 61 P2d 291 (2002); (*State v. Rees* unpublished 2002 WL31387030); *State v. Nelson-Waggoner* 6 P.3d1120 (2000)

Statements of physical, mental or emotional condition, URE 803(3)

- admissible to prove existence of a particular condition after an incident
 - *physical or mental injury or distress*
- foundation
 - *statement made*
 - *substance of statement*
 - *statement related to declarant's state of mind or condition at the time the statement was made*
 - *does not apply to statements of past mental or physical condition (see URE 803(4) for purposes of med. diagnosis)*
- see *State v. Auble*, 754 P2d 935 (Ut 1988) Because defendant raised defense of self defense and accident, he placed V's state of mind directly in issue. Hearsay statement of V reporting Defendant recently threatened to kill her was admissible; see also *State v. Jaeger* 973 P2d 404 (1999); *State v. Wetzel* 868 P2d 64 (1994)

Statements made for purposes of medical diagnosis, URE 803(4)

***see also outline on Medical evidence above**

- use to establish nature of V's injuries and means of injuries
- may be allowed to use to establish identity
 - see *United States v. Renville*, 779 F2d 430 (8th Cir. 1985)

Catch-all hearsay exception, URE 803(24)

- reasonable notice to opponent of intent to use
- statement must have circumstantial guarantees of reliability
- must be offered as evidence of a material fact
- statement is more probative on the issue that other evidence which the proponent has been able to secure through reasonable efforts
 - consider *People v. Geraci*, 649 NE2d 817 (NY 1995) where court allowed hearsay evidence when prosecution established by clear and convincing evidence that witness' absence (unavailability) due to intimidation (result of D's misconduct); see also *State v. Webster* 32 P3d 976 (2001); *State v. Nelson* 777 P2d 479 (1989)

Dismissals

- may be appropriate
- court to make final decision, **Not the victim**
- evidentiary problems/can't prove case
- best interest of V (**very limited use**)

Sentence (§77-36-5; §77-36-5.1)

- aggravating sentencing factors
 - *particular vulnerability of V (mental disability/ physical disability/ elderly/ pregnant*
 - *D does not accept full responsibility for actions*
 - *weapon was used*
 - *D has prior DV convictions or violent convictions*
 - *V was hospitalized*
 - *DV act was committed in the presence of children*
 - *D violated court orders (civil or criminal)*
 - *ongoing harassment of V by D by phone/ mail/ in person/ direct or indirect*
- extend criminal protective order as condition of sentence
 - **must be in writing** (§77-36-5)
 - *prosecutor to provide certified copy to V (§77-36-5)*
 - **this is an order separate from the standard probation order**
 - **this is to be entered into the statewide DV network (copy can be sent to Court Administrator's Office to enter)**
 - *assess D*
 - *V counseling costs*
 - *cost for services or treatment provided to abused spouse by DCFS or to contract provider directly mandatory for court to assess pursuant to §77-36-5*
 - *order*
 - *no threats*
 - *no contact*
 - *stay away*
 - *no alcohol or controlled substances*
 - *no firearms or other weapons*
 - *surrender weapons*
 - *attend DV licensed perpetrator treatment program, pay costs and satisfactorily complete, §77-36-5(5), unless court finds no licensed program reasonably available or DV treatment or therapy unnecessary*
 - *important that treatment provider have copy of police reports*
 - *know which programs are effective*
 - *alc/subst. abuse treatment*
 - *mental health treatment*
 - *restitution*
 - *electronic monitoring*
 - *incarceration*
 - *length of time depends upon agg. factors*

- *D should spend some incarceration time and then go into treatment w/ the remainder of incarceration time "hanging over D's head" to insure compliance*
- probation
- time frame (§77-18-1(10)(a)(i))
 - up to 36 months w/o violation for felony or class A
 - up to 12 months w/o violation for class B, C or infractions
- if more than one charge, ask for consecutive probationary periods (see §76-3-401)
- formal probation to Dept. of Corrections or other agency (§77-18-1(2)(a)(i),(ii))
 - advise V who to contact for info, reporting violations, etc.
- informal probation to the court (§77-18-1(2)(a)(iii))
 - advise V to contact prosecutor for info, reporting violations, etc.
 - prosecutor should ask court to order monthly or quarterly reports including attendance to court w/ copy to prosecutor
- set up notification to V of D's release from incarceration

- **recommended sentence if 1st DV conviction for misdemeanor w/ no agg. factors**
 - **recognized DV program--satisfactorily complete/pay for plus any D/A or M/H treatment**
 - **restitution to shelter, V**
 - **no alcohol/no drugs**
 - **susp. jail sentence assuming D arrested and taken to jail; otherwise, D needs to see the inside of the jail for a couple of days (this is to impress the fact that this is a crime!)**
 - **monthly reports to court**
 - **criminal sentence PO if requested by V**

RECOMMEND IMPOSITION OF MAXIMUM SENTENCE THEN CAN METE OUT IN INCREMENTS---INCREASING IN LENGTH WITH EACH SUBSEQUENT VIOLATION

Court orders must be followed and enforced essential to effective intervention

Parole

Board of Pardons

- duty to notify V of hearing and the right to appear (§77-27-9.5)
- duty to notify of release if V requested (§77-27-9.7)

Duty of prosecutor

- furnish all pertinent data requested by board (§77-27-13(4))
- **to furnish within 30 days from the date of sentence in writing**
 - all investigative reports
 - victim impact statement referring to physical, mental or economic loss suffered
 - mitigating or aggravating circumstances or both
 - full and complete description of the crime
 - written record of any plea bargain
 - any other relevant information

Risk Factors Affecting Lethality

(adapted from the Treatment Sub-Committee of the SLADVC)

Officers (or the victim advocate) should consider asking victims the following questions. The answers may be relevant to assist the officer or prosecutor in seeking higher bail or no bail, as well as helping victims with safety planning.

1. Has abuser threatened to kill victim, children or others?
 - a. Physically _____
 - b. Verbally _____
2. Has abuser previously attempted to kill victim, children or others? _____
3. Has abuser threatened to harm or kill himself or others? _____
 - a. Has abuser exhibited fantasies or details of plans of suicide or homicide? _____
4. Has abuser previously injured victim or children or others seriously enough to require medical treatment? _____
5. Does abuser have criminal history of violence? _____
6. Is abuser intoxicated on a daily or weekly basis or does s/he heavily or regularly use amphetamine, heroin or other street drugs and does s/he become violent when abusing substances? _____
7. Has abuser broken a protective order or restraining order in the past? _____
8. Has the violence in the home increased in severity and scope over the past year? _____
9. Does the abuser have a history of stalking behaviors? _____
10. Has the abuser threatened or abused children? _____
11. Has the abuser forced sexual activities upon the partner or children? _____
12. Has the abuser ever prevented the victim or children from leaving by threatening physical harm to self or others if they left? _____
13. Does the abuser have a physical, medical or mental condition that contributes to the violence? _____
14. Has the victim recently separated from or terminated the relationship with the abuser? _____
15. Has the abuser harmed or killed family pets or threatened to do so? _____
16. Does the abuser have a history of violence in his/her family of origin? _____
17. Has the abuser dropped out of treatment or been non-compliant in a domestic violence treatment program? _____
18. Does the abuser have chronic, severe mental health problems? _____
19. Does the abuser exhibit excessive jealousy? _____
20. Has the abuser destroyed the victim's personal property? _____

(Even one "yes" indicates the possibility of continued threat of harm and interventions should be employed to protect the victim)

Low risk	0-5 "yes" answers
Moderate risk	6-10 "yes" answers
High risk	11-15 "yes" answers
Severe risk	16-20 "yes" answers

Prosecutor Checklist

- Copy of police report to prosecutor w/in 5 days
- Determine primary physical aggressor
 - *prior complaints of DV*
 - *relative severity of injuries inflicted on each person*
 - *likelihood of future injury to each person*
 - *whether one party acted in self-defense*
- If defendant arrested, **defendant must appear in court w/in 1 judicial day of arrest**
- If defendant cited, **defendant must appear in court w/in 14 days of citation**
- If defendant summoned, **defendant must appear in court w/in 14 days of filing of information**
- Determine necessity of criminal protective order
- Must provide certified copy of criminal sentencing protective order to victim, if issued
- Issue warrant of arrest if violation of protective order
- Note "*Domestic Violence*" on information for court tracking purposes
- Diversion not allowed**
- If defendant convicted of "violation of protective order", mandatory electronic monitoring per §30-6-4.8

If victim requests:

- notify victim of status of case
- notify victim of decision re: charges w/in 5 days
- If no charges filed, advise victim of procedures available to initiate criminal and other protective proceedings

D V P R O S E C U T I O N

WEST VALLEY CITY ATTORNEY'S OFFICE

This policy memorandum outlines the general prosecution protocols that should govern the City's efforts against domestic violence offenders. Founded upon the Utah Prosecution Council's (UPC) DV 101 manual, these protocols should serve as a reference for individual prosecutors as they exercise their due discretion, thus fostering a consistent and reliable response to domestic violence. Prosecutors should note that there is more statutory guidance regarding domestic violence prosecution than other areas of prosecution, and the prosecutor should refer to those statutes when applicable.

The prosecutor must maintain the role as the victim's most powerful advocate during prosecution. City prosecutors shall be sensitive to the victim in DV prosecutions, including but not limited to the following:

- Charge and pursue to the fullest extent of the law persons who harass, threaten, injure, or otherwise attempt to intimidate or retaliate against victims or witnesses;
- Notify victims of screening decisions and offer the victim the opportunity to discuss the decision with a prosecutor;
- Work closely with the Victim Services Office on all DV prosecutions;
- Inform the court of the victim's views at appropriate hearings;
- Discourage continuances, and always consider the impact that a continuance would have upon the victim;
- Involve victims in prosecutions as much as possible; and
- Ensure that a victim's property is returned as soon as possible.

Screening (§77-36-1 et seq.):

The prosecutor will rely upon the National College of District Attorneys (NCDA) and American Bar Association (ABA) standard in screening a case for prosecution. That standard can be summarized as: A case should be filed if there is a reasonable likelihood of success at trial.

In addition, the prosecutor will consider the UPC formula: (1) Can you prove the case without the victim's cooperation? If so, then file; (2) If you cannot, is the victim cooperative? If so, then file; (3) If the victim is not cooperative and you cannot prove without the victim, then do not file. Examples of uncooperative victims include refusal to give information, failure to appear on a subpoena, evade service, recant reports, etc. City prosecutors have developed a tested 3 prong approach to generally assess the viability of a DV case when the victim is uncooperative. The test considers: (1) admissible statement(s); (2) corroboration; and (3) identification. The presence of these three prongs in a case suggest that the prosecutor has a reasonable expectation of success at trial without the victim.

Regarding the admissible statement prong, there is a hierarchy of effective types of hearsay statements. Prosecutors should be adept in recognizing the hierarchy, and seek to find multiple grounds for admissible hearsay. Although written statements are preferable to oral statements based upon experience, there should not be an absolute requirement that the statement be written. In the past, the excited utterance exception has been the most effective in building cases without victim cooperation. Other effective exceptions have been present sense impression, then existing condition, statement for medical purposes, and recorded recollection. And finally, a prosecutor should rely on the catch-all exceptions as a last measure. Although City prosecutors have obtained convictions using the catch-all, it is generally more difficult to establish and is more susceptible to defense attacks.

Historically, the City has been recognized for its "no-drop" policy, and will continue to operate under its philosophy. That is, West Valley will not drop charges simply because the victim has requested that the charges be dropped. Still, prosecutors will rely on the Victim Services Office for the best information on the victim's circumstances.

Time is of the essence in DV prosecutions and the screening prosecutor will prioritize DV cases above all others. (See §§ 77-36-2.2(6)(c) and 77-36-7).

Filing:

If arrested and taken into custody, the defendant must appear within one court day. If released on citation or summoned, the defendant must appear within 14 days of filing. (§ 77-36.2.6(2)). Personal appearance may not be waived (§77-36-2.6(4)).

Prosecutors should do all in their means to assist the Court in holding to the appearance requirements.

Bail Issues/Release Conditions:

The prosecutor shall request the Court to set an appropriately high bail in situations where there is substantial evidence to support the charge and clear and convincing evidence that the Defendant constitutes a substantial danger to the victim. The prosecutor carries the burden to meet the clear and convincing standard, but is not bound by the Rules of Evidence. (See Utah R. Evid. 1101).

The Court may order electronic monitoring as a condition of release. (§77-36-2.5(2)). In cases of "Hotlist" offenders, violent/habitual offenders, or protective order violators, the prosecutor should request this remedy.

Prosecutors should refer to the bail procedure statute at a bail hearing. (§77-20-1). Although any party may request to modify the initial bail at any time, there must be adequate notice to the opposing party and to the victim. Moreover, modifications must be based upon a material change in circumstances.

Pre-Trial Proceedings:

In appropriate cases, the prosecutor should seek a criminal protective order pursuant to Section 77-36-2.6(3). The prosecutor should rely on the victim or Victim Services Office for input as to appropriate cases. In addition, the prosecutor can ask the Court to maintain the confidentiality of the victim's location. (§ 77-36-2.7(1)(c)). Here too, the prosecutor's resources for appropriateness should be the victim and Victim Services Office.

Prosecutors shall not use Diversion Agreements for domestic violence offenses.

In the case of a Plea in Abeyance Agreement, the prosecutor should limit their use to cases that warrant them. Suggested criteria for such an agreement include: first time offense with a lower level of violence, and/or substantial evidentiary problems. City prosecutors will rely heavily upon the recommendations of the DV Hotlist Team in offering a plea in abeyance.

In negotiation, the prosecutor must achieve certain goals: (1) stop the violence; (2) protect the victim; (3) hold the perpetrator accountable; and (4) maintain a consistent, uniform response to Domestic Violence.

When the Court dismisses domestic violence charges at the request of the prosecutor, the reason(s) for dismissal must be recorded with the Court. (§77-36-2.7(4)).

Trial:

The prosecutor should maintain focus on proving the crime charged, and upon the defendant's conduct. In turn, the prosecutor should attempt to prevent focus upon the victim, which is a common defense tactic.

The prosecutor must be well versed in the Rules of Evidence with specific emphasis upon the hearsay rules and rules relating to the admissibility of the defendant's past conduct. In cases where the victim does not testify, the prosecutor must apply the three-pronged analysis in proving the case: (1) admissible statement(s); (2) corroboration; and (3) identification. In trial preparation, it is often beneficial to assume that the victim will not cooperate or testify for the prosecution. This assumption forces the prosecutor, and police, to prepare for the toughest evidentiary scenario, and increases the likelihood of conviction. In addition, prosecutors should consider calling an expert witness who could explain the dynamics of domestic violence cases.

Sentencing:

Prosecutors shall make recommendations at all domestic violence sentencings. In addition, the prosecutor should ensure that the victim has an opportunity to speak, have a representative speak, or provide information to the court by other means. The prosecutor should remind the Court that probation terms for a class A misdemeanor can be up to 36 months, and up to a year for lesser offenses. Continuation or initiation of the criminal protective order should be addressed. Note, these orders must be in writing and recorded on the statewide DV network.

Prosecutors shall request restitution at the time of sentencing, including cases where Crime Victim Reparations is the payee.

The Utah Prosecution Council's handbook DV 101 suggests the following recommendations for first time DV conviction:

- Complete/Pay for recognized DV program.

- No new offenses.
- No weapons. (Forfeit weapon if possible or in the alternative surrender firearms for duration of court jurisdiction).
- Restitution to shelter for victim's stay there.
- No Alcohol/Drugs.
- Suspended jail assuming defendant was arrested and booked. Otherwise, defendant needs to see inside of jail for a few days.
- Monthly reports to Court.
- Post-conviction protective order, if appropriate.

The prosecutor should opt to recommend supervised probation whenever possible. Adult Probation and Parole will supervise upon conviction of a class A offense, or higher, as well as some class B offenses if the defendant is a habitual offender.

Mandatory Reporting Laws



Mandatory Reporting Laws

Healthcare Provider Reporting Act

26-23a-1. Definitions.

As used in this chapter:

(1) "Health care provider" means any person, firm, corporation, or association which furnishes treatment or care to persons who have suffered bodily injury, and includes hospitals, clinics, podiatrists, dentists and dental hygienists, nurses, nurse practitioners, physicians and physicians' assistants, osteopathic physicians, naturopathic practitioners, chiropractors, acupuncturists, paramedics, and emergency medical technicians.

(2) "Injury" does not include any psychological or physical condition brought about solely through the voluntary administration of prescribed controlled substances.

(3) "Law enforcement agency" means the municipal or county law enforcement agency:

(a) having jurisdiction over the location where the injury occurred; or

(b) if the reporting health care provider is unable to identify or contact the law enforcement agency with jurisdiction over the injury, "law enforcement agency" means the agency nearest to the location of the reporting health care provider.

(4) "Report to a law enforcement agency" means to report, by telephone or other spoken communication, the facts known regarding an injury subject to reporting under Section 26-23a-2 to the dispatch desk or other staff person designated by the law enforcement agency to receive reports from the public.

26-23a-2. Injury reporting requirements by health care provider -- Contents of report.

(1) (a) Any health care provider who treats or cares for any person who suffers from any wound or other injury inflicted by the person's own act or by the act of another by means of a knife, gun, pistol, explosive, infernal device, or deadly weapon, or by violation of any criminal statute of this state, shall immediately report to a law enforcement agency the facts regarding the injury.

(b) The report shall state the name and address of the injured person, if known, the person's whereabouts, the character and extent of the person's injuries, and the name, address, and telephone number of the person making the report.

(2) A health care provider may not be discharged, suspended, disciplined, or harassed for making a report pursuant to this section.

(3) A person may not incur any civil or criminal liability as a result of making any report required by this section.

(4) A health care provider who has personal knowledge that the report of a wound or injury has been made in compliance with this section is under no further obligation to make a report regarding that wound or injury under this section.

26-23a-3. Penalties.

Any health care provider who intentionally or knowingly violates any provision of Section 26-23a-2 is guilty of a class B misdemeanor.

Vulnerable Adult Abuse

62A-3-305. Reporting requirements -- Investigation -- Immunity -- Violation -- Penalty -- Physician-patient privilege -- Nonmedical healing.

(1) Any person who has reason to believe that any vulnerable adult has been the subject of abuse, neglect, or exploitation shall immediately notify Adult Protective Services intake or the nearest law enforcement agency. When the initial report is made to law enforcement, law enforcement shall immediately notify Adult Protective Services intake. Adult Protective Services and law enforcement shall coordinate, as appropriate, their efforts to provide protection to the vulnerable adult.

(2) When the initial report or subsequent investigation by Adult Protective Services indicates that a criminal offense may have occurred against a vulnerable adult, it shall notify the nearest local law enforcement agency. That law enforcement agency shall initiate an investigation in cooperation with Adult Protective Services.

(3) Anyone who in good faith makes a report or otherwise notifies a law enforcement agency, the division, or Adult Protective Services of suspected abuse, neglect, or exploitation is immune from civil and criminal liability in connection with the report or other notification.

(4) Any person who willfully fails to report suspected abuse, neglect, or exploitation of a vulnerable adult is guilty of a class B misdemeanor.

(5) Under circumstances not amounting to a violation of Section **76-8-508**, a person who threatens, intimidates, or attempts to intimidate a vulnerable adult who is the subject of a report, a witness, the person who made the report, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a class B misdemeanor.

(6) The physician-patient privilege does not constitute grounds for excluding evidence regarding a vulnerable adult's injuries, or the cause of those injuries, in any judicial or administrative proceeding resulting from a report made in good faith pursuant to this part.

(7) An adult is not considered abused, neglected, or a vulnerable adult for the reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of medical care.

Child Abuse

62A-4a-402. Definitions.

As used in this part:

- (1) "A person responsible for a child's care" means the child's parent, guardian, or other person responsible for the child's care, whether in the same home as the child, a relative's home, a group, family, or center day care facility, a foster care home, or a residential institution.
- (2) "Child" means a person under 18 years of age.
- (3) "Child abuse or neglect" means causing harm or threatened harm to a child's health or welfare.
- (4) "Harm or threatened harm" means damage or threatened damage to the physical or emotional health and welfare of a child through neglect or abuse, and includes but is not limited to:
 - (a) causing nonaccidental physical or mental injury;
 - (b) incest;
 - (c) sexual abuse;
 - (d) sexual exploitation;
 - (e) molestation; or
 - (f) repeated negligent treatment or maltreatment.
- (5) "Incest" means having sexual intercourse with a person whom the perpetrator knows to be his or her ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin. The relationships referred to in this subsection include blood relationships of the whole or half blood without regard to legitimacy, and include relationships of parent and child by adoption, and relationships of stepparent and stepchild while the marriage creating the relationship of a stepparent and stepchild exists.
- (6) "Molestation" means touching the anus or any part of the genitals of a child or otherwise taking indecent liberties with a child, or causing a child to take indecent liberties with the perpetrator or another with the intent to arouse or gratify the sexual desire of any person.
- (7) "Sexual abuse" means acts or attempted acts of sexual intercourse, sodomy, or molestation directed towards a child.
- (8) "Sexual exploitation of minors" means knowingly employing, using, persuading, inducing, enticing or coercing any minor to pose in the nude for the purpose of sexual arousal of any person or for profit, or to engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct, and includes displaying, distributing, possessing for the purpose of distribution, or selling material depicting minors in the nude or engaging in sexual or simulated sexual conduct.
- (9) "Subject" or "subject of the report" means any person reported under this part, including, but not limited to, a child, parent, guardian, or other person responsible for a child's care.

62A-4a-403. Reporting requirements.

(1) Except as provided in Subsection (2), when any person including persons licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 31b, Nurse Practice Act, has reason to believe that a child has been subjected to incest, molestation, sexual exploitation, sexual abuse, physical abuse, or neglect, or who observes a child being subjected to conditions or circumstances which would reasonably result in sexual abuse, physical abuse, or neglect, he shall immediately notify the nearest peace officer, law enforcement agency, or office of the division. On receipt of this notice, the peace officer or law enforcement agency shall immediately notify the nearest office of the division. If an initial report of child abuse or neglect is made to the division, the division shall immediately notify the appropriate local law

enforcement agency. The division shall, in addition to its own investigation, comply with and lend support to investigations by law enforcement undertaken pursuant to a report made under this section.

(2) The notification requirements of Subsection (1) do not apply to a clergyman or priest, without the consent of the person making the confession, with regard to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs, if:

(a) the confession was made directly to the clergyman or priest by the perpetrator; and
(b) the clergyman or priest is, under canon law or church doctrine or practice, bound to maintain the confidentiality of that confession.

(3) (a) When a clergyman or priest receives information about abuse or neglect from any source other than confession of the perpetrator, he is required to give notification on the basis of that information even though he may have also received a report of abuse or neglect from the confession of the perpetrator.

(b) Exemption of notification requirements for a clergyman or priest does not exempt a clergyman or priest from any other efforts required by law to prevent further abuse or neglect by the perpetrator.

62A-4a-410. Immunity from liability.

(1) Any person, official, or institution participating in good faith in making a report, taking photographs or X-rays, assisting an investigator from the division, serving as a member of a child protection team, or taking a child into protective custody pursuant to this part, is immune from any liability, civil or criminal, that otherwise might result by reason of those actions.

(2) This section does not provide immunity with respect to acts or omissions of a governmental employee except as provided in Title 63, Chapter 30, Utah Governmental Immunity Act.

62A-4a-411. Failure to report -- Criminal penalty.

Any person, official, or institution required to report a case of suspected child abuse, child sexual abuse, neglect, fetal alcohol syndrome, or fetal drug dependency, who willfully fails to do so is guilty of a class B misdemeanor. Action for failure to report must be commenced within four years from the date of knowledge of the offense and the willful failure to report.

62A-4a-412. Reports and information confidential.

(1) Except as otherwise provided in this chapter, reports made pursuant to this part, as well as any other information in the possession of the division obtained as the result of a report are private, protected, or controlled records under Title 63, Chapter 2, Government Records Access and Management Act, and may only be made available to:

(a) a police or law enforcement agency investigating a report of known or suspected child abuse or neglect;

(b) a physician who reasonably believes that a child may be the subject of abuse or neglect;

(c) an agency that has responsibility or authority to care for, treat, or supervise a child who is the subject of a report;

(d) a contract provider that has a written contract with the division to render services to a child who is the subject of a report;

(e) any subject of the report, the natural parents of the minor, and the guardian ad litem;

(f) a court, upon a finding that access to the records may be necessary for the determination of an issue before it, provided that in a divorce, custody, or related proceeding between private parties, the record alone is:

(i) limited to objective or undisputed facts that were verified at the time of the investigation; and
(ii) devoid of conclusions drawn by the division or any of its workers on the ultimate issue of whether or not a person's acts or omissions constituted any level of abuse or neglect of another person;

(g) an office of the public prosecutor or its deputies in performing an official duty;

(h) a person authorized by a Children's Justice Center, for the purposes described in Section **67-5b-102**;

(i) a person engaged in bona fide research, when approved by the director of the division, if the information does not include names and addresses;

(j) the State Office of Education, acting on behalf of itself or on behalf of a school district, for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, limited to information with substantiated findings involving an alleged sexual offense, an alleged felony or class A misdemeanor drug offense, or any alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person, and with the understanding that the office must provide the subject of a report received under Subsection (1)(k) with an opportunity to respond to the report before making a decision concerning licensure or employment; and

(k) any person identified in the report as a perpetrator or possible perpetrator of child abuse or neglect, after being advised of the screening prohibition in Subsection (2).

(2) (a) No person, unless listed in Subsection (1), may request another person to obtain or release a report or any other information in the possession of the division obtained as a result of the report that is available under Subsection (1)(k) to screen for potential perpetrators of child abuse or neglect.

(b) A person who requests information knowing that it is a violation of Subsection (2)(a) to do so is subject to the criminal penalty in Subsection (4).

(3) Except as provided in Section **62A-4a-116.3**, the division and law enforcement officials shall ensure the anonymity of the person or persons making the initial report and any others involved in its subsequent investigation.

(4) Any person who wilfully permits, or aides and abets the release of data or information obtained as a result of this part, in the possession of the division or contained on any part of the Management Information System, in violation of this part or Sections **62A-4a-116** through **62A-4a-116.3**, is guilty of a class C misdemeanor.

(5) The physician-patient privilege is not a ground for excluding evidence regarding a child's injuries or the cause of those injuries, in any proceeding resulting from a report made in good faith pursuant to this part.

Federal Laws



Relevant Federal Laws

It is a federal crime under VAWA:

- to cross state lines or enter or leave Indian country and physically injure an “intimate partner”
18 U.S.C. §2261
- to cross state lines to stalk or harass or to stalk or harass within the maritime or territorial lands of the United States (this includes military bases and Indian country)
18 U.S.C. §2261A
- to cross state lines or enter or leave Indian country and violate a qualifying Protection Order
18 U.S.C. §2262

It is a federal crime under the Gun Control Act:

- to possess a firearm and/or ammunition while subject to a qualifying Protection Order (Exemption for military and police while on duty only)
18 U.S.C. §922(g)(8)
- to possess a firearm and/ammunition after conviction of a qualifying misdemeanor crime of domestic violence
18 U.S.C. §922(g)(9)

A violation of the Gun Control Act, §922(g)(9), has a maximum prison term of 10 years. A violation under VAWA, §2261, 2261A and 2262, has a maximum prison term of 5 years to life, depending on the seriousness of the bodily injury caused by the defendant. In a VAWA case, the Court must order restitution to pay the victim the full amount of losses (may include costs for medical or psychological care, physical therapy, transportation, temporary housing, child care expenses, lost income, attorney’s fees, costs incurred in obtaining a civil protection order and any other losses suffered by the victim as a result of the offense. In a *Gun Control* case, the Court may order restitution.

For a possible Gun Control Act violation, you should call you local Alcohol, Tobacco and Firearms (“ATF”) Office.

For a possible VAWA violation, you should call your local Federal Bureau of Investigation (“FBI”) Office.

Title 18 Sec. 2261. Interstate domestic violence

(a) Offenses. -

(1) Crossing a state line. - A person who travels across a State line or enters or leaves Indian country with the intent to injure, harass, or intimidate that person's spouse or intimate partner, and who, in the course of or as a result of such travel, intentionally commits a crime of violence and thereby causes bodily injury to such spouse or intimate partner, shall be punished as provided in subsection (b).

(2) Causing the crossing of a state line. - A person who causes a spouse or intimate partner to cross a State line or to enter or leave Indian country by force, coercion, duress, or fraud and, in the course or as a result of that conduct, intentionally commits a crime of violence and thereby causes bodily injury to the person's spouse or intimate partner, shall be punished as provided in subsection (b).

(b) Penalties. - A person who violates this section or section 2261A shall be fined under this title, imprisoned -

- (1) for life or any term of years, if death of the victim results;
- (2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;
- (3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;
- (4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and
- (5) for not more than 5 years, in any other case, or both fined and imprisoned.

Title 18 Sec. 2261A. Interstate stalking

Whoever travels across a State line or within the special maritime and territorial jurisdiction of the United States with the intent to injure or harass another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury (as defined in section 1365(g)(3) of this title) to, that person or a member of that person's immediate family (as defined in section 115 of this title) shall be punished as provided in section 2261 of this title.

Title 18 Sec. 2262. Interstate violation of protection order

(a) Offenses. -

- (1) Crossing a state line. - A person who travels across a State line or enters or leaves Indian country with the intent to engage in conduct that -
 - (ai) violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued; or

- (ii) would violate this subparagraph if the conduct occurred in the jurisdiction in which the order was issued; and
 - (b) subsequently engages in such conduct, shall be punished as provided in subsection (b).
 - (2) Causing the crossing of a state line. A person who causes a spouse or intimate partner to cross a State line or to enter or leave Indian country by force, coercion, duress, or fraud, and, in the course or as a result of that conduct, intentionally commits an act that injures the person's spouse or intimate partner in violation of a valid protection order issued by a State shall be punished as provided in subsection (b).
- (b) Penalties. - A person who violates this section shall be fined under this title, imprisoned -
- (1) for life or any term of years, if death of the victim results;
 - (2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;
 - (3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;
 - (4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and
 - (5) for not more than 5 years, in any other case, or both fined and imprisoned.

Title 18 Sec. 2265. Full faith and credit given to protection orders

- (a) Full Faith and Credit. - Any protection order issued that is consistent with subsection (b) of this section by the court of one State or Indian tribe (the issuing State or Indian tribe) shall be accorded full faith and credit by the court of another State or Indian tribe (the enforcing State or Indian tribe) and enforced as if it were the order of the enforcing State or tribe.
- (b) Protection Order. - A protection order issued by a State or tribal court is consistent with this subsection if -
 - (1) such court has jurisdiction over the parties and matter under the law of such State or Indian tribe; and
 - (2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State or tribal law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.
- (c) Cross or Counter Petition. - A protection order issued by a State or tribal court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if -

- (1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or
- (2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

Title 18 Sec. 2266. Definitions

In this chapter -

"bodily injury" means any act, except one done in self-defense, that results in physical injury or sexual abuse.

"Indian country" has the meaning stated in section 1151.

"protection order" includes any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final orders issued by civil and criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition or motion filed by or on behalf of a person seeking protection.

"spouse or intimate partner" includes -

- (A) a spouse, a former spouse, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited with the abuser as a spouse; and
- (B) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State in which the injury occurred or where the victim resides.

"State" includes a State of the United States, the District of Columbia, a commonwealth, territory, or possession of the United States.

"travel across State lines" does not include travel across State lines by an individual who is a member of an Indian tribe when such individual remains at all times in the territory of the Indian tribe of which the individual is a member.

Title 18 Sec. 921. Definitions

(a) As used in this chapter -

- (3) The term "**firearm**" means
 - (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
 - (B) the frame or receiver of any such weapon;
 - (C) any firearm muffler or firearm silencer; or
 - (D) any destructive device. Such term does not include an antique firearm.

- (17)
 - (A) The term "ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

- (32) The term "intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

- (33)
 - (A) Except as provided in subparagraph (C), the term "misdemeanor crime of domestic violence" means an offense that -
 - (i) is a misdemeanor under Federal or State law; and
 - (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.
 - (B)
 - (i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless -
 - (I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and
 - (II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either
 - (aa) the case was tried by a jury, or
 - (bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.
 - (C)
 - (ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or

has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

Title 18 Section 922. Unlawful acts

18 USC §922(d)(8) and 922 (d)(9)

- (d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person -
 - (8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that -
 - (A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and
 - (ii) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
 - (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
 - (9) has been convicted in any court of a misdemeanor crime of domestic violence. This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

Title 18 USC Section 922 (g)(8) and 922 (g)(9)

- (g) It shall be unlawful for any person -
 - (8) who is subject to a court order that -
 - (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
 - (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

- (C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
- (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
- (9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Title 18 Section 925. Exceptions: Relief from disabilities

- (a) (1) the provision of this chapter, except for section 922(d)(9) and 922(g)(9)...shall not apply with respect to the transportation, shipment, receipt, possession or importation of any firearm or ammunition imported for, sold or shipped to or issued for the use of the United States or any department or agency thereof or any State or any department, agency or political subdivision thereof.

Police and military exemption exists for using or possessing firearms or ammo while "on duty" when police or military person is subject to a protective order; exemption does not apply if police or military person is convicted of a domestic violence offense

**Full Faith And Credit Provisions of
The Violence Against Women Act
18 U.S.C. §§ 2265 - 2266 (2000)**

§ 2265 Full Faith and Credit Given to Protection Orders

(a) **FULL FAITH AND CREDIT.** - Any protection order issued that is consistent with subsection (b) of this section by the court of one State or Indian tribe (the issuing State or Indian tribe) shall be accorded full faith and credit by the court of another State or Indian tribe (the enforcing State or Indian tribe) and enforced as if it were the order of the enforcing State or tribe.

(b) **PROTECTION ORDER.** - A protection order issued by a State or tribal court is consistent with this subsection if -

(1) such court has jurisdiction over the parties and matter under the law of such State or Indian tribe; and

(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State or tribal law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(c) **CROSS OR COUNTER PETITION.** - A protection order issued by a State or tribal court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if -

(1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

(2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

(d) **NOTIFICATION AND REGISTRATION.** -

(1) **NOTIFICATION.** - A State or Indian tribe according full faith and credit to an order by a court of another State or Indian tribe shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in that enforcing State or tribal jurisdiction unless requested to do so by the party protected under such order.

(2) **NO PRIOR REGISTRATION OR FILING AS PREREQUISITE FOR ENFORCEMENT.** - Any protection order that is otherwise consistent with this section shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State or tribal jurisdiction.

(e) **TRIBAL COURT JURISDICTION.** - For purposes of this section, a tribal court shall have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe.

§ 2266 Definitions

(5) **PROTECTION ORDER.** - The term "protection order" includes any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil and criminal court (other than a support or child custody order issued pursuant to State divorce and child custody laws, except to the extent that such an order is entitled to full faith and credit under other Federal law) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition or motion filed by or on behalf of a person seeking protection.

(8) **STATE.** - The term "State" includes a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States.

Vulnerable Adults



Vulnerable Adults

(Civil provisions found in Title 62, Chapter 3. This section deals primarily with criminal provisions and the relationship of Adult Protective Services to law enforcement)

Definitions: §76-5-111

Elder adult

- person 65 years of age or older

Vulnerable adult (VA)

- elder adult or
- person 18 years of age or older who has a mental or physical impairment which substantially affects the person's ability to:
 - provide personal protection
 - provide necessities such as food, shelter, clothing, medical or other health care
 - obtain services necessary for health, safety or welfare
 - manage own resources or
 - comprehend the nature and consequences of remaining in a situation or abuse, neglect or exploitation

Abandonment

- knowing or intentional action or inaction, including desertion, by a person or entity acting as a caretaker for a VA that leaves the VA without means or ability to obtain necessary foods, clothing, shelter or medical or other health care

Abuse

- attempting to cause harm or intentionally or knowingly causing harm
- intentionally or knowingly placing another in fear of imminent harm
- unreasonable or inappropriate use of physical restraint, medication or isolation that causes or is likely to cause harm to a VA that is in conflict with dr.'s orders or used as unauthorized substitute for treatment, unless it furthers health and safety of VA
- deprivation of life sustaining treatment except as provided by law or informed consent

Caretaker

- any person, entity, corporation or public institution that assumes responsibility to provide VA with food, care, shelter, clothing, supervision, medical or other health care or other necessities
- includes relative by blood or marriage
- household member
- person employed or who provides volunteer work
- person who contracts or is under court order to provide care

Harm

- means knowing or intentional infliction of
- pain
- mental anguish
- emotional distress
- hurt
- physical or psychological damage
- physical injury
- suffering
- distress

Informed consent

- written expression by person or authorized by person stating the person fully understands the potential risks and benefits of withdrawal of food, water, medication, medical services, shelter, cooling, heating or other services necessary to maintain minimum physical or mental health and that person want the services to be withdrawn
 - person must be of sound mind and consent witnessed by 2 persons who do not benefit from withdrawal of services
- court order permits withdrawal of services

Intimidation

- communication conveyed through verbal or non-verbal conduct which threatens deprivation of money, food, clothing, medicine, shelter, social interaction, supervision, healthcare or companionship or which threatens isolation or harm

Isolation

- knowingly or intentionally preventing VA from having contact with another person by:
 - preventing VA from receiving mail, visitors, phone calls contrary to express wishes of VA
 - physically restraining VA in order to prevent meeting with visitor
 - making false or misleading statements to VA in order to induce VA to refuse communication from visitors or other family members
- does not include dr. treatment plan or other professional plan and does not include act intended to protect physical or mental welfare of VA

Lacks the capacity to consent:

- impairment
 - *due to mental illness*
 - *developmental disability*
 - *organic brain disorder*
 - *physical illness or disability*
 - *chronic use of drugs*
 - *chronic intoxication*
 - *short-term memory loss*
 - *or other cause*
- to the extent that VA lacks sufficient understanding
 - *of the nature or consequences of decisions concerning his/her person or property*

Neglect

- failure of caretaker to provide personal care, nutrition, clothing, shelter, supervision or medical or dental care or failure to provide protection from health and safety hazards or maltreatment
- pattern of conduct, without informed consent, resulting in deprivation of food, water, medication, healthcare, shelter, cooling, heating or other services necessary to maintain the VA's well being
- failure of the caretaker to provide care to a VA in a timely manner and with degree of care that reasonable person would use

Physical injury

- includes
 - *skin bruising*
 - *pressure sore*
 - *bleeding*
 - *malnutrition*
 - *dehydration*
 - *burns*
 - *bone fracture*
 - *subdural hematoma*
 - *soft tissue swelling*
 - *injury to any internal organ*
 - *dislocation*
 - *physical pain*
 - *illness*
 - *impairment of physical function*
 - *damage to any bodily tissue caused by non-therapeutic conduct requiring healing to restore to healthy condition or damage cannot be restored to healthy condition*
 - *any physical condition that imperils the health or welfare of a VA that is not a serious physical injury*

Serious physical injury

- any physical injury or set of injuries that
 - *seriously impairs the VA's health;*
 - *was caused by use of a deadly or dangerous weapon;*
 - *involves physical torture or causes serious emotional harm to a VA; or*
 - *creates a reasonable risk of death*

Adult Protective Services (APS) Title 62a, Chapter 3 Utah Code Ann.

What APS Can Do

- operate an intake system for receiving and screening reports of abuse, neglect or exploitation
- investigate reports of abuse, neglect or exploitation
- perform needs assessments
- coordinate with and refer to community resources for services
- provide short-term limited services when family or community resources are not available to provide protection
 - if consent withdrawn, services shall cease
 - court can order services
 - guardian or conservator can consent to services

What APS Cannot Do

- take custody of an adult
- no authority to place an adult in nursing home or other facility
- provide any service, including investigation, without voluntary consent of alleged victim or guardian or conservator unless court ordered to do so

Authority of APS Investigators

- Access to facilities licensed by or contracting with the Dept. of Health or Dept of Human Services
- Receive upon request written statements, documents, exhibits, and other items pertinent to investigation including medical or financial records when
 - Release of information is provided by VA who has capacity to consent
 - If VA lacks capacity to consent, then administrative subpoena has been issued through APS
 - Require all persons, including family members of a VA and any caretaker, to cooperate with APS
 - May require all officials, agencies, departments and political subdivisions of the state to assist and cooperate
- May photograph, video and audio tape in order to document if VA consents or if VA lacks capacity to consent

Resources

- Adult Protective Services: 1-800-371-7897 or 801-264-7669
- Bureau of Health Facility MFT: 801-538-6152
- Division of Occupational and Professional Licensing: 801-538-6630
- Bureau of Medical/Medicare Program Certification: 801-538-6158
- Insurance Fraud Division: 1-800-440-7021
- Medicaid Fraud: 801-284-6200
- Utah Medical Association: 801-355-7477
- Long Term Care Ombudsman: 1-800-371-7897
- Disability Law Center: 1-800-662-9080 or 801-363-1347
- Utah Legal Services: 1-800-662-4245 or 801-328-8891

Indicators of Abuse and Neglect

- Unexplained bruises, welts, lacerations, burns
- Signs of physical confinement (bilateral marks, rope burns, bindings, locked doors)
- Dehydration / Malnutrition
- Weight gain or loss
- Withholding medication or over-medicating
- Soiled clothing or linen
- Unexpected deterioration of health
- Untreated / repeated injuries
- Absence of medical necessities
- Frequent hospital visits/ changes of doctors / hospitals
- Isolation
- Untreated sores/ bedsores
- Decayed teeth
- Overgrown nails
- Odorous
- Dirty clothing or environment
- Inadequate clothing for weather
- Same clothing all the time
- Hungry, gobbles food
- Availability of necessities (food, water, bathroom facilities)
- Death from exposure, lack of necessary medical treatment, etc.

Reporting (§62A-3-302; §76-5-111.1)

- Mandatory reporting to APS or to the police if have reason to believe a D/E adult is being abused, emotionally or psychologically abused, neglected or exploited.
- Good faith immunity applies for reporting
- Class B misdemeanor for willful failure to report.

If reported to APS and

- if appears criminal, APS must notify police
- police to initiate investigation in cooperation with APS
- if allegation involves long term care facility, APS must notify local long term care ombudsman

If reported to police

- police must notify APS immediately
- APS to coordinate its investigation with law enforcement

Crimes and Penalties for Abuse and Neglect

Aggravated Abuse of a Vulnerable Adult, §76-5-111(2)

- under circumstances likely to produce death or serious physical injury
 - **defendant**
 - *any person who*
 - **conduct**
 - *causes a VA to suffer serious physical injury; OR*
 - *having the care or custody of a VA, causes or permits the VA's person or health to be injured; OR*
 - *causes or permits a VA to be placed in a situation where his/her person or health is endangered.*
- penalties
 - if done intentionally or knowingly = second degree felony
 - if done recklessly = third degree felony
 - if done with criminal negligence = Class A misdemeanor

Abuse of a Vulnerable Adult §76-5-111(3)

- If not aggravated abuse, then consider the following:
 - **defendant**
 - *any person who*
 - **conduct**
 - *causes a VA to suffer harm, abuse or neglect; OR*
 - *having the care or custody of a VA, causes or permits the VA's person or health to be injured, abused or neglected; OR*
 - *causes or permits a VA to be placed in a situation where his/her person or health is endangered.*
- penalties
 - if done intentionally or knowingly = Class A misdemeanor
 - if done recklessly = Class B misdemeanor
 - if done with criminal negligence = Class C misdemeanor

Exploitation of a Vulnerable Adult

Additional definitions:

Business Relationship

- Relationship between 2 or more persons or entities where there exists oral or written agreement for exchange of goods or services

Deception

- misrepresentation or concealment
 - *of material fact re:*
 - *services rendered, disposition of property or use of property*
 - *intended to benefit a VA; or*
 - *of the terms of a contract or agreement entered into with a VA; or*
 - *re: existing or pre-existing condition of any property involved in a contract or agreement with a VA*
- use or employment of any misrepresentation, false pretense, false promise to induce, encourage or solicit a VA to enter into a contract or agreement

Endeavor

- attempt or try

Position of trust

- parent, spouse, adult child, relative by blood or marriage
- joint tenant, tenant in common
- has legal or fiduciary relationship, including court-appointed or voluntary guardian, trustee, attorney or conservator
- is a caretaker

Sexual Exploitation

- production, distribution, possession or possession with intent to distribute material or live performance depicting a nude or partially nude VA who lacks capacity to consent, for the purpose of sexual arousal of any person

Undue influence

- person uses role, relationship or power to exploit or knowingly assists or causes another to exploit the trust, dependency or fear of a VA
- person uses role, relationship or power to gain control deceptively over the decision making of the VA

Indicators of Financial Exploitation

- Unusual activity in bank accounts, credit cards/ ATMs which is inconsistent with VA abilities
- New acquaintances residing with VA
- Recent changes in property titles
- Power of Attorney executed by confused adult
- Excessive charges for care

- Sudden increase in debt/ decrease in lifestyle
- New will naming new “friends”
- Lack of amenities when VA can afford them – missing property
- Disconnected utilities/ increase in cost
- Forged or suspicious signatures on checks or other binding documents
- Suspect becomes signor on accounts
- Redirected mail/ junk mail
- “Lifelong care” promised in exchange for VA’s property or money
- Suspect’s explanations: “It’s a gift”; “It was a loan”; “The money was owed to me”; “I gave all the money back to the victim”; “It’s going to be mine anyway”

Crimes and Penalties for Exploitation

Exploitation of a vulnerable adult (*six circumstances*), §76-5-111(4)

1. defendant

- *person in position of trust or confidence* **OR**
- has business relationship with VA or has undue influence over the VA
- **conduct**
 - knowingly, by deception or intimidation, obtains or uses or endeavors to obtain or use the VA’s
 - funds
 - credit
 - assets
 - other property
- **intent**
 - *to temporarily or permanently deprive the VA of the use, benefit or possession of the property*
- **purpose**
 - *for the benefit of someone other than the VA*

2. defendant

- *person who knows or should know VA lacks the capacity to consent*
- **conduct**
 - *obtains or uses; OR*
 - *endeavors to obtain or use; OR*
 - *assists another in obtaining, using or endeavoring to obtain or use the VA’s funds, assets or property*
- **intent**
 - *to temporarily or permanently deprive the VA of the use, benefit or possession of the property*
- **purpose**
 - *for the benefit of someone other than the VA*

3. **defendant**
 - *any person who*
 - **conduct**
 - *unjustly or improperly uses or manages resources of VA*
 - intent
 - *general intent*
 - purpose
 - *for profit or advantage of someone other than VA*

4. **defendant**
 - *any person who*
 - conduct
 - *unjustly or improperly uses VA's power of attorney or guardianship*
 - intent
 - *general intent*
 - purpose
 - *for profit or advantage of someone other than the VA*

5. **defendant**
 - *any person who*
 - conduct
 - *involves a VA, who lacks the capacity to consent, in facilitation or furtherance of criminal activity*
 - intent
 - *intent to facilitate crime*
 - purpose
 - *to facilitate or further criminal activity*

6. **defendant**
 - *any person who*
 - conduct
 - *produces, distributes, possesses or possesses with intent to distribute material or a live performance depicting a nude or partially nude VA who lacks the capacity to consent*
 - intent
 - *intent to produce, distribute, possess or possess with intent to distribute*
 - purpose
 - *sexual arousal of any person*

The penalties:

- if done intentionally or knowingly and aggregate value of resources used or profit made is or exceeds \$5,000 = second degree felony
- if done intentionally or knowingly and value less than \$5,000 or cannot be determined = third degree felony
- if done recklessly - Class A misdemeanor
- if done with criminal negligence = Class B misdemeanor

Endangerment of Child and Elder Adult - §76-5-112.5

Any person

- Who knowingly or intentionally permits a child or elder adult to be exposed to , ingest, inhale or have contact with controlled or chemical substance and
 - Child or elder adult risks bodily injury from exposure to chemical substance (3rd degree felony)
 - Child or elder adult actually suffers from exposure to chemical substances (2nd degree felony)
 - Child or elder adult dies from exposure (1st degree felony)

Threats to Vulnerable Adult, Witness, etc. - §62A-3-305

- Any person who, under circumstances not amounting to witness tampering (**§76-8-508**) threatens, intimidates, or attempts to intimidate a vulnerable adult who is the subject of a report, a witness, the person who made the report, or any other person cooperating with an investigation conducted pursuant to Title 62, Chapter 3, is guilty of a class B misdemeanor.

Authority to Transport – §62A3-308

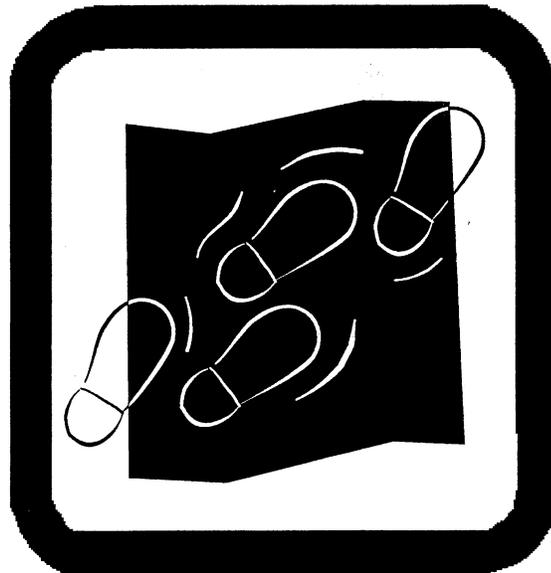
Police officer may remove and transport or cause to have transported a VA to an appropriate medical or shelter facility if officer

- has probable cause to believe that by reason of abuse, neglect or exploitation there exists exigent circumstances and
 - *the VA will suffer serious physical injury or death if not immediately placed in a safe environment and*
 - *the VA refuses to consent or lacks the capacity to consent and*
 - *there is not time to notify interested parties or to apply for a warrant or other court order*
- officer must notify APS **within 4 hours of the transportation**
 - *APS shall file petition for Emergency Order w/in 24 hours (excl. wkends & holidays)*
 - *Court holds hearing*

APS Report Sharing - §62A-3-312

Pertinent parts of the data base and adult protection case file shall be made available to law enforcement agencies, attorney general's office and county or district attorney's offices

Stalking



Stalking

Definitions

Utah 76-5-106.5. Definitions -- Stalking -- Injunction -- Hearing.

(1) As used in this section:

(a) "Course of conduct" means repeatedly maintaining a visual or physical proximity to a person or repeatedly conveying verbal or written threats or threats implied by conduct or a combination thereof directed at or toward a person.

(b) "Immediate family" means a spouse, parent, child, sibling, or any other person who regularly resides in the household or who regularly resided in the household within the prior six months.

(c) "Repeatedly" means on two or more occasions.

(2) A person is guilty of stalking who:

(a) intentionally or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person:

(i) to fear bodily injury to himself or a member of his immediate family; or

(ii) to suffer emotional distress to himself or a member of his immediate family;

(b) has knowledge or should have knowledge that the specific person:

(i) will be placed in reasonable fear of bodily injury to himself or a member of his immediate family; or

(ii) will suffer emotional distress or a member of his immediate family will suffer emotional distress; and

(c) whose conduct:

(i) induces fear in the specific person of bodily injury to himself or a member of his immediate family; or

(ii) causes emotional distress in the specific person or a member of his immediate family.

(3) A person is also guilty of stalking who intentionally or knowingly violates a stalking injunction, or intentionally or knowingly violates a permanent criminal stalking injunction issued pursuant to this section.

(4) Stalking is a class A misdemeanor

(a) upon the offender's first violation of Subsection (2); or

(b) If the offender violated a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions..

(5) Stalking is a third degree felony if the offender:

(a) has been previously convicted of an offense of stalking;

(b) has been convicted in another jurisdiction of an offense that is substantially similar to the offense of stalking;

(c) has been previously convicted of any felony offense in Utah or of any crime in another jurisdiction which if committed in Utah would be a felony, in which the victim of the stalking or a member of the victim's immediate family was also a victim of the previous felony offense; or

(d) violated a permanent criminal stalking injunction issued pursuant to Subsection (7).

(6) Stalking is a felony of the second degree if the offender:

- (a) used a dangerous weapon as defined in Section 76-1-601 or used other means or force likely to produce death or serious bodily injury, in the commission of the crime of stalking;
 - (b) has been previously convicted two or more times of the offense of stalking;
 - (c) has been convicted two or more times in another jurisdiction or jurisdictions of offenses that are substantially similar to the offense of stalking;
 - (d) has been convicted two or more times, in any combination, of offenses under Subsection (5); or
 - (e) has been previously convicted two or more times of felony offenses in Utah or of crimes in another jurisdiction or jurisdictions which, if committed in Utah, would be felonies, in which the victim of the stalking was also a victim of the previous felony offenses.
- (7) A conviction for stalking or a plea accepted by the court and held in abeyance for a period of time shall operate as an application for a permanent criminal stalking injunction limiting the contact of the defendant and the victim.
- (a) A permanent criminal stalking injunction shall be issued without a hearing unless the defendant requests a hearing at the time of the verdict, finding, or plea of guilty, guilty and mentally ill, plea of no contest, or acceptance of plea in abeyance. The court shall give the defendant notice of his right to request a hearing.
 - (i) If the defendant requests a hearing, it shall be held at the time of the verdict, finding, or plea of guilty, guilty and mentally ill, plea of no contest, or acceptance of plea in abeyance unless the victim requests otherwise, or for good cause.
 - (ii) If the verdict, finding, or plea of guilty, guilty and mentally ill, plea of no contest, or acceptance of plea in abeyance was entered in a justice court, a certified copy of the judgment and conviction or a certified copy of the court's order holding the plea in abeyance must be filed by the victim in the district court as an application and request for hearing for a permanent criminal stalking injunction.
 - (b) A permanent criminal stalking injunction may grant the following relief:
 - (i) an order restraining the defendant from entering the residence, property, school, or place of employment of the victim and requiring the defendant to stay away from the victim and members of the victim's immediate family or household and to stay away from any specified place that is named in the order and is frequented regularly by the victim; and
 - (ii) an order restraining the defendant from making contact with the victim, including an order forbidding the defendant from personally or through an agent initiating any communication likely to cause annoyance or alarm, including personal, written, or telephone contact with the victim, the victim's employers, employees, fellow workers, or others with whom communication would be likely to cause annoyance or alarm to the victim.
 - (c) A permanent criminal stalking injunction may be dissolved upon application of the victim to the court which granted the order.
 - (d) Notice of permanent criminal stalking injunctions issued pursuant to this section shall be sent by the court to the statewide warrants network or similar system.
 - (e) A permanent criminal stalking injunction issued pursuant to this section shall be effective statewide.
 - (f) Violation of an injunction issued pursuant to this section shall constitute an offense of stalking. Violations may be enforced in a civil action initiated by the stalking victim, a criminal action initiated by a prosecuting attorney, or both.

Stalking is a series of actions that, when taken individually, may be perfectly legal. However, when you show the course of conduct in context of the relationship of the parties as well as the prior bad acts of the defendant involving the victim, the fact finder is better able to determine the reasonableness of the victim's fears as well as the reasonableness of the anticipated or expected harm.

California Coalition Against Sexual Assault

Elements of Stalking 76-5-106.5

1. Intentionally or knowingly engages in a course of conduct
 - Course of conduct = two or more occasions of
 - maintaining visual or physical proximity to a person or
 - conveying verbal or written threats or
 - threats implied by conduct or
 - any combination thereof
 - Directed at or towards a specific person
2. Which would cause a reasonable person (**Objective standard**)
 - to fear bodily injury to self or immediate family **or**
 - to suffer emotional distress to self or member of immediate family
("Immediate family" means a spouse, parent, child, sibling, or any other person who regularly resides in the household or who regularly resided in the household within the prior six months.)
3. Stalker has knowledge or should have knowledge (of impact of actions) that
 - Specific person will
 - be placed in reasonable fear of bodily injury to self or member or immediate family or
 - suffer emotional distress
4. Stalker's conduct in fact induces fear or causes distress (**Subjective standard**)
 - induces fear in specific person of bodily injury to self or immediate member or
 - causes emotional distress in specific person or member of immediate family

Permanent Criminal Stalking Injunctions §76-5-106.5

- Conviction (includes finding of guilty, plea of guilty or no contest, plea held in abeyance, plea of guilty and mentally ill) operates as an application for a permanent criminal stalking injunction
- defendant can request hearing on the matter
- court can order defendant to remain away from victim and family, victim's employment and other places, can order no contact , direct or indirect
- victim can request dismissal
- notice of injunction sent by courts to statewide warrants system or similar system
- injunction effective statewide
- can be enforced civilly by victim or criminally by prosecutor or both

Civil Stalking Injunctions - Title 77, Chapter 3a

- No cost to file, serve or obtain one copy
- Requires corroborating evidence be attached to verified petition (police reports, affidavits, letters, or other evidence to support stalking petition)
- If court finds there is reason to believe stalking has occurred, an ex parte civil stalking injunction may be issued
- Must be served on respondent w/in 90 days from date order signed
- Court can
 - Prohibit respondent from committing stalking
 - Prohibit respondent from coming to residence, place of employment or school or other specifically designated places
 - Prohibit respondent from contacting victim directly or indirectly, including fellow workers, employers, employees
 - Order other necessary relief
- Effective when served on respondent
- Within 10 days of service, respondent can request, in writing, a hearing. Burden is on petitioner to show by a preponderance of the evidence that stalking occurred and respondent is the stalker
- If burden met, court will issue civil stalking injunction which is effective for 3 years
- If respondent does not request hearing w/in 10 days of service, ex parte order automatically becomes civil stalking injunction w/o further notice to respondent and expires 3 years from date of service of ex parte
- Respondent still can request, in writing, one hearing on the matter but then has burden to show good cause why should be dismissed; burden then shifts to petitioner to prove the allegations by a preponderance of the evidence
- If ex parte order modified at the hearing, the ex parte order will continue to protect the petitioner until the civil stalking injunction is served on the respondent
- Stalking injunctions are entered onto the statewide network by the court clerk's office
- Petitioner can request dismissal at any time
- **Violation = Class A misdemeanor**
- **Mandatory arrest** if police have probable cause to believe that either a civil or criminal stalking injunction has been violated (section 77-3a-103)

Typologies of Stalkers

Simple obsessional:

- involves interpersonal relationships (i.e., ex-boyfriend/girlfriend, ex-husband/wife, co-workers, neighbors, etc.) **seeks to re-establish relationship**
- this is the most dangerous type of stalking case
- cases become more dangerous as they progress from the less-personal modes of contact (phone calls, letters) to the more personal forms of contacts (physical stalking, physical approach).
- communicated threats are a significant indicator defining a high-risk case
- prior criminal violations also raise a risk of harm in any particular case
- most common type -Tjaden/Thoennes study for the Center for Policy Research found that stalking lasts 1.8 years on average but stalking by intimate partners lasts twice as long
- many of the stalkers have personality disorders

Love obsessional

- no relationship between parties (i.e., fan/celebrity, unknown apartment tenant, unknown admirer at work) **seeks to establish relationship with target**
- most of a suspect's initial contacts with a victim are via correspondence
- factors which enhance risk include:
 - excessive number of letters
 - stated intention or evidence of directed travel to encounter the victim
 - duration of a year or more
 - stalkers are mostly male
 - longest in duration
 - have major mental disorders

Erotomania

- subject believes he/she is loved by another. Cases can develop between fan and celebrity, or in more ordinary settings such as secretary and superior. **believes relationship already exists**
 - rare in general population
 - no cure
 - stalkers predominantly female/victims usually older males
 - although these suspects are very resourceful and will engage in a variety of contact behaviors, they are most often reserved and will not normally attempt face-to-face dialogue
 - because they believe they are "loved" by the victim, they are, by their nature, not inclined to harm the victim. A communication which shows a change in "tone," wherein the suspect communicates frustration, anger or intent to harm, should be considered as posing a significant risk to the victim

False victimization

- suspect (false victim) postures himself/herself as a victim of stalking
- rare
- stalker usually female attempting to re-establish relationship with significant other

- however, other police and prosecutor agencies in Utah have experienced these kinds of stalkers as needing/seeking/thriving on the attention of the “authorities” who respond to their complaints (police, victim advocates, prosecutors, etc.)

Vengeance/Terrorism Stalking

Not seeking a personal relationship with target

- Purpose of stalking is to attempt to elicit a particular response or change of behavior from their victims
- Two types
 - Vengeance
 - Seek only to punish for some perceived wrong
 - Most common involves fired employee
 - Political stalker
 - using stalking as a weapon of terror to accomplish a political agenda; force target to engage in or refrain from particular activity
 - Example: anti-abortionists stalking drs. who perform abortions

John Douglas, retired FBI profiler, uses other classifications in his book, *Obsession*

- Attachment seekers, aka romantic stalkers—motivated by desire to form relationship with person they stalk
- Identity seekers— looking for fame and recognition they can attain through acts
- Rejection based stalkers –looking for revenge (most dangerous, more likely to kill their prey)
- Delusion based stalkers –believe there is a force heading them to fulfill a mission (hardest to treat, least predictable)

Common Stalking Behaviors

- Violations of any protective order(visits to home or other location, contact, etc.)
- Telephone calls (harassing, threatening, obscene or otherwise)
- Mail or deliveries (cards, letters, gifts) to victim
- Trespassing
- Burglary or trespass to victim’s home (often shows no forced entry because stalker has key)
- Following victim on foot or in vehicle
- Threats, direct, veiled or conditional
- Vandalism of victim’s property, home, pets, vehicles, workplace or vandalism of property of a family member or friend
- Stalkers will unscrew security or outside lights around victim’s house or disable the alarm system or disable victim’s vehicle
- Stalker transfers victim’s phone line to another line in order to monitor messages; may also disable phone
- Stalkers sometimes plant listening devices in victim’s home
- Stalkers file “Change of Address” forms at Post Office with the victim’s info in order to intercept the victim’s mail (utility bills, other bills, personal mail, etc.)

All conduct of the suspect should be considered and evaluated to determine if other criminal charges should be filed such as assault, trespass, threat against life or property, telephone harassment, violation of a protective order, criminal mischief, voyeurism, etc.

Note: Utah's stalking statute is broad enough to cover many instances of "cyberstalking" - stalking through email or other electronic means. Utah law prohibits the conduct, to wit: direct or indirect threats, and the means of the delivery of the threat is not specified. If the electronic communication does not rise to the level of threat but is damaging to the reputation or other thing of value of the victim, federal law may be helpful, (Title 18, Part 1, Chapter 41, Sec 875 Interstate Communications).

You may also want to look at federal stalking laws, Title 18 USC 2261A as well as other federal laws such as tampering with mail. You can contact the US Attorney's Office, the FBI, the Postal Inspector, etc. for assistance.

Suspect Intervention

- Police contact
 - In person to give verbal "cease and desist" to alleged stalker
 - In letter give written notice of "cease and desist" to alleged stalker
 - if arrest, may want to request increased bail based upon stalker's course of conduct and lethality assessment; request prosecutor ask court for order as condition of defendant's release to have no contact with victim
 - utilize "involuntary commitment" procedure if warranted
 - be aware that some stalkers may encourage commitment to avoid responsibility and accountability of actions
- Victim
 - tell stalker one time only "NO" and then have no further contact with stalker; don't negotiate with stalker and don't try to "let down easy".
 - obtain civil stalking injunction against stalker if non-cohabitant ; get protective order if cohabitant
- Prosecutor
 - request increased bail based upon stalker's course of conduct and lethality assessment; ask court for order as condition of defendant's release to have no contact with victim or other conditions as warranted
 - if DV stalking, consider asking for "no bail" pursuant to 77-36-2.5(8)
 - on misdemeanor conviction, minimum sentence request should be formal probation, not informal or court probation, with mandatory completion of psychiatric evaluation and treatment program, substance use monitoring if appropriate.

Stalkers are never "normal" individuals

Investigative Strategies

Gathering and Developing Evidence

Initial Responders

- Many times police will be called to investigate a violation of a restraining order crime. Officers need to be aware that there is a good chance that this incident is not the first such event. Officers need to get more information regarding prior occurrences and how the prior cases were adjudicated. Because such crimes are typically one-on-one occurrences, officers need to take time to investigate whether there is any way to corroborate the incident.
- Questions to Ask the Victim and Witnesses
 - Have other crimes or threatening behavior occurred? (vandalism, calls, letters). If yes, when where, and how; were there any witnesses?
 - How long has the stalking behavior been going on?
 - Have any prior crime reports been completed? What types? What agencies? What is the status of those investigations?
 - Are there any restraining orders in effect? When and where were they obtained? Was the suspect served?

Subsequent Investigation (Detective)

- Victim Interview
 - Determine if victim has maintained a diary or log of prior events. If not, instruct victim how to keep such a log. Such information is useful in developing evidence to prove the elements of the crime. (*See supplement portion of this stalking section for a sample 'stalking incident diary' form to give to victims*)
 - Instruct victim on what types of evidence are important (i.e., phone tapes, video tapes, use of third party witnesses to corroborate events and dates).
- Suspect interview.
 - The suspect should be interviewed whenever possible either during the investigation or subsequent to arrest.

Third Party Interview

- Other potential witnesses such as neighbors, co-workers, relatives, police officers from prior incidents, etc., should be interviewed. The victim is the best source of information to discover other witnesses.

Using Technology as Evidence

- Law enforcement personnel and prosecutors must work with phone companies, the post office, etc. They must also be aware of the various methods of stalking and how to track down evidence linking these items to the suspect.
- Phone/cellular phones. Use search warrants and/or subpoena duces tecum to obtain billing statements, telephone service records, toll records. Use bill file records for telephone and cellular phones.
- Facsimile.
 - A fax becomes a hard copy document that has a date and time stamp.

- If the suspect's machine is seized pursuant to a search warrant, it may have a report that would show numbers dialed.
- Use search warrants and/or subpoena duces tecum to obtain toll records on the fax number.
- Computer /E-mail/Internet
 - With a closed E-mail system, signature ID may be left, such as a company fax number, employee ID number, etc.
 - Search warrant to seize suspect computer outside the workplace.
 - Suspect may save messages on his hard drive.

Use of Search Warrants

- Law enforcement must be able to construct a search warrant to obtain vital evidence linking a suspect to acts of stalking and harassment. Items that should be included:
 - Weapons and ammunition
 - Items belonging to the victim
 - Computers and disks
 - Copies of letters sent to victims
 - Telephone bills
 - Postal receipts for delivery of letters or packages to victim
 - Photographs of the victim
 - Instrumentalities such as fax machines, typewriters, packaging materials, etc.

Areas of Concern

- Types of Problem Situations
 - Ongoing divorce/custody battles.
 - Property litigation
 - Business disputes
 - Workers' compensation claims
 - Partnership litigation
 - Unlawful discharge
 - Neighborhood complaints
 - Zoning
 - Loud dogs, parties, music
 - Mutual Restraining Orders

Be aware that suspects will often utilize the court system to maliciously counter sue or file a PO in an attempt to dissuade or discredit the victim.

Victim Credibility

- Law enforcement personnel and prosecutors need to establish a victim's credibility or lack of credibility:
 - Rap sheet should be run to determine if victim has prior or pending record
 - Emphasize to victim that he/she should be completely honest with investigator and prosecutor, even if it means revealing something private or embarrassing
 - Investigators should be alert to ensure that victim is not reporting false or exaggerated facts to enhance the case or other inappropriate motivations

Long Term Basis

- Detectives and prosecutors must be prepared to handle these cases on a long-term basis:
 - Pre-filing: gathering evidence
 - Post-filing: working together for a successful prosecution
 - Post-conviction: detectives and prosecutors must address the issue of what happens to the victim and others involved in the case when the defendant gets released on probation or parole.

Evidentiary Issues Common to Stalking Cases

Reconstruction of Crime, Use of Exhibits Dates/Times/Places

- Stalking by definition involves a pattern of conduct.
- Investigators and prosecutors must work with victim to reconstruct dates/times/ places
- Investigators should try to find witnesses to events, whether helpful or not helpful to the prosecution.
- Consider documentary evidence and other exhibits such as 911 reports, phone or work records that will help identify dates of events.
- Prosecutors and investigators have to account for the lapse of time between the initiation of contact by the defendant and the date of complaint or trial.

Burden of Proof

- State has the burden of proof on such issues as threat, fear, identity, and defendant's mens rea (state of mind).
 - Threats:
 - Consider not just words but over gestures or conduct considered in light of prior history between the parties.
 - Argue perception of the conduct by a reasonable person and by the victim (objective; subjective).
 - Fear
 - Consider past history of parties when reviewing whether conduct placed victim in fear.
 - Identity
 - Anonymous acts are problematic; Consider how anonymous acts can be tied to defendant.
 - Documentary evidence (e.g., phone records; handwriting expert; credit card bills or clerk in store (e.g., flowers); phone traps; hang-ups (some judges allow, some do not).
 - Consider establishing identity through opportunity and notice; fingerprinting (also involves educating victim how to handle); voice exemplars; search warrants (e.g., for typewriter or paper used for note); do not overlook fact that defendant may have used third parties to carry out his act -- can help you to find additional witnesses or records.

- **Mens Rea**
 - Sometimes defendant's own statements will help prove element of mens rea but sometimes, prosecutor must rely upon circumstantial evidence.
 - Past history is significant, helps to characterize the act.

Victim Credibility

- Prosecutor must educate juries on victim dynamics, including ambivalence, recantation, reluctance to testify.
- Consider using experts to explain dynamics. Any corroborative evidence will help establish victim credibility. Any demonstrative evidence or exhibits are helpful.
- Witness preparation is crucial. Prosecutor should be prepared to argue that past history between the parties is relevant to establish whether act constituted a threat.

Prior Acts, Subsequent Acts, Similar Crimes

- With same victim -- prior and subsequent acts establish the pattern of conduct required for conviction; seemingly insignificant or innocent acts become meaningful; establishes identity; motive; mens rea; reasonableness of victim's fear; establishes threatening nature of an "innocent" act.
- With different victim--prior or subsequent acts establish identity (acts are not being offered to show propensity but identity of anonymous caller/corresponder).

Use of Exceptions to the Hearsay Rule

- Spontaneous exclamations (excited utterances) by victim
 - Most significant hearsay exception in stalking cases, particularly in simple obsessional stalking case where victim may be reluctant to testify, or invokes privilege not to testify, or for other reason, victim is not available.
 - Statement made contemporaneously (or near contemporaneously) with event that precipitated the excitement while victim or witness is under stress of exciting event, such that premeditation of fabrication claim is mitigated ("call the police; he just followed me and threatened me!").
 - Police must include statement in police report to negate cross-examination as to why statement is not included in report.
 - Police should also take note of victim's demeanor when statement is made so that foundation for admissibility (declarant appears to be under stress) can be established by prosecutor.
 - Prosecutor should argue that spontaneous exclamation as exception to hearsay rule was not invented for purposes of stalking/domestic violence cases--appeared as an exception to the hearsay rule many years ago.
- Prior inconsistent statements
 - Admissible for impeachment purposes if witness is available and testifies.
- Prior testimony (declarant "unavailable," e.g., asserts marital privilege).
 - Consider feasibility at time of arrest of having victim testify at preliminary hearing or bail hearing and offering defendant opportunity to cross-examine so that prosecutor develops prior reported testimony that meets foundational requirements.

- Foundation requirements are that declarant is unavailable; statement is made under oath in a proceeding where the issues were substantially the same as in the current proceeding; and the party against whom it is offered (usually the defendant) had opportunity to cross-examine. Need reliable record such as transcript, recording, video tape.
- Defendant's Admissions.
 - No requirement that statement be incriminating, inculpatory, or inconsistent with what he thought his best interests were when made. Admissible whether or not defendant testifies.
 - Both oral and written (e.g., letters) statement are admissible.
 - Testimony given by defendant in prior court proceeding is admissible as an admission, whether or not he testifies in subsequent proceeding.
- Past recollection recorded and present recollection revived.
 - Can be effectively used in stalking cases where events are prolonged and victim has kept diary.
 - Witnesses often can find recalling events difficult.
 - Past recollection recorded: document embodying witness's forgotten knowledge can be admitted for truth of assertions contained in the document. Foundation to be established is that witness once had personal knowledge of facts but has insufficient recollection of them. Reading memorandum does not refresh recollection, but witness can testify that at the time she made it, events were fresh and memorandum accurately recorded events.
- Business records.
 - Generally, records kept by any business are admissible if entries were made in good faith, in the regular course of business, before the action was begun, and it was the usual course of business to make the entry at the time of the event recorded or within a reasonable time thereafter.
 - Examples of business records include: invoices, phone records, police records, such as police log indicating what time call was received or report of damage to car.
 - This does not mean that all statements contained in the record are admissible. Each level of hearsay must satisfy an exception to the hearsay rule.
 - Consider: telephone records, hospital records, computer and e-mail records, fax records.
 - Custodian of records or person familiar with how records are generated may testify.
 - Consider also use of defendant's work or school attendance records to show opportunity or identity.
- Public Records.
 - Official or public records may be admitted as exception to hearsay rule if made by a public officer in the performance of his official duty.
 - This does not mean that second level hearsay statements will necessarily be admitted. For example, assume victim submits affidavit in support of application for restraining order naming defendant and alleging he assaulted her. Victim later recants. Prosecutor cannot offer affidavit as substantive evidence to establish identity of person who assaulted victim: victim's statement needs other basis of

admissibility in order to satisfy due process, confrontation concern [e.g. Mass. case: Commonwealth v. Kirk, 39 Massachusetts App. Ct. 225, 654 N.E.2nd 938 (1995) (victim's spontaneous exclamation, "my boyfriend did this" was properly admitted, but reversible error to admit application for restraining order and supporting documentation as proof of identity of defendant as "boyfriend" where victim refused to testify)].

Physical Evidence and Authentication

- Telephone calls: authentication involves witness's identification of voice (prior familiarity; voice "line-up;" recordings; use of experts). Prosecutor does not have to establish that victim and individual have ever met in person, if there are other circumstances that establish identity of speaker.
- Letters: authentication involves identification of handwriting (prior familiarity; search warrant; use of expert for comparison) or of typed document (establish access to certain word processing equipment, for example).

Defenses Common to Stalking Cases

First Amendment

- The right to speak and associate freely is not absolute.
- Sometimes the constitutional right of speech and association has to be balanced against the right of privacy and to be left alone.

Mental Illness

- There are at least two mental issues that can be asserted as a defense: competency and responsibility.
 - Competence.
 - As in any other type of case, if the defendant is not competent to stand trial, the trial cannot proceed. Prosecution is barred.
 - The prosecutor, therefore, must be vigilant at the earliest stages, e.g., at arraignment, to make sure that if competence is an issue, the groundwork is laid for an evaluation.(see §77-15-3).
 - Also, the prosecutor should ensure that notwithstanding any competency evaluation that might precede the defendant's arraignment, there is an appropriate bail order and a speedy arraignment.
 - Otherwise, the prosecutor runs the risk of not being able to put into evidence statements given by the defendant and other evidence generated in the interim (defendant will likely argue that such evidence is fruit of the poisonous tree [the illegal detention]).
 - Responsibility
 - The defendant may be competent but assert mental illness as a defense to responsibility. The defendant must give notice of intent to assert the defense pursuant to §77-14-4 and the court will order an examination of the defendant under §77-16a-301.

Alibi

- Stalking, by definition, involves a pattern of conduct.
- If the prosecution is relying on three acts, however, and the jury believes the defendant's alibi as to one of the acts, the crime has not been proved.
- The investigator should investigate the alibi claim of the defendant in an effort to meet it. Notice of intent to claim alibi by be filed by the defense so that the prosecution has an opportunity to investigate it and rebut it. (See §77-14-2).
- The investigation will involve an exploration of the relationship between the defendant and the party offering the alibi so as to allow for effective impeachment of the alibi witness.
- Also, investigator should measure distances -- often a witness will be wrong about how long it takes to get from one place to another.
- Remember to explore ways to obtain documentary information or the absence of documentary information: if the defendant indicates he bought something in a store, see if invoice can be produced from the store; if the defendant indicates he took a taxicab, see if the fare can be located on the log. If he indicates he took a bus, check out the route yourself.
- sometimes, alibi witness was with the defendant that day, but not for the time period stated.
- Prosecutor's cross-examination will include not only impeachment on account of bias, but impeachment on account of broadness of alibi.

Anonymity

- One of the hardest issues investigator/prosecutor has to confront is how to attribute "anonymous" conduct to the defendant.
- Anonymous telephone calls, for example, or "hang ups" may in fact be excluded if there is no basis upon which the calls can be attributed to the defendant. Or, the victim may find that her property is damaged.
- The success of the prosecution will depend upon the evidence the investigator is able to develop during the investigative stage about each act -- telephone records; telephone trap and trace; fingerprints; identifying stationery or postmarks; eyewitnesses; computer records.

"She never said stop."

- This defense goes to the element of "mens rea" and threat
- Prosecutor's job is to persuade the jury that even the receipt of flowers, for example, can be meant by the defendant as, and perceived by the victim as, a threat.

Cultural Behavior

- Prosecutors should be familiar with cultural differences among their victims and be prepared to explain cultural phenomena to the jury that may explain why, for example, victim at first forgave defendant's behavior or did not perceive it as wrong or dangerous.
- Prosecutors should be sensitive to any biases on the part of the individual jurors and may consider submitting questions to be used in a voir dire of the jury.

Countersuits by Defendant

- The defense of countersuit by the defendant arises and should be treated like any other impeachment issue.

- The prosecutor and investigator must ask the victim whether the defendant has any information that can be used to undermine her credibility, to show her bias or financial interest in the matter, or otherwise to undermine an element that the prosecution must prove.
- Generally, courts liberally allow evidence relating to bias or credibility.
- Prosecutor and investigator must check to see whether the victim has a criminal record; whether the victim has falsely claimed victimization before; whether the victim has instituted a civil suit (prosecutor should forestall this by telling the victim at the beginning that the institution of civil suit may undermine criminal case).
- In case of simple obsessional (spouse, girlfriend, child-in-common situation) stalking, prosecutor will prepare victim to handle issues relating to any action pending in family court, e.g., custody of child.
- Prosecutor should not lose control of criminal case to civil attorney. Prosecutor also must deal with discovery issues. Discovery should take place in the context of criminal trial only; it is not a good idea to allow deposition, for example to proceed in a civil case because of the risk that inconsistent statements will result or that victim will be intimidated, or that victim will want to drop the criminal suit in exchange for remedy in civil action.

What Victims Often Hear from Police and Prosecutors

- "There's nothing we can do".
- "It's not a crime to drive on a public street past your house...walk on a public sidewalk past your house...be in a public place watching you...etc".
- "If he's not actually threatening you, there's nothing we can do; simply watching you is not enough".
- "If you didn't see the person do it (damage to property, etc.) there's nothing we can do".

What Police and Prosecutors Can Do

- Know the stalking statute and its elements
- Be willing to spend the time investigating and prosecuting
- Let the victim "help you" investigate by keeping diaries, taking photos, setting up video cameras, getting "Caller ID", utilizing "Last Call Return", etc.
- review all categories of evidence
 - victim's conduct
 - suspect's/defendant's conduct
 - physical evidence
 - civil witnesses
 - law enforcement witnesses
 - circumstantial evidence
- Always keep an open mind

NEVER UNDERESTIMATE A STALKER!!!

What is "Stalking"?

Stalking involves one person's obsessive behavior toward another person. The stalker's actions may be motivated by an intense affection for or an extreme dislike of the victim. Stalking will usually take the form of annoying, threatening or obscene phone calls or letters. The calls may start with one or two a day but can quickly escalate. Stalkers will conduct covert surveillance of the victim, following every move the target makes. Even the victim's home may be stalked out.

Who can be stalked?

It can happen to anyone. Stalking does not stay contained to just the immediate target (victim). The problems can extend to other family members and third parties. A victim can be stalked for several days, weeks or even years.

A statistically small, but visible number of stalking victims are celebrities. Victims can be casual acquaintances or random targets of a stalker. Through constant harassment, stalkers have succeeded in making themselves the focal point of the victim's life. For the victim, life can become a nightmare as the person becomes a prisoner in his or her own home.

The majority of stalking takes place between people who have known each other intimately. Domestic violence stalkers, as a category, constitute the most dangerous and potentially lethal group of stalkers. Abusers often feel that their victims belong to them, are theirs to control or punish for trying to leave. These abusers often rationalize their inappropriate behavior by blaming the victim. Leaving an abusive relationship requires care in planning and execution. Personnel at domestic violence shelters and victims assistance groups can be of tremendous help in working out the details. If you are a victim, remember that you do not deserve to be stalked or battered in a relationship.

So whether one is dealing with a former lover, a co-worker or a stranger, a victim will need to play it safe and protect themselves, their family, their home and their workplace.

If you are a victim?

- ◆ Try to avoid all personal contact
Treat the stalker as if he or she is extremely dangerous and stay away from them. Should they confront you, take care to avoid any actions or words that might anger them. Don't get drawn into any discussions. Get away from them as soon as you can safely do so and then contact the police.
- ◆ Tell your stalker once, clearly, "No"
After that do not engage your stalker in any way. People unwittingly encourage stalkers by trying to reason with them. When they do that, it gives stalkers what they want, which is contact.
- ◆ Don't let personal information be released.
Tell all personal friends, family members, co-workers and children not to release information about you, your address and phone number to others.
- ◆ Remove identification
Remove home address on personal checks and business cards.
- ◆ Get a P.O. Box and limit access to your address
Utilize a private mail box service to receive all personal mail. On March 11, 1994, the U.S. Postal Service announced limited public access to change of address information filed by individuals and families. Take them a copy of your protective order if you have one.
- ◆ File a privacy request with the State Tax Commission on your vehicles
Forms are available at the State Tax Commission whereby access to information on any and all vehicles, past and present, (which could lead your stalker to your home address), can be restricted. There is no charge for this.
- ◆ Get a new driver's license with new P.O. Box address
You may also want to contact your local Driver's License Division and request that your driver's license information be classified as "private" or "protected" to limit unauthorized access to that information
- ◆ Inform people
Let everyone around you know what's going on. Describe the threatening person to them;

photographs work even better. Describe their vehicle and give the license late number to family members, neighbors, co-workers, school officials, secretaries, receptionists, apartment managers and police.

◆ Tell people at work
Notify your supervisor, security director and receptionist at work about your situation. Provide them with suspect information. If you have a protective order, leave an extra copy at the office.

◆ Screen mail
Have a secretary or security personnel screen all incoming personal mail.

◆ Be alert!
Be alert for any unusual packages, boxes or deliveries left at your residence or workplace for you.

◆ Be aware!
Be aware of anyone following you to and from work or home. Before you leave work, ask a security guard or co-worker to escort you to your car.

◆ Secure your property
Keep personal property locked in your desk or locker

◆ Phone call identification
• "Caller ID" to record calls.
• "Call Trace", is available on a pay per use basis. You simply lift receiver and press *57 (or dial 1157 on a rotary phone) immediately after hanging up from the call; follow the recorded message; the number of the caller will be recorded by US West; deterrent action by US West and local law enforcement can be taken after 3 calls from the same number are identified; you will not be given the name or number of the person who called you
• "Last Call Return" gets you the number of the last person who called you. This service is available to most US West customers on a pay per use basis. Lift up the receiver and press *69, the number of the missed call will be heard; if you want to redial the call, press 1 and your phone will redial the number.
• Keep tapes of calls from the stalker

- recorded on the answering machine.
Attach a tape recorder to your phone and record the stalker's phone calls to you (this is legal in Utah; however, you cannot record phone conversations that you are not a party to or where you don't have one party's consent to record)
- Contact your local police and phone company about this situation
- ◆ Get support
Join a support group for your own emotional well being. Contact you local domestic violence shelter for this information.
- ◆ Get help!
Head for the nearest police station, fire station or well populated area if you feel in danger or are being followed

What to do

- ◆ Keep records of all stalking/harassing behavior. This pamphlet contains a record sheet which will help you chronologically list all activities as they occur. Utah's stalking statute has been provided for you on this form. Remember, both you and law enforcement just look at the totality of the circumstances and not just one single incident.
- ◆ Keep accurate dates, times and location of where events took place, items received and names of any witnesses.
Before filling out the form on the reverse, make extra copies for future use of additional incidents.
- ◆ Keep all letters, envelopes and all packing materials. Touch only the extreme edges since fingerprints, saliva and other evidence may be present. If possible, place in a brown paper bag, contact the police and turn the evidence over to them.
- ◆ Remember that a threat doesn't require words.
A hand that's pointed at you in the shape of a gun conveys a message that's loud and clear. A bouquet of black roses delivered to your office, a dead animal received in the mail or a photograph with your image crossed out can also communicate the same message.

STALKING INCIDENT RECORD

<p>Intentionally or knowingly engages in a course of conduct directed at a specific person which would cause a reasonable person to fear bodily injury to self or immediate family member or to suffer emotional distress to self or member of immediate family</p> <p><i>Course of conduct = two or more occasions of maintaining visual or physical proximity to a person or conveying verbal or written threats or threats implied by conduct or any combination thereof directed at or toward a person</i></p>	<p>Has knowledge or should have knowledge (of impact of actions)</p> <p>Specific person will be placed in reasonable fear of bodily injury to self or member of immediate family or suffer emotional distress or member of immediate family will suffer emotional distress</p>	<p>Conduct in fact induces fear or causes distress</p> <p>Induces fear in specific person of bodily injury to self or immediate family member or Causes emotional distress in specific person or member of immediate family</p> <p>Violation of a permanent criminal stalking injunction constitutes the crime of stalking also</p> <p>Prior convictions of stalker for stalking anyone, here or elsewhere, or for committing felonies against you need to be reported to the police as the penalty for stalking increases with these prior convictions</p>
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Incident types

Suspect Information

<ul style="list-style-type: none"> a. Watching or following b. Approaching a victim c. Drive-bys d. Threatening phone calls or hang-ups e. Sending or delivering hate mail f. Sending or delivering love notes g. Computer e-mail, fax h. Vandalizing vehicle or home or personal property i. Placing or delivering an unwanted object or object that has symbolic message j. Other 	<p>name:</p> <p>address:</p> <p>identifying information (ht./wt./hair & eye color/ physical characteristics, car make, model, color & plate state and #, etc.)</p>
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Please use to document incidents

Date	Time	incident type	Law Enforcement Agency	Officer name and report #	incident location	witness information: name, address, phone	explain how you felt
Comments:							
Comments:							
Comments:							

Date	Time	incident type	Law Enforcement Agency	Officer name and report #	incident location	witness information: name, address, phone	explain how you felt
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Comments:

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Comments:

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Comments:

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Comments:

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Comments:

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Comments:

IN THE _____ COURT, _____ COUNTY,
STATE OF UTAH

STATE OF UTAH,	:	
CITY OF _____	:	
Plaintiff,	:	PERMANENT CRIMINAL STALKING INJUNCTION
v.	:	
	:	
DOB:	:	
Defendant.	:	Case No. Judge
	:	

The Court makes the following findings:

The defendant has been convicted of the criminal offense of stalking, Section 76-5-106.5 Utah Code Ann., or has entered a plea of guilty to the criminal charge of stalking, Section 76-5-106.5 Utah Code Ann., which is being held in abeyance for a period of time. The stalking victim is _____.

The defendant has been given notice of his/her right to a hearing on the issuance of a permanent criminal stalking injunction and

the defendant waives his/her right to a hearing on the matter; or

a hearing was held on the matter and the court heard evidence and arguments

There is good cause appearing and the court determines that the issuance of a permanent criminal stalking injunction, pursuant to Section 76-5-106.5 Utah Code Ann., is appropriate.

IT IS HEREBY ORDERED: (initialed boxes only)

1. that the defendant is restrained from entering the residence, property, school or place of employment of the stalking victim.

2. that the defendant is required to stay away from the stalking victim and members of the stalking victim's immediate family or household.

3. that the defendant is to stay away from the following specified places frequented regularly by the stalking victim: _____

4. that the defendant is restrained from making contact with the stalking victim. The defendant is forbidden from personally or through an agent initiating any communication likely to cause annoyance or alarm, including personal, written or telephone contact with the stalking victim, the stalking victim's employers, employees, fellow workers or others with whom communication would be likely to cause annoyance or alarm to the stalking victim.

This order is permanent and may only be dissolved by the stalking victim upon application to this court. This order is enforceable statewide as well as nationwide.

VIOLATION OF THIS INJUNCTION SHALL CONSTITUTE AN OFFENSE OF STALKING, pursuant to Section 76-5-106.5. Violations may be enforced in a civil action by the stalking victim, a criminal action initiated by a prosecuting attorney, or both.

Dated this _____ day of _____, 2____.

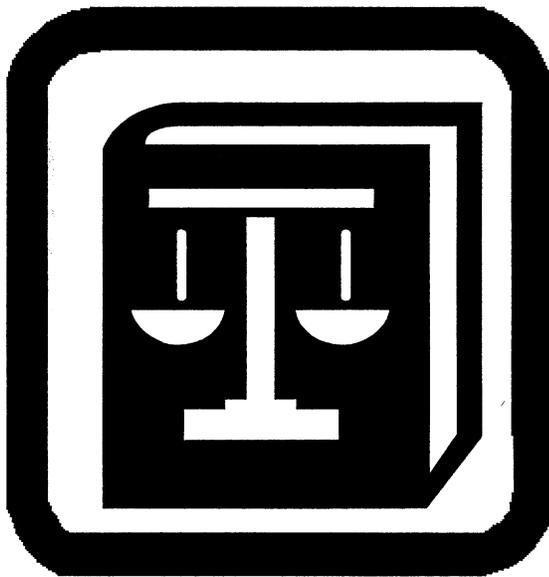
JUDGE

I certify that the above-named defendant was served with a copy of this order on this _____ day of _____, _____.

By _____
_____ Sheriff's office

Respondent was afforded both notice and opportunity to be heard in the hearing that gave rise to this order. The court had jurisdiction over the parties and matter under the laws of the state of Utah. Pursuant to the Violence Against Women Act 18 U.S.C. §§2265-2266 (2000), this order is valid in all the United States, the District of Columbia, tribal lands, and United States Territories.

Domestic Violence Related Laws



Domestic Violence Related Laws

Cohabitant Abuse Act

30-6-1. Definitions.

As used in this chapter:

(1) "Abuse" means intentionally or knowingly causing or attempting to cause a cohabitant physical harm or intentionally or knowingly placing a cohabitant in reasonable fear of imminent physical harm.

(2) "Cohabitant" means an emancipated person pursuant to Section 15-2-1 or a person who is 16 years of age or older who:

- (a) is or was a spouse of the other party;
- (b) is or was living as if a spouse of the other party;
- (c) is related by blood or marriage to the other party;
- (d) has one or more children in common with the other party;
- (e) is the biological parent of the other party's unborn child; or
- (f) resides or has resided in the same residence as the other party.

(3) Notwithstanding Subsection (2), "cohabitant" does not include:

- (a) the relationship of natural parent, adoptive parent, or step-parent to a minor; or
- (b) the relationship between natural, adoptive, step, or foster siblings who are under 18

years of age.

(4) "Court clerk" means a district court clerk.

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

(6) "Ex parte protective order" means an order issued without notice to the defendant in accordance with this chapter.

(7) "Foreign protective order" means a protective order issued by another state, territory, or possession of the United States, tribal lands of the United States, the Commonwealth of Puerto Rico, or the District of Columbia which shall be given full faith and credit in Utah, if the protective order is similar to a protective order issued in compliance with Title 30, Chapter 6, Cohabitant Abuse Act, or Title 77, Chapter 36, Cohabitant Abuse Procedures Act, and includes the following requirements:

(a) the requirements of due process were met by the issuing court, including subject matter and personal jurisdiction;

(b) the respondent received reasonable notice; and

(c) the respondent had an opportunity for a hearing regarding the protective order.

(8) "Law enforcement unit" or "law enforcement agency" means any public agency having general police power and charged with making arrests in connection with enforcement of the criminal statutes and ordinances of this state or any political subdivision.

(9) "Peace officer" means those persons specified in Title 53, Chapter 13, Peace Officer Classifications.

(10) "Protective order" means an order issued pursuant to this chapter subsequent to a hearing on the petition, of which the petitioner and respondent have been given notice in accordance with this chapter.

30-6-2. Abuse or danger of abuse -- Protective orders.

(1) Any cohabitant who has been subjected to abuse or domestic violence, or to whom there is a substantial likelihood of abuse or domestic violence, may seek an ex parte protective order or a protective order in accordance with this chapter, whether or not that person has left the residence or the premises in an effort to avoid further abuse.

(2) A petition for a protective order may be filed under this chapter regardless of whether an action for divorce between the parties is pending.

(3) A petition seeking a protective order may not be withdrawn without approval of the court.

30-6-3. Venue of action.

(1) The district court has jurisdiction of any action brought under this chapter.

(2) An action brought pursuant to this chapter shall be filed in the county where either party resides or in which the action complained of took place.

30-6-4. Forms for petitions and protective orders -- Assistance.

(1) (a) The offices of the court clerk shall provide forms and nonlegal assistance to persons seeking to proceed under this chapter.

(b) The Administrative Office of the Courts shall develop and adopt uniform forms for petitions and orders for protection in accordance with the provisions of this chapter on or before September 1, 1995. That office shall provide the forms to the clerk of each court authorized to issue protective orders. The forms shall include:

(i) a statement notifying the petitioner for an ex parte protective order that knowing falsification of any statement or information provided for the purpose of obtaining a protective order may subject the petitioner to felony prosecution;

(ii) a separate portion of the form for those provisions, the violation of which is a criminal offense, and a separate portion for those provisions, the violation of which is a civil violation, as provided in Subsection **30-6-4.2(5)**;

(iii) language in the criminal provision portion stating violation of any criminal provision is a class A misdemeanor, and language in the civil portion stating violation of or failure to comply with a civil provision is subject to contempt proceedings;

(iv) a space for information the petitioner is able to provide to facilitate identification of the respondent, such as social security number, driver license number, date of birth, address, telephone number, and physical description;

(v) a space for the petitioner to request a specific period of time for the civil provisions to be in effect, not to exceed 150 days, unless the petitioner provides in writing the reason for the requested extension of the length of time beyond 150 days;

(vi) a statement advising the petitioner that when a minor child is included in an ex parte protective order or a protective order, as part of either the criminal or the civil portion of the order, the petitioner may provide a copy of the order to the principal of the school where the child attends; and

(vii) a statement advising the petitioner that if the respondent fails to return custody of a minor child to the petitioner as ordered in a protective order, the petitioner may obtain from the court a writ of assistance.

(2) If the person seeking to proceed under this chapter is not represented by an attorney, it is the responsibility of the court clerk's office to provide:

(a) the forms adopted pursuant to Subsection (1);

(b) all other forms required to petition for an order for protection including, but not limited to, forms for service;

(c) clerical assistance in filling out the forms and filing the petition, in accordance with Subsection (1)(a). A court clerk's office may designate any other entity, agency, or person to

provide that service, but the court clerk's office is responsible to see that the service is provided;

(d) information regarding the means available for the service of process;

(e) a list of legal service organizations that may represent the petitioner in an action brought under this chapter, together with the telephone numbers of those organizations; and

(f) written information regarding the procedure for transporting a jailed or imprisoned respondent to the protective order hearing, including an explanation of the use of transportation order forms when necessary.

(3) No charges may be imposed by a court clerk, constable, or law enforcement agency for:

(a) filing a petition under this chapter;

(b) obtaining an ex parte protective order;

(c) obtaining copies, either certified or not certified, necessary for service or delivery to law enforcement officials; or

(d) fees for service of a petition, ex parte protective order, or protective order.

(4) A petition for an order of protection shall be in writing and verified.

(5) (a) All orders for protection shall be issued in the form adopted by the Administrative Office of the Courts pursuant to Subsection (1).

(b) Each protective order issued, except orders issued ex parte, shall include the following language:

"Respondent was afforded both notice and opportunity to be heard in the hearing that gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322, 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of Columbia, tribal lands, and United States territories."

30-6-4.1. Continuing duty to inform court of other proceedings -- Effect of other proceedings.

(1) At any hearing in a proceeding to obtain an order for protection, each party has a continuing duty to inform the court of each proceeding for an order for protection, any civil litigation, each proceeding in juvenile court, and each criminal case involving either party, including the case name, the file number, and the county and state of the proceeding, if that information is known by the party.

(2) (a) An order for protection issued pursuant to this chapter is in addition to and not in lieu of any other available civil or criminal proceeding.

(b) A petitioner is not barred from seeking a protective order because of other pending proceedings.

(c) A court may not delay granting relief under this chapter because of the existence of a pending civil action between the parties.

(3) A petitioner may omit his or her address from all documents filed with the court under this chapter, but shall separately provide the court with a mailing address that is not to be made part of the public record, but that may be provided to a peace officer or entity for service of process.

30-6-4.2. Protective orders -- Ex parte protective orders -- Modification of orders -- Service of process -- Duties of the court.

(1) If it appears from a petition for an order for protection or a petition to modify an order for protection that domestic violence or abuse has occurred or a modification of an order for protection is required, a court may:

(a) without notice, immediately issue an order for protection ex parte or modify an order for protection ex parte as it considers necessary to protect the petitioner and all parties named to be protected in the petition; or

(b) upon notice, issue an order for protection or modify an order after a hearing, whether or not the respondent appears.

(2) A court may grant the following relief without notice in an order for protection or a modification issued ex parte:

(a) enjoin the respondent from threatening to commit or committing domestic violence or abuse against the petitioner and any designated family or household member;

(b) prohibit the respondent from harassing, telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly;

(c) order that the respondent is excluded from the petitioner's residence and its premises, and order the respondent to stay away from the residence, school, or place of employment of the petitioner, and the premises of any of these, or any specified place frequented by the petitioner and any designated family or household member;

(d) upon finding that the respondent's use or possession of a weapon may pose a serious threat of harm to the petitioner, prohibit the respondent from purchasing, using, or possessing a firearm or other weapon specified by the court;

(e) order possession and use of an automobile and other essential personal effects, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;

(f) grant to the petitioner temporary custody of any minor children of the parties;

(g) order any further relief that the court considers necessary to provide for the safety and welfare of the petitioner and any designated family or household member; and

(h) if the petition requests child support or spousal support, at the hearing on the petition order both parties to provide verification of current income, including year-to-date pay stubs or employer statements of year-to-date or other period of earnings, as specified by the court, and complete copies of tax returns from at least the most recent year.

(3) A court may grant the following relief in an order for protection or a modification of an order after notice and hearing, whether or not the respondent appears:

(a) grant the relief described in Subsection (2); and

(b) specify arrangements for parent-time of any minor child by the respondent and require supervision of that parent-time by a third party or deny parent-time if necessary to protect the safety of the petitioner or child.

(4) Following the protective order hearing, the court shall:

(a) as soon as possible, deliver the order to the county sheriff for service of process;

(b) make reasonable efforts to ensure that the order for protection is understood by the petitioner, and the respondent, if present;

(c) transmit, by the end of the next business day after the order is issued, a copy of the order for protection to the local law enforcement agency or agencies designated by the petitioner; and

(d) transmit a copy of the order to the statewide domestic violence network described in Section **30-6-8**.

(5) (a) Each protective order shall include two separate portions, one for provisions, the violation of which are criminal offenses, and one for provisions, the violation of which are civil violations, as follows:

(i) criminal offenses are those under Subsections (2)(a) through (e), and under Subsection (3)(a) as it refers to Subsections (2)(a) through (e); and

(ii) civil offenses are those under Subsections (2)(f) through (h), and Subsection (3)(a) as it refers to Subsections (2)(f) through (h).

(b) The criminal provision portion shall include a statement that violation of any criminal provision is a class A misdemeanor.

(c) The civil provision portion shall include a notice that violation of or failure to comply with a civil provision is subject to contempt proceedings.

(6) The protective order shall include:

(a) a designation of a specific date, determined by the court, when the civil portion of the protective order either expires or is scheduled for review by the court, which date may not exceed 150 days after the date the order is issued, unless the court indicates on the record the reason for setting a date beyond 150 days;

(b) information the petitioner is able to provide to facilitate identification of the respondent, such as Social Security number, driver license number, date of birth, address, telephone number, and physical description; and

(c) a statement advising the petitioner that:

(i) after three years from the date of issuance of the protective order, a hearing may be held to dismiss the criminal portion of the protective order;

(ii) the petitioner should, within the 30 days prior to the end of the three-year period, advise the court of the petitioner's current address for notice of any hearing; and

(iii) the address provided by the petitioner will not be made available to the respondent.

(7) Child support and spouse support orders issued as part of a protective order are subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non IV-D Cases, except when the protective order is issued ex parte.

(8) (a) The county sheriff that receives the order from the court, pursuant to Subsection (5)(a), shall provide expedited service for orders for protection issued in accordance with this chapter, and shall transmit verification of service of process, when the order has been served, to the statewide domestic violence network described in Section **30-6-8**.

(b) This section does not prohibit any law enforcement agency from providing service of process if that law enforcement agency:

(i) has contact with the respondent and service by that law enforcement agency is possible; or

(ii) determines that under the circumstances, providing service of process on the respondent is in the best interests of the petitioner.

(9) (a) When an order is served on a respondent in a jail or other holding facility, the law enforcement agency managing the facility shall make a reasonable effort to provide notice to the petitioner at the time the respondent is released from incarceration.

(b) Notification of the petitioner shall consist of a good faith reasonable effort to provide notification, including mailing a copy of the notification to the last-known address of the victim.

(10) A court may modify or vacate an order of protection or any provisions in the order after notice and hearing, except that the criminal provisions of a protective order may not be vacated within two years of issuance unless the petitioner:

(a) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah Rules of Civil Procedure, and the petitioner personally appears before the court and gives specific consent to the vacation of the criminal provisions of the protective order; or

(b) submits a verified affidavit, stating agreement to the vacation of the criminal provisions of the protective order.

(11) A protective order may be modified without a showing of substantial and material change in circumstances.

(12) Insofar as the provisions of this chapter are more specific than the Utah Rules of Civil Procedure, regarding protective orders, the provisions of this chapter govern.

30-6-4.3. Hearings on ex parte orders.

(1) (a) When a court issues an ex parte protective order the court shall set a date for a hearing on the petition within 20 days after the ex parte order is issued.

(b) If at that hearing the court does not issue a protective order, the ex parte protective order shall expire, unless it is otherwise extended by the court.

(c) If at that hearing the court issues a protective order, the ex parte protective order remains in effect until service of process of the protective order is completed.

(d) A protective order issued after notice and a hearing is effective until further order of the court.

(e) If the hearing on the petition is heard by a commissioner, either the petitioner or respondent may file an objection within ten days of the entry of the recommended order and the assigned judge shall hold a hearing within 20 days of the filing of the objection.

(2) Upon a hearing under this section, the court may grant any of the relief described in Section **30-6-4.2**.

(3) When a court denies a petition for an ex parte protective order or a petition to modify an order for protection ex parte, the court shall set the matter for hearing upon notice to the respondent.

(4) A respondent who has been served with an ex parte protective order may seek to vacate the ex parte protective order prior to the hearing scheduled pursuant to Subsection (1)(a) by filing a verified motion to vacate. The respondent's verified motion to vacate and a notice of hearing on that motion shall be personally served on the petitioner at least two days prior to the hearing on the motion to vacate.

30-6-4.4. No denial of relief solely because of lapse of time.

The court may not deny a petitioner relief requested pursuant to this chapter solely because of a lapse of time between an act of domestic violence or abuse and the filing of the petition for an order of protection

30-6-4.5. Mutual protective orders prohibited.

(1) A court may not grant a mutual order or mutual orders for protection to opposing parties, unless each party:

(a) has filed an independent petition against the other for a protective order, and both petitions have been served;

(b) makes a showing at a due process protective order hearing of abuse or domestic violence committed by the other party; and

(c) demonstrates the abuse or domestic violence did not occur in self-defense.

(2) If the court issues mutual protective orders, the circumstances justifying those orders shall be documented in the case file.

30-6-4.6. Prohibition of court-ordered or court-referred mediation.

In any case brought under the provisions of this chapter, the court may not order the parties into mediation for resolution of the issues in a petition for an order for protection.

30-6-8. Statewide domestic violence network -- Peace officers' duties -- Prevention of abuse in absence of order -- Limitation of liability.

(1) (a) On or before January 1, 1996, law enforcement units, the Department of Public Safety, and the Administrative Office of the Courts shall utilize statewide procedures to ensure that peace officers at the scene of an alleged violation of a protective order have immediate access to information necessary to verify the existence and terms of that order, and other orders of the court required to be made available on the network by the provisions of this chapter or Title 77, Chapter 36, Cohabitant Abuse Procedures Act. Those officers shall use every reasonable means to enforce the court's order, in accordance with the requirements and

procedures of this chapter and Title 77, Chapter 36.

(b) The Administrative Office of the Courts, in cooperation with the Department of Public Safety and the Criminal Investigations and Technical Services Division, established in Section **53-10-103**, shall provide for a single, statewide network containing:

(i) all orders for protection issued by a court of this state; and
(ii) all other court orders or reports of court action that are required to be available on the network under this chapter and Title 77, Chapter 36.

(c) The entities described in Subsection (b) may utilize the same mechanism as the statewide warrant system, described in Section **53-10-208**.

(d) All orders and reports required to be available on the network shall be available within 24 hours after court action. If the court that issued the order is not part of the state court computer system, the orders and reports shall be available on the network within 72 hours.

(e) The information contained in the network shall be available to a court, law enforcement officer, or agency upon request.

(2) When any peace officer has reason to believe a cohabitant or child of a cohabitant is being abused, or that there is a substantial likelihood of immediate danger of abuse, although no protective order has been issued, that officer shall use all reasonable means to prevent the abuse, including:

(a) remaining on the scene as long as it reasonably appears there would otherwise be danger of abuse;

(b) making arrangements for the victim to obtain emergency medical treatment;

(c) making arrangements for the victim to obtain emergency housing or shelter care;

(d) explaining to the victim his or her rights in these matters;

(e) asking the victim to sign a written statement describing the incident of abuse; or

(f) arresting and taking into physical custody the abuser in accordance with the provisions of Title 77, Chapter 36.

(3) No person or institution may be held criminally or civilly liable for the performance of, or failure to perform, any duty established by this chapter, so long as that person acted in good faith and without malice.

30-6-11. Division of Child and Family Services -- Development and assistance of volunteer network.

(1) The Division of Child and Family Services within the Department of Human Services shall, either directly or by contract:

(a) develop a statewide network of volunteers and community resources to support, assist, and advocate on behalf of victims of domestic violence;

(b) train volunteers to provide clerical assistance to persons seeking orders for protection under this chapter;

(c) coordinate the provision of volunteer services with Utah Legal Services and the Legal Aid Society; and

(d) assist local government officials in establishing community based support systems for victims of domestic violence.

(2) Volunteers shall provide additional nonlegal assistance to victims of domestic violence, including providing information on the location and availability of shelters and other community resources.

30-6-12. Full faith and credit for foreign protective orders.

(1) A foreign protective order is enforceable in this state as long as it is in effect in the issuing state or political entity.

(2) (a) A person entitled to protection under a foreign protective order may file the order in

any district court by filing with the court a certified copy of the order. A filing fee may not be required.

(b) The person filing the foreign protective order shall swear under oath in an affidavit, that to the best of the person's knowledge the order is presently in effect as written and the respondent was personally served with a copy of the order.

(c) The affidavit shall be in the form adopted by the Administrative Office of the Courts, consistent with its responsibilities to develop and adopt forms under Section **30-6-4**.

(d) The court where the order is filed shall transmit a copy of the order to the statewide domestic violence network described in Section **30-6-8**.

(e) Upon inquiry by a law enforcement agency, the clerk of the district court shall make a copy of the foreign protective order available.

(3) Law enforcement personnel may rely:

(a) upon a certified copy of any foreign protective order which has been provided to the peace officer by any source; and

(b) on the statement of the person protected by the order that the order is in effect and the respondent was personally served with a copy of the order.

(4) A violation in Utah of a foreign protective order is subject to the same penalties as the violation of a protective order issued in Utah.

30-6-14. Authority to prosecute class A misdemeanor violations.

Alleged class A misdemeanor violations of this chapter may be prosecuted by city attorneys.

30-6-15. Dismissal of protective order when divorce is final.

When a protective order exists and a divorce proceeding is pending between the same parties named in the protective order, the protective order shall be dismissed when the court issues a decree of divorce for the parties if the petitioner in the protective order action is present or has been given notice in both the divorce and protective order action of the hearing, and the court specifically finds that the order need not continue. If the court dismisses the protective order, the court shall immediately issue an order of dismissal to be filed in the protective order action and transmit a copy of the order of dismissal to the statewide domestic violence network as described in Section **30-6-8**.

Cohabitant Abuse Procedures Act

77-36-1. Definitions.

As used in this chapter:

- (1) "Cohabitant" has the same meaning as in Section **30-6-1**.
- (2) "Domestic violence" means any criminal offense involving violence or physical harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to commit a criminal offense involving violence or physical harm, when committed by one cohabitant against another. "Domestic violence" also means commission or attempt to commit, any of the following offenses by one cohabitant against another:
 - (a) aggravated assault, as described in Section **76-5-103**;
 - (b) assault, as described in Section **76-5-102**;
 - (c) criminal homicide, as described in Section **76-5-201**;
 - (d) harassment, as described in Section **76-5-106**;
 - (e) telephone harassment, as described in Section **76-9-201**;
 - (f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections **76-5-301**, **76-5-301.1**, and **76-5-302**;
 - (g) mayhem, as described in Section **76-5-105**;
 - (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, and Title 76, Chapter 5a;
 - (i) stalking, as described in Section **76-5-106.5**;
 - (j) unlawful detention, as described in Section **76-5-304**;
 - (k) violation of a protective order or ex parte protective order, as described in Section **76-5-108**;
 - (l) any offense against property described in Title 76, Chapter 6, Part 1, 2, or 3;
 - (m) possession of a deadly weapon with intent to assault, as described in Section **76-10-507**;
 - (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any person, building, or vehicle, as described in Section **76-10-508**;
 - (o) disorderly conduct, as defined in Section **76-9-102**, if a conviction of disorderly conduct is the result of a plea agreement in which the defendant was originally charged with any of the domestic violence offenses otherwise described in this Subsection (2). Conviction of disorderly conduct as a domestic violence offense, in the manner described in this Subsection (2)(o), does not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Section 921, and is exempt from the provisions of the federal Firearms Act, 18 U.S.C. Section 921 et seq.; or
 - (p) child abuse as described in Section **76-5-109.1**.
- (3) "Victim" means a cohabitant who has been subjected to domestic violence.

77-36-1.1. Enhancement of penalty for subsequent domestic violence offenses.

(1) When an offender is convicted of any domestic violence offense in Utah, or is convicted in any other state, or in any district, possession, or territory of the United States, of an offense that would be a domestic violence offense under Utah law, and is within a five-year period after the conviction subsequently charged with a domestic violence offense that is a misdemeanor, the offense charged and the punishment for that subsequent offense may be enhanced by one degree above the offense and punishment otherwise provided in the statutes described in Section **77-36-1**.

(2) For purposes of this section, a plea in abeyance is considered a conviction.

77-36-2.1. Duties of law enforcement officers -- Notice to victims.

(1) A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and prevent further violence, including:

- (a) taking the action that, in the officer's discretion, is reasonably necessary to provide for the safety of the victim and any family or household member;
- (b) confiscating the weapon or weapons involved in the alleged domestic violence;
- (c) making arrangements for the victim and any child to obtain emergency housing or shelter;
- (d) providing protection while the victim removes essential personal effects;
- (e) arrange, facilitate, or provide for the victim and any child to obtain medical treatment; and
- (f) arrange, facilitate, or provide the victim with immediate and adequate notice of the rights of victims and of the remedies and services available to victims of domestic violence, in accordance with Subsection (2).

(2) (a) A law enforcement officer shall give written notice to the victim in simple language, describing the rights and remedies available under this chapter, Title 30, Chapter 6, Cohabitant Abuse Act, and Title 78, Chapter 3h, Child Protective Orders.

(b) The written notice shall also include:

- (i) a statement that the forms needed in order to obtain an order for protection are available from the court clerk's office in the judicial district where the victim resides or is temporarily domiciled;
- (ii) a list of shelters, services, and resources available in the appropriate community, together with telephone numbers, to assist the victim in accessing any needed assistance; and
- (iii) the information required to be provided to both parties in accordance with Subsection **77-36-2.5(7)**.

77-36-2.2. Powers and duties of law enforcement officers to arrest.

(1) The primary duty of law enforcement officers responding to a domestic violence call is to protect the victim and enforce the law.

(2) (a) In addition to the arrest powers described in Section **77-7-2**, when a peace officer responds to a domestic violence call and has probable cause to believe that an act of domestic violence has been committed, the peace officer shall arrest without a warrant or issue a citation to any person that he has probable cause to believe has committed an act of domestic violence.

(b) If the peace officer has probable cause to believe that there will be continued violence against the alleged victim, or if there is evidence that the perpetrator has either recently caused serious bodily injury or used a dangerous weapon in the domestic violence offense, the officer shall arrest and take the alleged perpetrator into custody, and may not utilize the option of issuing a citation under this section. For purposes of this section "serious bodily injury" and "dangerous weapon" mean the same as those terms are defined in Section **76-1-601**.

(c) If a peace officer does not immediately exercise arrest powers or initiate criminal proceedings by citation or otherwise, he shall notify the victim of his or her right to initiate a criminal proceeding and of the importance of preserving evidence, in accordance with the requirements of Section **77-36-2.1**.

(3) If a law enforcement officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who the predominant aggressor was. If the officer determines that one person was the predominant physical aggressor, the officer need not arrest the other person alleged to have committed domestic violence. In determining who the predominant aggressor was, the officer shall consider:

- (a) any prior complaints of domestic violence;
- (b) the relative severity of injuries inflicted on each person;
- (c) the likelihood of future injury to each of the parties; and

(d) whether one of the parties acted in self defense.

(4) A law enforcement officer may not threaten, suggest, or otherwise indicate the possible arrest of all parties in order to discourage any party's request for intervention by law enforcement.

(5) (a) A law enforcement officer who does not make an arrest after investigating a complaint of domestic violence, or who arrests two or more parties, shall submit a detailed, written report specifying the grounds for not arresting or for arresting both parties.

(b) A law enforcement officer who does not make an arrest shall notify the victim of his or her right to initiate a criminal proceeding and of the importance of preserving evidence.

(6) (a) A law enforcement officer responding to a complaint of domestic violence shall prepare an incident report that includes the officer's disposition of the case.

(b) That report shall be made available to the victim, upon request, at no cost.

(c) The law enforcement agency shall forward a copy of the incident report to the appropriate prosecuting attorney within five days after the complaint of domestic violence occurred.

(7) Each law enforcement agency shall, as soon as practicable, make a written record and maintain records of all incidents of domestic violence reported to it, and shall be identified by a law enforcement agency code for domestic violence.

77-36-2.3. Law enforcement officer's training.

All training of law enforcement officers relating to domestic violence shall stress protection of the victim, enforcement of criminal laws in domestic situations, and the availability of community shelters, services, and resources. Law enforcement agencies and community organizations with expertise in domestic violence shall cooperate in all aspects of that training.

77-36-2.4. Violation of protective orders -- Mandatory arrest.

(1) A law enforcement officer shall, without a warrant, arrest an alleged perpetrator whenever there is probable cause to believe that the alleged perpetrator has violated any of the provisions of an ex parte protective order or protective order.

(2) (a) Intentional or knowing violation of any ex parte protective order or protective order is a class A misdemeanor, in accordance with Section **76-5-108**, and is a domestic violence offense, pursuant to Section **77-36-1**.

(b) Second or subsequent violations of ex parte protective orders or protective orders carry increased penalties, in accordance with Section **77-36-1.1**.

(3) As used in this section, "ex parte protective order" or "protective order" includes any protective order or ex parte protective order issued under Title 30, Chapter 6, Cohabitant Abuse Act, or Title 77, Chapter 36, Cohabitant Abuse Procedures Act, any child protective order or ex parte child protective order issued under Title 78, Chapter 3h, Child Protective Orders, or a foreign protective order enforceable under Section **30-6-12**.

77-36-2.5. Conditions for release after arrest for domestic violence.

(1) Upon arrest for domestic violence, a person may not be released on bail, recognizance, or otherwise prior to the close of the next court day following the arrest, unless as a condition of that release he is ordered by the court or agrees in writing that until the expiration of that time he will:

(a) have no personal contact with the alleged victim;

(b) not threaten or harass the alleged victim; and

(c) not knowingly enter onto the premises of the alleged victim's residence or any premises temporarily occupied by the alleged victim.

(2) As a condition of release, the court may order the defendant to participate in an electronic

monitoring program and pay the costs associated with the program.

(3) (a) Subsequent to an arrest for domestic violence, an alleged victim may waive in writing any or all of the requirements described in Subsection (1). Upon waiver, those requirements shall not apply to the alleged perpetrator.

(b) A court or magistrate may modify the requirements described in Subsections (1)(a) or (c), in writing or on the record, and only for good cause shown.

(4) (a) Whenever a person is released pursuant to Subsection (1), the releasing agency shall notify the arresting law enforcement agency of the release, conditions of release, and any available information concerning the location of the victim. The arresting law enforcement agency shall then make reasonable effort to notify the victim of that release.

(b) (i) When a person is released pursuant to Subsection (1) based on a written agreement, the releasing agency shall transmit that information to the statewide domestic violence network described in Section **30-6-8**.

(ii) When a person is released pursuant to Subsection (1) based upon a court order, the court shall transmit that order to the statewide domestic violence network described in Section **30-6-8**.

(c) This Subsection (4) does not create or increase liability of a law enforcement officer or agency, and the good faith immunity provided by Section **77-36-8** is applicable.

(5) (a) If a law enforcement officer has probable cause to believe that a person has violated a court order or agreement executed pursuant to Subsection (1) the officer shall, without a warrant, arrest the alleged violator.

(b) Any person who knowingly violates a court order or agreement executed pursuant to Subsection (1) shall be guilty as follows:

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

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

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

(6) An individual who was originally arrested for a felony under this chapter and released pursuant to this section, may subsequently be held without bail if there is substantial evidence to support a new felony charge against him.

(7) At the time an arrest for domestic violence is made, the arresting officer shall provide both the alleged victim and the alleged perpetrator with written notice containing the following information:

(a) the requirements described in Subsection (1), and notice that those requirements shall be ordered by a court or must be agreed to by the alleged perpetrator prior to release;

(b) notification of the penalties for violation of the court order or any agreement executed under Subsection (1);

(c) the date and time, absent modification by a court or magistrate, that the requirements expire;

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

(e) the availability and effect of any waiver of the requirements; and

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

(8) In addition to the provisions of Subsections (1) through (6), because of the unique and highly emotional nature of domestic violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of violence subsequent to the release of an offender who has been arrested for domestic violence, it is the finding of the Legislature that domestic violence crimes, as defined in Section **77-36-1**, are crimes for which bail may be denied if there is substantial evidence to support the charge, and if the court finds

by clear and convincing evidence that the alleged perpetrator would constitute a substantial danger to an alleged victim of domestic violence if released on bail. If bail is denied under this Subsection (8), it shall be under the terms and conditions described in Subsections (1) through (6).

77-36-2.6. Appearance of defendant required -- Determinations by court.

(1) A defendant who has been arrested for an offense involving domestic violence shall appear in person before the court or a magistrate within one judicial day after the arrest.

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

(3) At the time of an appearance under Subsection (1) or (2), the court shall determine the necessity of imposing a protective order or other condition of pretrial release including, but not limited to, participating in an electronic monitoring program, and shall state its findings and determination in writing.

(4) Appearances required by this section are mandatory and may not be waived.

77-36-2.7. Dismissal -- Diversion prohibited -- Plea in abeyance -- Release before trial.

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

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

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

(c) shall waive any requirement that the victim's location be disclosed other than to the defendant's attorney, upon a showing that there is any possibility of further violence, and order the defendant's attorney not to disclose the victim's location to his client;

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

(e) may dismiss a charge on stipulation of the prosecutor and the victim; and

(f) may hold a plea in abeyance, in accordance with the provisions of Chapter 2a, making treatment or any other requirement for the defendant a condition of that status.

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

(3) (a) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any defendant charged with a crime involving domestic violence is released from custody before trial, the court authorizing the release may issue an order:

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

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

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

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

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

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

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

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

(c) The court shall provide the victim with a certified copy of any order issued pursuant to this section if the victim can be located with reasonable effort.

(4) When a court dismisses criminal charges or a prosecutor moves to dismiss charges against a defendant accused of a domestic violence offense, the specific reasons for dismissal shall be recorded in the court file and made a part of the statewide domestic violence network described in Section **30-6-8**.

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

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

77-36-5. Sentencing -- Restricting contact with victim -- Electronic monitoring -- Counseling -- Cost assessed against defendant.

(1) When a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's contact with the victim, an order may be issued or, if one has already been issued, it may be extended for the length of the defendant's probation. The order shall be in writing, and the prosecutor shall provide a certified copy of that order to the victim.

(2) In determining its sentence the court, in addition to penalties otherwise provided by law, may require the defendant to participate in an electronic monitoring program.

(3) The court may also require the defendant to pay all or part of the costs of counseling incurred by the victim, as well as the costs for defendant's own counseling.

(4) The court shall:

(a) assess against the defendant, as restitution, any costs for services or treatment provided to the abused spouse by the Division of Child and Family Services under Section **62A-4a-106**; and

(b) order those costs to be paid directly to the division or its contracted provider.

(5) The court shall order the defendant to obtain and satisfactorily complete treatment or therapy in a domestic violence treatment program, as defined in Section **62A-2-101**, that is licensed by the Department of Human Services, unless the court finds that there is no licensed program reasonably available or that the treatment or therapy is not necessary.

77-36-5.1. Conditions of probation for person convicted of domestic violence offense.

(1) Before any perpetrator who has been convicted of a domestic violence offense may be placed on probation, the court shall consider the safety and protection of the victim and any member of the victim's family or household.

(2) The court may condition probation or a plea in abeyance on the perpetrator's compliance with one or more orders of the court which may include, but are not limited to, an order:

(a) enjoining the perpetrator from threatening to commit or committing acts of domestic violence against the victim or other family or household member;

(b) prohibiting the perpetrator from harassing, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly;

(c) requiring the perpetrator to stay away from the victim's residence, school, place of employment, and the premises of any of these, or a specified place frequented regularly by the victim or any designated family or household member;

(d) prohibiting the perpetrator from possessing or consuming alcohol or controlled substances;

(e) prohibiting the perpetrator from purchasing, using, or possessing a firearm or other specified weapon;

(f) directing the perpetrator to surrender any weapons that he owns or possesses;

(g) directing the perpetrator to participate in and complete, to the satisfaction of the court, a program of intervention for perpetrators, treatment for alcohol or substance abuse, or psychiatric or psychological treatment;

(h) directing the perpetrator to pay restitution to the victim; and

(i) imposing any other condition necessary to protect the victim and any other designated family or household member or to rehabilitate the perpetrator.

(3) The perpetrator is responsible for the costs of any condition of probation, according to his ability to pay.

(4) (a) Adult Probation and Parole, or other provider, shall immediately report to the court and notify the victim of any assault by the perpetrator, the perpetrator's failure to comply with any condition imposed by the court, and any threat of harm made by the perpetrator.

(b) Notification of the victim under Subsection (4)(a) shall consist of a good faith reasonable effort to provide prompt notification, including mailing a copy of the notification to the last-known address of the victim.

77-36-6. Enforcement of orders.

Each law enforcement agency in this state shall enforce all orders of the court issued pursuant to the requirements and procedures described in this chapter, and shall enforce all protective orders and ex parte protective orders issued pursuant to Title 30, Chapter 6. The requirements of this section apply statewide, regardless of the jurisdiction in which the order was issued or the location of the victim or the perpetrator.

77-36-7. Prosecutor to notify victim of decision as to prosecution.

(1) The prosecutor who is responsible for making the decision of whether to prosecute a case shall advise the victim, if the victim has requested notification, of the status of the victim's case and shall notify the victim of a decision within five days after the decision has been made.

(2) Notification to the victim that charges will not be filed against an alleged perpetrator shall include a description of the procedures available to the victim in that jurisdiction for initiation of criminal and other protective proceedings.

77-36-8. Peace officers' immunity from liability.

A peace officer may not be held liable in any civil action brought by a party to an incident of domestic violence for making or failing to make an arrest or for issuing or failing to issue a citation in accordance with this chapter, for enforcing in good faith an order of the court, or for acting or omitting to act in any other way in good faith under this chapter, in situations arising from an alleged incident of domestic violence.

77-36-9. Separability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

77-36-10. Authority to prosecute class A misdemeanor violations.

Alleged class A misdemeanor violations of this chapter may be prosecuted by city attorneys

Criminal Laws

76-5-106. Harassment.

(1) A person is guilty of harassment if, with intent to frighten or harass another, he communicates a written or recorded threat to commit any violent felony.

(2) Harassment is a class B misdemeanor.

76-5-106.5. Definitions -- Stalking -- Injunction -- Hearing.

(1) As used in this section:

(a) "Course of conduct" means repeatedly maintaining a visual or physical proximity to a person or repeatedly conveying verbal or written threats or threats implied by conduct or a combination thereof directed at or toward a person.

(b) "Immediate family" means a spouse, parent, child, sibling, or any other person who regularly resides in the household or who regularly resided in the household within the prior six months.

(c) "Repeatedly" means on two or more occasions.

(2) A person is guilty of stalking who:

(a) intentionally or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person:

(i) to fear bodily injury to himself or a member of his immediate family; or

(ii) to suffer emotional distress to himself or a member of his immediate family;

(b) has knowledge or should have knowledge that the specific person:

(i) will be placed in reasonable fear of bodily injury to himself or a member of his immediate family; or

(ii) will suffer emotional distress or a member of his immediate family will suffer emotional distress; and

(c) whose conduct:

(i) induces fear in the specific person of bodily injury to himself or a member of his immediate family; or

(ii) causes emotional distress in the specific person or a member of his immediate family.

(3) A person is also guilty of stalking who intentionally or knowingly violates a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions, or intentionally or knowingly violates a permanent criminal stalking injunction issued pursuant to this section.

(4) Stalking is a class A misdemeanor:

(a) upon the offender's first violation of Subsection (2); or

(b) if the offender violated a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions.

(5) Stalking is a third degree felony if the offender:

(a) has been previously convicted of an offense of stalking;

(b) has been convicted in another jurisdiction of an offense that is substantially similar to the offense of stalking;

(c) has been previously convicted of any felony offense in Utah or of any crime in another jurisdiction which if committed in Utah would be a felony, in which the victim of the stalking or a member of the victim's immediate family was also a victim of the previous felony offense; or

(d) violated a permanent criminal stalking injunction issued pursuant to Subsection (7).

(6) Stalking is a felony of the second degree if the offender:

(a) used a dangerous weapon as defined in Section **76-1-601** or used other means or force

likely to produce death or serious bodily injury, in the commission of the crime of stalking;

(b) has been previously convicted two or more times of the offense of stalking;

(c) has been convicted two or more times in another jurisdiction or jurisdictions of offenses that are substantially similar to the offense of stalking;

(d) has been convicted two or more times, in any combination, of offenses under Subsection (5); or

(e) has been previously convicted two or more times of felony offenses in Utah or of crimes in another jurisdiction or jurisdictions which, if committed in Utah, would be felonies, in which the victim of the stalking was also a victim of the previous felony offenses.

(7) A conviction for stalking or a plea accepted by the court and held in abeyance for a period of time shall operate as an application for a permanent criminal stalking injunction limiting the contact of the defendant and the victim.

(a) A permanent criminal stalking injunction shall be issued without a hearing unless the defendant requests a hearing at the time of the verdict, finding, or plea of guilty, guilty and mentally ill, plea of no contest, or acceptance of plea in abeyance. The court shall give the defendant notice of his right to request a hearing.

(i) If the defendant requests a hearing, it shall be held at the time of the verdict, finding, or plea of guilty, guilty and mentally ill, plea of no contest, or acceptance of plea in abeyance unless the victim requests otherwise, or for good cause.

(ii) If the verdict, finding, or plea of guilty, guilty and mentally ill, plea of no contest, or acceptance of plea in abeyance was entered in a justice court, a certified copy of the judgment and conviction or a certified copy of the court's order holding the plea in abeyance must be filed by the victim in the district court as an application and request for hearing for a permanent criminal stalking injunction.

(b) A permanent criminal stalking injunction may grant the following relief:

(i) an order restraining the defendant from entering the residence, property, school, or place of employment of the victim and requiring the defendant to stay away from the victim and members of the victim's immediate family or household and to stay away from any specified place that is named in the order and is frequented regularly by the victim; and

(ii) an order restraining the defendant from making contact with the victim, including an order forbidding the defendant from personally or through an agent initiating any communication likely to cause annoyance or alarm, including personal, written, or telephone contact with the victim, the victim's employers, employees, fellow workers, or others with whom communication would be likely to cause annoyance or alarm to the victim.

(c) A permanent criminal stalking injunction may be dissolved upon application of the victim to the court which granted the order.

(d) Notice of permanent criminal stalking injunctions issued pursuant to this section shall be sent by the court to the statewide warrants network or similar system.

(e) A permanent criminal stalking injunction issued pursuant to this section shall be effective statewide.

(f) Violation of an injunction issued pursuant to this section shall constitute an offense of stalking. Violations may be enforced in a civil action initiated by the stalking victim, a criminal action initiated by a prosecuting attorney, or both.

(g) Nothing in this section shall preclude the filing of a criminal information for stalking based on the same act which is the basis for the violation of the stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions, or permanent criminal stalking injunction.

76-5-108. Protective orders restraining abuse of another -- Violation.

(1) Any person who is the respondent or defendant subject to a protective order, child protective order, ex parte protective order, or ex parte child protective order issued under Title 30, Chapter 6, Cohabitant Abuse Act, or Title 78, Chapter 3a, Juvenile Court Act of 1996, Title 77, Chapter 36, Cohabitant Abuse Procedures Act, or a foreign protective order as described in Section 30-6-12, who intentionally or knowingly violates that order after having been properly served, is guilty of a class A misdemeanor, except as a greater penalty may be provided in Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

(2) Violation of an order as described in Subsection (1) is a domestic violence offense under Section 77-36-1 and subject to increased penalties in accordance with Section 77-36-1.1.

76-5-109.1. Commission of domestic violence in the presence of a child.

(1) As used in this section:

(a) "Cohabitant" has the same meaning as defined in Section 30-6-1.

(b) "Domestic violence" has the same meaning as in Section 77-36-1.

(c) "In the presence of a child" means:

(i) in the physical presence of a child; or

(ii) having knowledge that a child is present and may see or hear an act of domestic violence.

(2) A person is guilty of child abuse if the person:

(a) commits or attempts to commit criminal homicide, as defined in Section 76-5-201, against a cohabitant in the presence of a child; or

(b) intentionally causes serious bodily injury to a cohabitant or uses a dangerous weapon, as defined in Section 76-1-601, or other means or force likely to produce death or serious bodily injury against a cohabitant, in the presence of a child; or

(c) under circumstances not amounting to a violation of Subsection (2)(a) or (b), commits an act of domestic violence in the presence of a child.

(3) (a) A person who violates Subsection (2)(a) or (b) is guilty of a third degree felony.

(b) A person who violates Subsection (2)(c) is guilty of a class B misdemeanor.

(4) A charge under this section is separate and distinct from, and is in addition to, a charge of domestic violence where the victim is the cohabitant. Either or both charges may be filed by the prosecutor.

76-5-111. Abuse, neglect, or exploitation of a vulnerable adult -- Penalties.

(1) As used in this section:

(a) "Abandonment" means a knowing or intentional action or inaction, including desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or medical or other health care.

(b) "Abuse" means:

(i) attempting to cause harm, intentionally or knowingly causing harm, or intentionally or knowingly placing another in fear of imminent harm;

(ii) causing physical injury by knowing or intentional acts or omissions;

(iii) unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's orders or used as an unauthorized substitute for treatment, unless that conduct furthers the health and safety of the adult; or

(iv) deprivation of life-sustaining treatment, except:

(A) as provided in Title 75, Chapter 2, Part 11, Personal Choice and Living Will Act; or

(B) when informed consent, as defined in this section, has been obtained.

(c) "Business relationship" means a relationship between two or more individuals or entities where there exists an oral or written agreement for the exchange of goods or services.

(d) "Caretaker" means any person, entity, corporation, or public institution that assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision, medical or other health care, or other necessities. "Caretaker" includes a relative by blood or marriage, a household member, a person who is employed or who provides volunteer work, or a person who contracts or is under court order to provide care.

(e) "Deception" means:

(i) a misrepresentation or concealment:

(A) of a material fact relating to services rendered, disposition of property, or use of property intended to benefit a vulnerable adult;

(B) of the terms of a contract or agreement entered into with a vulnerable adult; or

(C) relating to the existing or preexisting condition of any property involved in a contract or agreement entered into with a vulnerable adult; or

(ii) the use or employment of any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit a vulnerable adult to enter into a contract or agreement.

(f) "Elder adult" means a person 65 years of age or older.

(g) "Endeavor" means to attempt or try.

(h) "Exploitation" means the offense described in Subsection (4).

(i) "Harm" means pain, mental anguish, emotional distress, hurt, physical or psychological damage, physical injury, suffering, or distress inflicted knowingly or intentionally.

(j) "Informed consent" means:

(i) a written expression by the person or authorized by the person, stating that the person fully understands the potential risks and benefits of the withdrawal of food, water, medication, medical services, shelter, cooling, heating, or other services necessary to maintain minimum physical or mental health, and that the person desires that the services be withdrawn. A written expression is valid only if the person is of sound mind when the consent is given, and the consent is witnessed by at least two individuals who do not benefit from the withdrawal of services; or

(ii) consent to withdraw food, water, medication, medical services, shelter, cooling, heating, or other services necessary to maintain minimum physical or mental health, as permitted by court order.

(k) "Intimidation" means communication conveyed through verbal or nonverbal conduct which threatens deprivation of money, food, clothing, medicine, shelter, social interaction, supervision, health care, or companionship, or which threatens isolation or harm.

(l) (i) "Isolation" means knowingly or intentionally preventing a vulnerable adult from having contact with another person by:

(A) preventing the vulnerable adult from receiving visitors, mail, or telephone calls, contrary to the express wishes of the vulnerable adult, including communicating to a visitor that the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing that communication to be false;

(B) physically restraining the vulnerable adult in order to prevent the vulnerable adult from meeting with a visitor; or

(C) making false or misleading statements to the vulnerable adult in order to induce the vulnerable adult to refuse to receive communication from visitors or other family members.

(ii) The term "isolation" does not include an act intended to protect the physical or mental

welfare of the vulnerable adult or an act performed pursuant to the treatment plan or instructions of a physician or other professional advisor of the vulnerable adult.

(m) "Lacks capacity to consent" means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause to the extent that a vulnerable adult lacks sufficient understanding of the nature or consequences of decisions concerning the adult's person or property.

(n) "Neglect" means:

(i) failure of a caretaker to provide nutrition, clothing, shelter, supervision, personal care, or dental or other health care, or failure to provide protection from health and safety hazards or maltreatment;

(ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and with the degree of care that a reasonable person in a like position would exercise;

(iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed consent, resulting in deprivation of food, water, medication, health care, shelter, cooling, heating, or other services necessary to maintain the vulnerable adult's well being;

(iv) intentional failure by a caretaker to carry out a prescribed treatment plan that results or could result in physical injury or physical harm; or

(v) abandonment by a caretaker.

(o) "Physical injury" includes damage to any bodily tissue caused by nontherapeutic conduct, to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition, or damage to any bodily tissue to the extent that the tissue cannot be restored to a sound and healthy condition. "Physical injury" includes skin bruising, a dislocation, physical pain, illness, impairment of physical function, a pressure sore, bleeding, malnutrition, dehydration, a burn, a bone fracture, a subdural hematoma, soft tissue swelling, injury to any internal organ, or any other physical condition that imperils the health or welfare of the vulnerable adult and is not a serious physical injury as defined in this section.

(p) "Position of trust and confidence" means the position of a person who:

(i) is a parent, spouse, adult child, or other relative by blood or marriage of a vulnerable adult;

(ii) is a joint tenant or tenant in common with a vulnerable adult;

(iii) has a legal or fiduciary relationship with a vulnerable adult, including a court-appointed or voluntary guardian, trustee, attorney, or conservator; or

(iv) is a caretaker of a vulnerable adult.

(q) "Serious physical injury" means any physical injury or set of physical injuries that:

(i) seriously impairs a vulnerable adult's health;

(ii) was caused by use of a dangerous weapon as defined in Section **76-1-601**;

(iii) involves physical torture or causes serious emotional harm to a vulnerable adult; or

(iv) creates a reasonable risk of death.

(r) "Sexual exploitation" means the production, distribution, possession, or possession with the intent to distribute material or a live performance depicting a nude or partially nude vulnerable adult who lacks the capacity to consent, for the purpose of sexual arousal of any person.

(s) "Undue influence" occurs when a person uses the person's role, relationship, or power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a vulnerable adult, or uses the person's role, relationship, or power to gain control deceptively over the decision making of the vulnerable adult.

(t) "Vulnerable adult" means an elder adult, or an adult 18 years of age or older who has a mental or physical impairment which substantially affects that person's ability to:

(i) provide personal protection;

- (ii) provide necessities such as food, shelter, clothing, or medical or other health care;
- (iii) obtain services necessary for health, safety, or welfare;
- (iv) carry out the activities of daily living;
- (v) manage the adult's own resources; or
- (vi) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(2) Under any circumstances likely to produce death or serious physical injury, any person, including a caretaker, who causes a vulnerable adult to suffer serious physical injury or, having the care or custody of a vulnerable adult, causes or permits that adult's person or health to be injured, or causes or permits a vulnerable adult to be placed in a situation where the adult's person or health is endangered, is guilty of the offense of aggravated abuse of a vulnerable adult as follows:

- (a) if done intentionally or knowingly, the offense is a second degree felony;
- (b) if done recklessly, the offense is third degree felony; and
- (c) if done with criminal negligence, the offense is a class A misdemeanor.

(3) Under circumstances other than those likely to produce death or serious physical injury any person, including a caretaker, who causes a vulnerable adult to suffer harm, abuse, or neglect; or, having the care or custody of a vulnerable adult, causes or permits that adult's person or health to be injured, abused, or neglected, or causes or permits a vulnerable adult to be placed in a situation where the adult's person or health is endangered, is guilty of the offense of abuse of a vulnerable adult as follows:

- (a) if done intentionally or knowingly, the offense is a class A misdemeanor;
- (b) if done recklessly, the offense is a class B misdemeanor; and
- (c) if done with criminal negligence, the offense is a class C misdemeanor.

(4) (a) A person commits the offense of exploitation of a vulnerable adult when the person:

(i) is in a position of trust and confidence, or has a business relationship, with the vulnerable adult or has undue influence over the vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, credit, assets, or other property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the adult's property, for the benefit of someone other than the vulnerable adult;

(ii) knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, or assists another in obtaining or using or endeavoring to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of his property for the benefit of someone other than the vulnerable adult;

(iii) unjustly or improperly uses or manages the resources of a vulnerable adult for the profit or advantage of someone other than the vulnerable adult;

(iv) unjustly or improperly uses a vulnerable adult's power of attorney or guardianship for the profit or advantage of someone other than the vulnerable adult;

(v) involves a vulnerable adult who lacks the capacity to consent in the facilitation or furtherance of any criminal activity; or

(vi) commits sexual exploitation of a vulnerable adult.

(b) A person is guilty of the offense of exploitation of a vulnerable adult as follows:

(i) if done intentionally or knowingly and the aggregate value of the resources used or the profit made is or exceeds \$5,000, the offense is a second degree felony;

(ii) if done intentionally or knowingly and the aggregate value of the resources used or the profit made is less than \$5,000 or cannot be determined, the offense is a third degree felony;

(iii) if done recklessly, the offense is a class A misdemeanor; or

(iv) if done with criminal negligence, the offense is a class B misdemeanor.

(5) It does not constitute a defense to a prosecution for any violation of this section that the accused did not know the age of the victim.

(6) An adult is not considered abused, neglected, or a vulnerable adult for the reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of medical care.

76-5-111.1. Reporting requirements.

(1) Any person, including but not limited to, a social worker, physician, psychologist, nurse, teacher, or employee of a private or public facility serving adults, who has reason to believe that any disabled or elder adult has been the subject of abuse, emotional or psychological abuse, neglect, or exploitation shall immediately notify the nearest peace officer, law enforcement agency, or local office of Adult Protective Services within the Department of Human Services, Division of Aging and Adult Services.

(2) Anyone who makes that report in good faith is immune from civil liability in connection with the report.

(3) (a) When the initial report is made to a peace officer or law enforcement agency, and the disabled or elder adult requires protection, the officer or agency shall immediately notify the nearest local office of Adult Protective Services and that office shall coordinate its investigation with law enforcement, and provide protection to the disabled or elder adult as necessary.

(b) When the initial report involves a resident of a long-term care facility, as defined in Section **62A-3-202**, the local long-term care ombudsman within the Department of Human Services, Division of Aging and Adult Services, shall be immediately notified. The ombudsman and the local Adult Protective Services office shall cooperate in conducting the investigation.

(c) When the initial report or investigation by an Adult Protective Services office indicates that criminal abuse, neglect, or exploitation, as defined in Section **76-5-111** has occurred, or that any other criminal offense against a disabled or elder adult has occurred, the local Adult Protective Services office shall immediately notify the local law enforcement agency. That law enforcement agency shall initiate an investigation in cooperation with the local Adult Protective Services office.

(4) A person who is required to report suspected abuse, emotional or psychological abuse, neglect, or exploitation of a disabled or elder adult under Subsection (1), and who willfully fails to do so, is guilty of a class B misdemeanor.

76-5-112.5. Endangerment of child or elder adult.

(1) For purposes of this section:

(a) "Chemical substance" means a substance intended to be used as a precursor in the manufacture of a controlled substance, or any other chemical intended to be used in the manufacture of a controlled substance. Intent under this subsection may be demonstrated by the substance's use, quantity, manner of storage, or proximity to other precursors, or to manufacturing equipment.

(b) "Child" means the same as that term is defined in Subsection **76-5-109(1)(a)**.

(c) "Controlled substance" means the same as that term is defined in Section **58-37-2**.

(d) "Drug paraphernalia" means the same as that term is defined in Section **58-37a-3**.

(e) "Elder adult" means the same as that term is defined in Section **76-5-111**.

(2) Unless a greater penalty is otherwise provided by law, any person who knowingly or intentionally causes or permits a child or elder adult to be exposed to, to ingest or inhale, or to

have contact with a controlled substance, chemical substance, or drug paraphernalia as defined in Subsection (1), is guilty of a felony of the third degree.

(3) Unless a greater penalty is otherwise provided by law, any person who violates Subsection (2), and a child or elder adult actually suffers bodily injury, substantial bodily injury, or serious bodily injury by exposure to, ingestion of, inhalation of, or contact with a controlled substance, chemical substance, or drug paraphernalia, is guilty of a felony of the second degree unless the exposure, ingestion, inhalation, or contact results in the death of the child or elder adult, in which case the person is guilty of a felony of the first degree.

(4) (a) It is an affirmative defense to a violation of this section that the controlled substance was provided by lawful prescription for the child or elder adult, and that it was administered to the child or elder adult in accordance with the prescription instructions provided with the controlled substance.

(b) As used in this Subsection (4), "prescription" has the same definition as in Section 58-37-2.

76-9-201. Telephone harassment.

(1) A person is guilty of telephone harassment and subject to prosecution in the jurisdiction where the telephone call originated or was received if with intent to annoy, alarm, intimidate, offend, abuse, threaten, harass, or frighten another at the called number, the person:

(a) makes repeated telephone calls, whether or not a conversation ensues, or after having been told not to call back, causes the telephone of another to ring repeatedly or continuously;

(b) makes a telephone call and insults, taunts, or challenges the recipient of the telephone call or any person at the called number in a manner likely to provoke a violent or disorderly response; or

(c) makes a telephone call and threatens to inflict injury, physical harm, or damage to any person or the property of any person.

(2) Telephone harassment is a class B misdemeanor.

76-9-702.7. Voyeurism offense -- Penalties -- Exemptions.

(1) A person is guilty of voyeurism who intentionally uses a camcorder, motion picture camera, photographic camera of any type, or other equipment that is concealed to secretly or surreptitiously videotape, film, photograph, or record by electronic means an individual:

(a) for the purpose of viewing any portion of the individual's body regarding which the individual has a reasonable expectation of privacy, whether or not that portion of the body is covered with clothing;

(b) without the knowledge or consent of the individual;

(c) with the intent to invade the privacy of the individual; and

(d) under circumstances in which the individual has a reasonable expectation of privacy.

(2) A violation of Subsection (1) is a class A misdemeanor, except that a violation of Subsection (1) committed against a child under 14 years of age is a third degree felony.

(3) Distribution or sale of any images, including in print, electronic, magnetic, or digital format, obtained under Subsection (1) by transmission, display, or dissemination is a third degree felony, except that if the violation of this Subsection (3) includes images of a child under 14 years of age, the violation is a second degree felony.

(4) A person is guilty of voyeurism who intentionally uses a mirror or other reflective device that is concealed, a two-way mirror, a hole or opening, or any instrumentality to secretly or surreptitiously view an individual:

(a) for the purpose of viewing any portion of the individual's body regarding which the

individual has a reasonable expectation of privacy, whether or not that portion of the body is covered with clothing;

(b) without the knowledge or consent of the individual;

(c) with the intent to invade the privacy of the individual; and

(d) under circumstances in which the individual has a reasonable expectation of privacy.

(5) A violation of Subsection (4) is a class B misdemeanor, except that a violation of Subsection (4) committed against a child under 14 years of age is a class A misdemeanor.

Bail Laws

77-36-2.5. Conditions for release after arrest for domestic violence.

(1) Upon arrest for domestic violence, a person may not be released on bail, recognizance, or otherwise prior to the close of the next court day following the arrest, unless as a condition of that release he is ordered by the court or agrees in writing that until the expiration of that time he will:

(a) have no personal contact with the alleged victim;

(b) not threaten or harass the alleged victim; and

(c) not knowingly enter onto the premises of the alleged victim's residence or any premises temporarily occupied by the alleged victim.

(2) As a condition of release, the court may order the defendant to participate in an electronic monitoring program and pay the costs associated with the program.

(3) (a) Subsequent to an arrest for domestic violence, an alleged victim may waive in writing any or all of the requirements described in Subsection (1). Upon waiver, those requirements shall not apply to the alleged perpetrator.

(b) A court or magistrate may modify the requirements described in Subsections (1)(a) or (c), in writing or on the record, and only for good cause shown.

(4) (a) Whenever a person is released pursuant to Subsection (1), the releasing agency shall notify the arresting law enforcement agency of the release, conditions of release, and any available information concerning the location of the victim. The arresting law enforcement agency shall then make reasonable effort to notify the victim of that release.

(b) (i) When a person is released pursuant to Subsection (1) based on a written agreement, the releasing agency shall transmit that information to the statewide domestic violence network described in Section **30-6-8**.

(ii) When a person is released pursuant to Subsection (1) based upon a court order, the court shall transmit that order to the statewide domestic violence network described in Section **30-6-8**.

(c) This Subsection (4) does not create or increase liability of a law enforcement officer or agency, and the good faith immunity provided by Section **77-36-8** is applicable.

(5) (a) If a law enforcement officer has probable cause to believe that a person has violated a court order or agreement executed pursuant to Subsection (1) the officer shall, without a warrant, arrest the alleged violator.

(b) Any person who knowingly violates a court order or agreement executed pursuant to Subsection (1) shall be guilty as follows:

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

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

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

(6) An individual who was originally arrested for a felony under this chapter and released pursuant to this section, may subsequently be held without bail if there is substantial evidence to support a new felony charge against him.

(7) At the time an arrest for domestic violence is made, the arresting officer shall provide both the alleged victim and the alleged perpetrator with written notice containing the following information:

(a) the requirements described in Subsection (1), and notice that those requirements shall be ordered by a court or must be agreed to by the alleged perpetrator prior to release;

- (b) notification of the penalties for violation of the court order or any agreement executed under Subsection (1);
- (c) the date and time, absent modification by a court or magistrate, that the requirements expire;
- (d) the address of the appropriate court in the district or county in which the alleged victim resides;
- (e) the availability and effect of any waiver of the requirements; and
- (f) information regarding the availability of and procedures for obtaining civil and criminal protective orders with or without the assistance of an attorney.

(8) In addition to the provisions of Subsections (1) through (6), because of the unique and highly emotional nature of domestic violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of violence subsequent to the release of an offender who has been arrested for domestic violence, it is the finding of the Legislature that domestic violence crimes, as defined in Section 77-36-1, are crimes for which bail may be denied if there is substantial evidence to support the charge, and if the court finds by clear and convincing evidence that the alleged perpetrator would constitute a substantial danger to an alleged victim of domestic violence if released on bail. If bail is denied under this Subsection (8), it shall be under the terms and conditions described in Subsections (1) through (6).

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

(1) A person charged with or arrested for a criminal offense shall be admitted to bail as a matter of right, except if the person is charged with a:

- (a) capital felony, when the court finds there is substantial evidence to support the charge;
- (b) felony committed while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when the court finds there is substantial evidence to support the current felony charge;
- (c) felony when there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person or to the community, or is likely to flee the jurisdiction of the court, if released on bail; or
- (d) felony when the court finds there is substantial evidence to support the charge and it finds by clear and convincing evidence that the person violated a material condition of release while previously on bail.

(2) Any person who may be admitted to bail may be released either on his own recognizance or upon posting bail, on condition that he appear in court for future court proceedings in the case, and on any other conditions imposed in the discretion of the magistrate or court that will reasonably:

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

(3) The initial order denying or fixing the amount of bail shall be issued by the magistrate or court issuing the warrant of arrest or by the magistrate or court presiding over the accused's first judicial appearance. A person arrested for a violation of a criminal protective order issued pursuant to Section **77-36-2.5** may not be released prior to the accused's first judicial appearance.

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

- (a) the indictment or information;

- (b) any sworn probable cause statement;
- (c) information provided by any pretrial services agency; or
- (d) any other reliable record or source.

(5) A motion to modify the initial order may be made by a party at any time upon notice to the opposing party sufficient to permit the opposing party to prepare for hearing and to permit any victim to be notified and be present. Hearing on a motion to modify may be held in conjunction with a preliminary hearing or any other pretrial hearing. The magistrate or court may rely on information as provided in Subsections (4)(a) through (d) and may base its ruling on evidence provided at the hearing so long as each party is provided an opportunity to present additional evidence or information relevant to bail.

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

(7) An appeal may be taken from an order of any court denying bail to the Supreme Court, which shall review the determination under Subsection (1).

Juvenile Court Laws

62A-4a-412. Reports and information confidential.

(1) Except as otherwise provided in this chapter, reports made pursuant to this part, as well as any other information in the possession of the division obtained as the result of a report are private, protected, or controlled records under Title 63, Chapter 2, Government Records Access and Management Act, and may only be made available to:

(a) a police or law enforcement agency investigating a report of known or suspected child abuse or neglect;

(b) a physician who reasonably believes that a child may be the subject of abuse or neglect;

(c) an agency that has responsibility or authority to care for, treat, or supervise a child who is the subject of a report;

(d) a contract provider that has a written contract with the division to render services to a child who is the subject of a report;

(e) any subject of the report, the natural parents of the minor, and the guardian ad litem;

(f) a court, upon a finding that access to the records may be necessary for the determination of an issue before it, provided that in a divorce, custody, or related proceeding between private parties, the record alone is:

(i) limited to objective or undisputed facts that were verified at the time of the investigation; and

(ii) devoid of conclusions drawn by the division or any of its workers on the ultimate issue of whether or not a person's acts or omissions constituted any level of abuse or neglect of another person;

(g) an office of the public prosecutor or its deputies in performing an official duty;

(h) a person authorized by a Children's Justice Center, for the purposes described in Section **67-5b-102**;

(i) a person engaged in bona fide research, when approved by the director of the division, if the information does not include names and addresses;

(j) the State Office of Education, acting on behalf of itself or on behalf of a school district, for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, limited to information with substantiated findings involving an alleged sexual offense, an alleged felony or class A misdemeanor drug offense, or any alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person, and with the understanding that the office must provide the subject of a report received under Subsection (1)(k) with an opportunity to respond to the report before making a decision concerning licensure or employment;

(k) any person identified in the report as a perpetrator or possible perpetrator of child abuse or neglect, after being advised of the screening prohibition in Subsection (2); and

(l) a person filing a petition for a child protective order on behalf of a minor who is the subject of the report.

(2) (a) No person, unless listed in Subsection (1), may request another person to obtain or release a report or any other information in the possession of the division obtained as a result of the report that is available under Subsection (1)(k) to screen for potential perpetrators of child abuse or neglect.

(b) A person who requests information knowing that it is a violation of Subsection (2)(a) to do so is subject to the criminal penalty in Subsection (4).

(3) Except as provided in Section **62A-4a-116.3**, the division and law enforcement officials shall ensure the anonymity of the person or persons making the initial report and any others involved in its subsequent investigation.

(4) Any person who wilfully permits, or aides and abets the release of data or information obtained as a result of this part, in the possession of the division or contained on any part of the Management Information System, in violation of this part or Sections **62A-4a-116** through **62A-4a-116.3**, is guilty of a class C misdemeanor.

(5) The physician-patient privilege is not a ground for excluding evidence regarding a child's injuries or the cause of those injuries, in any proceeding resulting from a report made in good faith pursuant to this part.

78-3a-104. Jurisdiction of juvenile court -- Original -- Exclusive.

(1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings concerning:

(a) a minor who has violated any federal, state, or local law or municipal ordinance or a person younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age, regardless of where the violation occurred, excluding traffic laws and boating and ordinances;

(b) a person 21 years of age or older who has failed or refused to comply with an order of the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's 21st birthday; however, the continuing jurisdiction is limited to causing compliance with existing orders;

(c) a minor who is an abused child, neglected child, or dependent child, as those terms are defined in Section **78-3a-103**;

(d) a protective order for a minor pursuant to the provisions of Title 78, Chapter 3h, Child Protective Orders;

(e) appointment of a guardian of the person or other guardian of a minor who comes within the court's jurisdiction under other provisions of this section;

(f) the termination of the legal parent-child relationship in accordance with Part 4, Termination of Parental Rights Act, including termination of residual parental rights and duties;

(g) the treatment or commitment of a mentally retarded minor;

(h) a minor who is a habitual truant from school;

(i) the judicial consent to the marriage of a minor under age 16 upon a determination of voluntariness or where otherwise required by law, employment, or enlistment of a minor when consent is required by law;

(j) any parent or parents of a minor committed to a secure youth corrections facility, to order, at the discretion of the court and on the recommendation of a secure youth corrections facility, the parent or parents of a minor committed to a secure youth corrections facility for a custodial term, to undergo group rehabilitation therapy under the direction of a secure youth corrections facility therapist, who has supervision of that parent's or parents' minor, or any other therapist the court may direct, for a period directed by the court as recommended by a secure youth corrections facility;

(k) a minor under Title 55, Chapter 12, Interstate Compact on Juveniles;

(l) the treatment or commitment of a mentally ill child. The court may commit a child to the physical custody of a local mental health authority in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health. The court may not commit a child directly to the Utah State Hospital;

(m) the commitment of a minor in accordance with Section **62A-15-301**;

(n) de novo review of final agency actions resulting from an informal adjudicative proceeding as provided in Section **63-46b-15**; and

(o) adoptions conducted in accordance with the procedures described in Title 78, Chapter

30, Adoption, when the juvenile court has previously entered an order terminating the rights of a parent and finds that adoption is in the best interest of the minor.

(2) In addition to the provisions of Subsection (1)(a) the juvenile court has exclusive jurisdiction over any traffic or boating offense committed by a minor under 16 years of age and concurrent jurisdiction over all other traffic or boating offenses committed by a minor 16 years of age or older, except that the court shall have exclusive jurisdiction over the following offenses committed by a minor under 18 years of age:

(a) Section **76-5-207**, automobile homicide;

(b) Section **41-6-44**, operating a vehicle while under the influence of alcohol or drugs;

(c) Section **41-6-45**, reckless driving or Section **73-18-12**, reckless operation;

(d) Section **41-1a-1314**, unauthorized control over a motor vehicle, trailer, or semitrailer for an extended period of time; and

(e) Section **41-6-13.5** or **73-18-20**, fleeing a peace officer.

(3) The court also has jurisdiction over traffic and boating offenses that are part of a single criminal episode filed in a petition that contains an offense over which the court has jurisdiction.

(4) The juvenile court has jurisdiction over an ungovernable or runaway minor who is referred to it by the Division of Child and Family Services or by public or private agencies that contract with the division to provide services to that minor where, despite earnest and persistent efforts by the division or agency, the minor has demonstrated that he:

(a) is beyond the control of his parent, guardian, lawful custodian, or school authorities to the extent that his behavior or condition endangers his own welfare or the welfare of others; or

(b) has run away from home.

(5) This section does not restrict the right of access to the juvenile court by private agencies or other persons.

(6) The juvenile court has jurisdiction of all magistrate functions relative to cases arising under Section **78-3a-602**.

(7) The juvenile court has jurisdiction to make a finding of substantiated, unsubstantiated, or without merit, in accordance with Section **78-3a-320**.

78-3a-105. Concurrent jurisdiction -- District court and juvenile court.

(1) The district court or other court has concurrent jurisdiction with the juvenile court as follows:

(a) when a person who is 18 years of age or older and who is under the continuing jurisdiction of the juvenile court under Section **78-3a-118** violates any federal, state, or local law or municipal ordinance; and

(b) in establishing paternity and ordering testing for the purposes of establishing paternity, in accordance with Title 78, Chapter 45a, Uniform Act on Paternity, with regard to proceedings initiated under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 4, Termination of Parental Rights Act.

(2) The juvenile court has jurisdiction over petitions to modify a minor's birth certificate if the court otherwise has jurisdiction over the minor.

(3) This section does not deprive the district court of jurisdiction to appoint a guardian for a minor, or to determine the support, custody, and parent-time of a minor upon writ of habeas corpus or when the question of support, custody, and parent-time is incidental to the determination of a cause in the district court.

(4) (a) Where a support, custody, or parent-time award has been made by a district court in a divorce action or other proceeding, and the jurisdiction of the district court in the case is continuing, the juvenile court may acquire jurisdiction in a case involving the same minor if the

minor is dependent, abused, neglected, or otherwise comes within the jurisdiction of the juvenile court under Section **78-3a-104**.

(b) The juvenile court may, by order, change the custody, support, parent-time, and visitation rights previously ordered in the district court as necessary to implement the order of the juvenile court for the safety and welfare of the minor. The juvenile court order remains in effect so long as the jurisdiction of the juvenile court continues.

(c) When a copy of the findings and order of the juvenile court has been filed with the district court, the findings and order of the juvenile court are binding on the parties to the divorce action as though entered in the district court.

(5) The juvenile court has jurisdiction over questions of custody, support, and parent-time, of a minor who comes within the court's jurisdiction under this section or Section **78-3a-104**.

78-3a-118 (Superseded 07/01/04). Adjudication of jurisdiction of juvenile court -- Disposition of cases -- Enumeration of possible court orders -- Considerations of court -- Obtaining DNA sample.

(1) (a) When a minor is found to come within the provisions of Section **78-3a-104**, the court shall so adjudicate. The court shall make a finding of the facts upon which it bases its jurisdiction over the minor. However, in cases within the provisions of Subsection **78-3a-104(1)**, findings of fact are not necessary.

(b) If the court adjudicates a minor for a crime of violence or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided to the school superintendent of the district in which the minor resides or attends school. Notice shall be made to the district superintendent within three days of the adjudication and shall include the specific offenses for which the minor was adjudicated.

(2) Upon adjudication the court may make the following dispositions by court order:

(a) (i) The court may place the minor on probation or under protective supervision in the minor's own home and upon conditions determined by the court, including compensatory service as provided in Section **78-11-20.7**.

(ii) The court may place the minor in state supervision with the probation department of the court, under the legal custody of:

- (A) his parent or guardian;
- (B) the Division of Youth Corrections; or
- (C) the Division of Child and Family Services.

(iii) If the court orders probation or state supervision, the court shall direct that notice of its order be provided to designated persons in the local law enforcement agency and the school or transferee school, if applicable, which the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iv) Any employee of the local law enforcement agency and the school which the minor attends who discloses the court's order of probation is not:

(A) civilly liable except when the disclosure constitutes fraud or malice as provided in Section **63-30-4**; and

(B) civilly or criminally liable except when the disclosure constitutes a knowing violation of Section **63-2-801**.

(b) The court may place the minor in the legal custody of a relative or other suitable person, with or without probation or protective supervision, but the juvenile court may not assume the function of developing foster home services.

(c) (i) The court may:

(A) vest legal custody of the minor in the Division of Child and Family Services, Division of Youth Corrections, or the Division of Substance Abuse and Mental Health; and

(B) order the Department of Human Services to provide dispositional recommendations and services.

(ii) For minors who may qualify for services from two or more divisions within the Department of Human Services, the court may vest legal custody with the department.

(iii) (A) Minors who are committed to the custody of the Division of Child and Family Services on grounds other than abuse or neglect are subject to the provisions of Title 78, Chapter 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title 62A, Chapter 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

(B) Prior to the court entering an order to place a minor in the custody of the Division of Child and Family Services on grounds other than abuse or neglect, the court shall provide the division with notice of the hearing no later than five days before the time specified for the hearing so the division may attend the hearing.

(C) Prior to committing a minor to the custody of the Division of Child and Family Services, the court shall make a finding as to what reasonable efforts have been attempted to prevent the minor's removal from his home.

(d) (i) The court may commit the minor to the Division of Youth Corrections for secure confinement.

(ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or dependency under Subsection **78-3a-104(1)(c)** may not be committed to the Division of Youth Corrections.

(e) The court may commit the minor, subject to the court retaining continuing jurisdiction over him, to the temporary custody of the Division of Youth Corrections for observation and evaluation for a period not to exceed 45 days, which period may be extended up to 15 days at the request of the director of the Division of Youth Corrections.

(f) (i) The court may commit the minor to a place of detention or an alternative to detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction over the minor. This commitment may be stayed or suspended upon conditions ordered by the court.

(ii) This Subsection (2)(f) applies only to those minors adjudicated for:

(A) an act which if committed by an adult would be a criminal offense; or

(B) contempt of court under Section **78-3a-901**.

(g) The court may vest legal custody of an abused, neglected, or dependent minor in the Division of Child and Family Services or any other appropriate person in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

(h) The court may place the minor on a ranch or forestry camp, or similar facility for care and also for work, if possible, if the person, agency, or association operating the facility has been approved or has otherwise complied with all applicable state and local laws. A minor placed in a forestry camp or similar facility may be required to work on fire prevention, forestation and reforestation, recreational works, forest roads, and on other works on or off the grounds of the facility and may be paid wages, subject to the approval of and under conditions set by the court.

(i) (A) The court may order the minor to repair, replace, or otherwise make restitution for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in Section **78-3a-318** and impose fines in limited amounts.

(B) The court may also require the minor to reimburse an individual, entity, or governmental agency who offered and paid a reward to a person or persons for providing information

resulting in a court adjudication that the minor is within the jurisdiction of the juvenile court due to the commission of a criminal offense.

(C) If a minor has been returned to this state under the Interstate Compact on Juveniles, the court may order the minor to make restitution for costs expended by any governmental entity for the return.

(j) The court may issue orders necessary for the collection of restitution and fines ordered by the court, including garnishments, wage withholdings, and executions.

(k) (i) The court may through its probation department encourage the development of employment or work programs to enable minors to fulfill their obligations under Subsection (2)(i) and for other purposes considered desirable by the court.

(ii) Consistent with the order of the court, the probation officer may permit the minor found to be within the jurisdiction of the court to participate in a program of work restitution or compensatory service in lieu of paying part or all of the fine imposed by the court.

(l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in addition to any other disposition authorized by this section:

(A) restrain the minor from driving for periods of time the court considers necessary; and

(B) take possession of the minor's driver license.

(ii) The court may enter any other disposition under Subsection (2)(l)(i); however, the suspension of driving privileges for an offense under Section **78-3a-506** are governed only by Section **78-3a-506**.

(m) (i) When a minor is found within the jurisdiction of the juvenile court under Section **78-3a-104** because of violating Section **58-37-8**, Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(ii) When a minor is found within the jurisdiction of the juvenile court under Section **78-3a-104** because of a violation of Section **32A-12-209** or Subsection **76-9-701(1)**, the court may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(n) The court may order that the minor be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he receive other special care. For these purposes the court may place the minor in a hospital or other suitable facility.

(o) (i) The court may appoint a guardian for the minor if it appears necessary in the interest of the minor, and may appoint as guardian a public or private institution or agency in which legal custody of the minor is vested.

(ii) In placing a minor under the guardianship or legal custody of an individual or of a private agency or institution, the court shall give primary consideration to the welfare of the minor. When practicable, the court may take into consideration the religious preferences of the minor and of the minor's parents.

(p) (i) In support of a decree under Section **78-3a-104**, the court may order reasonable conditions to be complied with by the parents or guardian, the minor, the minor's custodian, or any other person who has been made a party to the proceedings. Conditions may include:

(A) parent-time by the parents or one parent;

(B) restrictions on the minor's associates;

(C) restrictions on the minor's occupation and other activities; and

(D) requirements to be observed by the parents or custodian.

(ii) A minor whose parents or guardians successfully complete a family or other counseling program may be credited by the court for detention, confinement, or probation time.

(q) The court may order the minor to be committed to the physical custody of a local mental health authority, in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(r) (i) The court may make an order committing a minor within its jurisdiction to the Utah State Developmental Center if the minor has mental retardation in accordance with the provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility.

(ii) The court shall follow the procedure applicable in the district courts with respect to judicial commitments to the Utah State Developmental Center when ordering a commitment under Subsection (2)(r)(i).

(s) The court may terminate all parental rights upon a finding of compliance with the provisions of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

(t) The court may make any other reasonable orders for the best interest of the minor or as required for the protection of the public, except that a person younger than 18 years of age may not be committed to jail or prison.

(u) The court may combine the dispositions listed in this section if they are compatible.

(v) Before depriving any parent of custody, the court shall give due consideration to the rights of parents concerning their minor. The court may transfer custody of a minor to another person, agency, or institution in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

(w) Except as provided in Subsection (2)(y)(i), an order under this section for probation or placement of a minor with an individual or an agency shall include a date certain for a review of the case by the court. A new date shall be set upon each review.

(x) In reviewing foster home placements, special attention shall be given to making adoptable minors available for adoption without delay.

(y) (i) The juvenile court may enter an order of permanent custody and guardianship with a relative or individual of a minor where the court has previously acquired jurisdiction as a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an order for child support on behalf of the minor child against the natural or adoptive parents of the child.

(ii) Orders under Subsection (2)(y)(i):

(A) shall remain in effect until the minor reaches majority;

(B) are not subject to review under Section **78-3a-119**; and

(C) may be modified by petition or motion as provided in Section **78-3a-903**.

(iii) Orders permanently terminating the rights of a parent, guardian, or custodian and permanent orders of custody and guardianship do not expire with a termination of jurisdiction of the juvenile court.

(3) In addition to the dispositions described in Subsection (2), when a minor comes within the court's jurisdiction he may be given a choice by the court to serve in the National Guard in lieu of other sanctions, provided:

(a) the minor meets the current entrance qualifications for service in the National Guard as determined by a recruiter, whose determination is final;

(b) the minor is not under the jurisdiction of the court for any act that:

(i) would be a felony if committed by an adult;

(ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

- (iii) was committed with a weapon; and
- (c) the court retains jurisdiction over the minor under conditions set by the court and agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.
- (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction of the court as described in Subsection **53-10-403**(3). The specimen shall be obtained by designated employees of the court or, if the minor is in the legal custody of the Division of Youth Corrections, then by designated employees of the division under Subsection **53-10-404**(5)(b).
- (b) The responsible agency shall ensure that employees designated to collect the saliva DNA specimens receive appropriate training and that the specimens are obtained in accordance with accepted protocol.
- (c) Reimbursements paid under Subsection **53-10-404**(2)(a) shall be placed in the DNA Specimen Restricted Account created in Section **53-10-407**.
- (d) Payment of the reimbursement is second in priority to payments the minor is ordered to make for restitution under this section and treatment under Section **78-3a-318**.

78-3a-305. Petition filed -- Protective orders.

- (1) Any interested person may file a petition to commence proceedings in the juvenile court alleging that a minor is abused, neglected, or dependent. The person shall first make a referral with the division.
- (2) (a) If the child who is the subject of a petition was removed from his home by the Division of Child and Family Services that petition shall be filed on or before the date of the initial shelter hearing described in Section **78-3a-306**.
- (b) If a petition is requested by the division, the attorney general shall file the petition within 72 hours of the completion of the investigation and request, excluding weekends and holidays, if:
 - (i) the child who is the subject of the requested petition has not been removed from his home by the division; and
 - (ii) without an expedited hearing and services ordered under the protective supervision of the court, the child will likely be taken into protective custody.
- (3) The petition shall be verified, and contain all of the following:
 - (a) the name, age, and address, if any, of the minor upon whose behalf the petition is brought;
 - (b) the names and addresses, if known to the petitioner, of both parents and any guardian of the minor;
 - (c) a concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is abused, neglected, or dependent; and
 - (d) a statement regarding whether the minor is in protective custody, and if so, the date and precise time the minor was taken into protective custody.

78-3h-101. Definitions.

As used in this chapter:

- (1) "Court" means the juvenile court.
- (2) "Division" means the Division of Child and Family Services.

78-3h-102. Petition -- Ex parte determination -- Guardian ad litem -- Referral to division.

- (1) Any interested person may file a petition for a protective order on behalf of a child who has been abused, sexually abused, neglected, or abandoned or is in imminent danger of being abused, sexually abused, neglected, or abandoned. The petitioner shall first make a referral to

the division.

(2) Upon the filing of a petition, the court shall immediately determine, based on the evidence and information presented, whether the minor has been abused, sexually abused, neglected, or abandoned or is in imminent danger of being abused, sexually abused, neglected, or abandoned. If so, the court shall enter an ex parte child protective order.

(3) The court may appoint an attorney guardian ad litem for the child who is the subject of the petition.

78-3h-103. Hearing.

(1) The court shall schedule a hearing within 20 days after the ex parte determination.

(2) The petitioner shall serve a copy of the petition, ex parte child protective order, and notice of hearing on the respondent, the minor's parent or guardian, and the guardian ad litem. The notice shall contain:

(a) the name and address of the person to whom it is directed;

(b) the date, time, and place of the hearing;

(c) the name of the minor on whose behalf a petition is being brought; and

(d) a statement that a person is entitled to have an attorney present at the hearing.

(3) The court shall provide an opportunity for any person having relevant knowledge to present evidence or information. The court may hear statements by counsel.

(4) An agent of the division served with a subpoena in compliance with the Utah Rules of Civil Procedure shall testify in accordance with the Utah Rules of Evidence.

(5) If the court determines, based on a preponderance of the evidence, that the minor has been abused, sexually abused, neglected, or abandoned or is in imminent danger of being abused, sexually abused, neglected, or abandoned, the court shall enter a child protective order. With the exception of the provisions of Section **78-3a-320**, a child protective order does not constitute an adjudication of abuse, neglect, or dependency under Title 78, Chapter 3a, Part 3, Abuse Neglect and Dependency Proceedings.

78-3h-104. Content of order.

(1) A child protective order or an ex parte child protective order may contain the following provisions the violation of which is a class A misdemeanor under Section **77-36-2.4**:

(a) enjoin the respondent from threatening to commit or committing abuse or neglect of the minor;

(b) prohibit the respondent from harassing, telephoning, contacting, or otherwise communicating with the minor, directly or indirectly;

(c) prohibit the respondent from entering or remaining upon the residence, school, or place of employment of the minor and the premises of any of these or any specified place frequented by the minor;

(d) upon finding that the respondent's use or possession of a weapon may pose a serious threat of harm to the minor, prohibit the respondent from purchasing, using, or possessing a firearm or other specified weapon; and

(e) determine ownership and possession of personal property and direct the appropriate law enforcement officer to attend and supervise the petitioner's or respondent's removal of personal property.

(2) A child protective order or an ex parte child protective order may contain the following provisions the violation of which is contempt of court:

(a) determine temporary custody of a minor who is the subject of the petition;

(b) determine parent-time with a minor who is the subject of the petition, including denial of

parent-time if necessary to protect the safety of the minor, and require supervision of parent-time by a third party;

(c) determine support in accordance with Title 78, Chapter 45, Uniform Liability for Support Act; and

(d) order any further relief the court considers necessary to provide for the safety and welfare of the minor.

(3) A child protective order and an ex parte child protective order shall include:

(a) a statement that violation of a criminal provision is a class A misdemeanor and violation of a civil provision is contempt of court; and

(b) information the petitioner is able to provide to facilitate identification of the respondent, such as Social Security number, driver license number, date of birth, address, telephone number, and physical description.

(4) A child protective order shall include:

(a) a statement that:

(i) three years from entry of the order, the respondent may petition to dismiss the criminal portion of the order;

(ii) the petitioner should, within the 30 days prior to the end of the three-year period, advise the court of the petitioner's address for notice of any hearing; and

(iii) the address provided by the petitioner will not be made available to the respondent;

(b) the date when the civil portion of the order will expire or be reviewed; and

(c) the following statement: "Respondent was afforded notice and opportunity to be heard in the hearing that gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322, 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of Columbia, tribal lands, and United States territories."

78-3h-105. Service -- Income withholding -- Expiration.

(1) If the court enters an ex parte child protective order or a child protective order, the court shall:

(a) make reasonable efforts to ensure that the order is understood by the petitioner and the respondent, if present;

(b) as soon as possible transmit the order to the county sheriff for service; and

(c) by the end of the next business day after the order is entered transmit a copy of the order to any law enforcement agency designated by the petitioner and to the statewide domestic violence network described in Section **30-6-8**.

(2) The county sheriff shall serve the order and transmit verification of service to the statewide domestic violence network described in Section **30-6-8** in an expeditious manner. Any law enforcement agency may serve the order and transmit verification of service to the statewide domestic violence network if the law enforcement agency has contact with the respondent or if service by that law enforcement agency is in the best interests of the child.

(3) When an order is served on a respondent in a jail, prison, or other holding facility, the law enforcement agency managing the facility shall notify the petitioner of the respondent's release. Notice to the petitioner consists of a prompt, good faith effort to provide notice, including mailing the notice to the petitioner's last-known address.

(4) Child support orders issued as part of a child protective order are subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non IV-D Cases.

(5) After notice and hearing a court may modify or vacate a child protective order without a showing of substantial and material change in circumstances, except that the criminal provisions of the child protective order may not be vacated within two years of issuance unless

the petitioner:

(a) is personally served with notice of the hearing as provided in Rule 4, Utah Rules of Civil Procedure, and the petitioner personally appears before the court and gives specific consent to the vacation of the criminal provisions of the protective order; or

(b) submits a verified affidavit, stating agreement to the vacation of the criminal provisions of the protective order.

(6) The civil provisions of the child protective order expire 150 days after the date of the pretrial hearing unless a different date is set by the court. The court may not set a date more than 150 days after the date of the pretrial hearing without a finding of good cause. The court may review and extend the expiration date, but may not extend it to more than 150 days after the date of the pretrial hearing without a finding of good cause. Any civil provision of the child protective order assimilated into the order remains effective until the minor is 18 years of age unless otherwise ordered by the court.

78-3h-106. Statewide domestic violence network.

The Administrative Office of the Courts, in cooperation with the Department of Public Safety and the Criminal Investigations and Technical Services Division, shall post ex parte child protective orders, child protective orders, and any modifications to them on the statewide network established in Section **30-6-8**.

78-3h-107. Forms and assistance -- No fees.

(1) The Administrative Office of the Courts shall adopt and make available uniform forms for petitions and orders conforming to this part. The forms shall notify the petitioner that:

(a) a knowing falsehood in any statement under oath may subject the petitioner to felony prosecution;

(b) the petitioner may provide a copy of the order to the principal of the minor's school; and

(c) the petitioner may enforce a court order through the court if the respondent violates or fails to comply with a provision of the order.

(2) If the petitioner is not represented, the clerk of the court shall provide, directly or through an agent:

(a) the forms adopted pursuant to Subsection (1);

(b) clerical assistance in completing the forms and filing the petition;

(c) information regarding means for service of process;

(d) a list of organizations with telephone numbers that may represent the petitioner; and

(e) information regarding the procedure for transporting a jailed or imprisoned respondent to hearings, including transportation order forms when necessary.

(3) No fee may be imposed by a court, constable, or law enforcement agency for:

(a) filing a petition under this chapter;

(b) obtaining copies necessary for service or delivery to law enforcement officials; or

(c) service of a petition, ex parte child protective order, or child protective order.

Civil Stalking Injunction Law

77-3a-101. Civil stalking injunction -- Petition -- Ex parte injunction.

(1) As used in this chapter, "stalking" means the crime of stalking as defined in Section 76-5-106.5. Stalking injunctions may not be obtained against law enforcement officers, governmental investigators, or licensed private investigators, acting in their official capacity.

(2) Any person who believes that he or she is the victim of stalking may file a verified written petition for a civil stalking injunction against the alleged stalker with the district court in the district in which the petitioner or respondent resides or in which any of the events occurred. A minor with his or her parent or guardian may file a petition on his or her own behalf, or a parent, guardian, or custodian may file a petition on the minor's behalf.

(3) The Administrative Office of the Courts shall develop and adopt uniform forms for petitions, ex parte civil stalking injunctions, civil stalking injunctions, service and any other necessary forms in accordance with the provisions of this chapter on or before July 1, 2001. The office shall provide the forms to the clerk of each district court.

(a) All petitions, injunctions, ex parte injunctions, and any other necessary forms shall be issued in the form adopted by the Administrative Office of the Courts.

(b) The offices of the court clerk shall provide the forms to persons seeking to proceed under this chapter.

(4) The petition for a civil stalking injunction shall include:

(a) the name of the petitioner; however, the petitioner's address shall be disclosed to the court for purposes of service, but, on request of the petitioner, the address may not be listed on the petition, and shall be protected and maintained in a separate document or automated database, not subject to release, disclosure, or any form of public access except as ordered by the court for good cause shown;

(b) the name and address, if known, of the respondent;

(c) specific events and dates of the actions constituting the alleged stalking;

(d) if there is a prior court order concerning the same conduct, the name of the court in which the order was rendered; and

(e) corroborating evidence of stalking, which may be in the form of a police report, affidavit, record, statement, item, letter, or any other evidence which tends to prove the allegation of stalking.

(5) If the court determines that there is reason to believe that an offense of stalking has occurred, an ex parte civil stalking injunction may be issued by the court that includes any of the following:

(a) respondent may be enjoined from committing stalking;

(b) respondent may be restrained from coming near the residence, place of employment, or school of the other party or specifically designated locations or persons;

(c) respondent may be restrained from contacting, directly or indirectly, the other party, including personal, written or telephone contact with the other party, the other party's employers, employees, fellow workers or others with whom communication would be likely to cause annoyance or alarm to the other party; or

(d) any other relief necessary or convenient for the protection of the petitioner and other specifically designated persons under the circumstances.

(6) Within ten days of service of the ex parte civil stalking injunction, the respondent is entitled to request, in writing, an evidentiary hearing on the civil stalking injunction.

(a) A hearing requested by the respondent shall be held within ten days from the date the request is filed with the court unless the court finds compelling reasons to continue the hearing. The hearing shall then be held at the earliest possible time. The burden is on the petitioner to show by a preponderance of the evidence that stalking of the petitioner by the respondent has

occurred.

(b) An ex parte civil stalking injunction issued under this section shall state on its face:

(i) that the respondent is entitled to a hearing, upon written request within ten days of the service of the order;

(ii) the name and address of the district court where the request may be filed;

(iii) that if the respondent fails to request a hearing within ten days of service, the ex parte civil stalking injunction is automatically modified to a civil stalking injunction without further notice to the respondent and that the civil stalking injunction expires three years after service of the ex parte civil stalking injunction; and

(iv) that if the respondent requests, in writing, a hearing after the ten-day period after service, the court shall set a hearing within a reasonable time from the date requested.

(7) At the hearing, the court may modify, revoke, or continue the injunction. The burden is on the petitioner to show by a preponderance of the evidence that stalking of the petitioner by the respondent has occurred.

(8) The ex parte civil stalking injunction and civil stalking injunction shall include the following statement: "Attention. This is an official court order. If you disobey this order, the court may find you in contempt. You may also be arrested and prosecuted for the crime of stalking and any other crime you may have committed in disobeying this order."

(9) The ex parte civil stalking injunction shall be served on the respondent within 90 days from the date it is signed. An ex parte civil stalking injunction is effective upon service. If no hearing is requested in writing by the respondent within ten days of service of the ex parte civil stalking injunction, the ex parte civil stalking injunction automatically becomes a civil stalking injunction without further notice to the respondent and expires three years from the date of service of the ex parte civil stalking injunction.

(10) If the respondent requests a hearing after the ten-day period after service, the court shall set a hearing within a reasonable time from the date requested. At the hearing, the burden is on the respondent to show good cause why the civil stalking injunction should be dissolved or modified.

(11) Within 24 hours after the affidavit or acceptance of service has been returned, excluding weekends and holidays, the clerk of the court from which the ex parte civil stalking injunction was issued shall enter a copy of the ex parte civil stalking injunction and proof of service or acceptance of service in the statewide network for warrants or a similar system.

(a) The effectiveness of an ex parte civil stalking injunction or civil stalking injunction shall not depend upon its entry in the statewide system and, for enforcement purposes, a certified copy of an ex parte civil stalking injunction or civil stalking injunction is presumed to be a valid existing order of the court for a period of three years from the date of service of the ex parte civil stalking injunction on the respondent.

(b) Any changes or modifications of the ex parte civil stalking injunction are effective upon service on the respondent. The original ex parte civil stalking injunction continues in effect until service of the changed or modified civil stalking injunction on the respondent.

(12) Within 24 hours after the affidavit or acceptance of service has been returned, excluding weekends and holidays, the clerk of the court shall enter a copy of the changed or modified civil stalking injunction and proof of service or acceptance of service in the statewide network for warrants or a similar system.

(13) The ex parte civil stalking injunction or civil stalking injunction may be dissolved at any time upon application of the petitioner to the court which granted it.

(14) The court clerk shall provide, without charge, to the petitioner one certified copy of the injunction issued by the court and one certified copy of the proof of service of the injunction on the respondent. Charges may be imposed by the clerk's office for any additional copies, certified or not certified in accordance with Rule 4-202.08 of the Code of Judicial Administration.

(15) The remedies provided in this chapter for enforcement of the orders of the court are in addition to any other civil and criminal remedies available. The district court shall hear and decide all matters arising pursuant to this section.

(16) After a hearing with notice to the affected party, the court may enter an order requiring any party to pay the costs of the action, including reasonable attorney's fees.

(17) This chapter does not apply to protective orders or ex parte protective orders issued pursuant to Title 30, Chapter 6, Cohabitant Abuse Act, or to preliminary injunctions issued pursuant to an action for dissolution of marriage or legal separation.

77-3a-102. Fees -- Service of process.

(1) Ex parte civil stalking injunctions and civil stalking injunctions shall be served by a sheriff or constable.

(2) All service shall be in accordance with applicable law.

(3) Fees may not be imposed by a court clerk, constable, or law enforcement agency for:

(a) filing a petition under this chapter;

(b) obtaining an ex parte civil stalking injunction; or

(c) service of a civil stalking injunction, ex parte or otherwise.

77-3a-103. Enforcement.

(1) A peace or law enforcement officer shall, without a warrant, arrest a person if the peace or law enforcement officer has probable cause to believe that the person has violated an ex parte civil stalking injunction or civil stalking injunction issued pursuant to this chapter or has violated a permanent criminal stalking injunction issued pursuant to Section **76-5-106.5**, whether or not the violation occurred in the presence of the officer.

(2) A violation of an ex parte civil stalking injunction or of a civil stalking injunction issued pursuant to this chapter constitutes the criminal offense of stalking as defined in Section **76-5-106.5** and is also a violation of the civil stalking injunction. Violations may be enforced by a civil action initiated by the petitioner, a criminal action initiated by a prosecuting attorney, or both.

Judicial Rules

Rule 4-601. Victims and witnesses.

Intent:

To establish procedures which ensure that victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity.

To establish procedures which ensure that child victims and child witnesses of crime are treated with consideration for their age and maturity and in a manner that is the least traumatic, intrusive or intimidating.

Applicability:

This rule shall apply to the judiciary, prosecutors, defense counsel, and law enforcement and corrections personnel in all felony cases in and all misdemeanor cases where personal injury is sustained by the victim. This rule also applies to all individuals who have been subpoenaed or called to testify as witnesses in any criminal proceeding.

Statement of the Rule:

- (1) At the time of the arraignment or preliminary hearing, or as soon thereafter as possible, the prosecuting agency shall provide written verification to the court that all victims and subpoenaed witnesses have been informed of their responsibilities during the criminal proceedings and that those proceedings have been explained to them in a manner which is understandable, given the age and maturity of the victims and witnesses.
- (2) At the time of the arraignment or preliminary hearing, or as soon thereafter as possible, the prosecuting agency shall provide written verification to the court that all victims and subpoenaed witnesses have been informed of their right to be free from threats, intimidation and harm by anyone seeking to induce the victim or witness to testify falsely, withhold testimony or information, avoid legal process, or secure the dismissal of or prevent the filing of a criminal complaint, indictment or information. At that time and where facilities are available, the prosecuting agency shall provide written verification to the court that the victims and witnesses have been informed of their right to a separate waiting area.
- (3) Unless otherwise waived in writing, the prosecuting agency shall provide notice to all victims of the date and time of scheduled hearings, trial and sentencing and of their right to be present during those proceedings and any other public hearing unless they are subpoenaed to testify as a witness and the exclusionary rule is invoked.
- (4) The informational rights of victims and witnesses contained in paragraphs (1) through (3) of this rule are contingent upon their providing the prosecuting agency and court with their current telephone numbers and addresses.
- (5) The written verification filed with the magistrate shall be transferred with the case file to the District Court in cases in which the defendant is bound over to the District Court for trial.

(6) In cases where the victim or the victim's legal guardian so requests, the prosecutor shall explain to the victim that a plea agreement involves the dismissal or reduction of charges in exchange for a plea of guilty and identify the possible penalties which may be imposed by the court upon acceptance of the plea agreement. At the time of entry of the plea, the prosecutor shall represent to the court, either in writing or on the record, that the victim has been contacted and an explanation of the plea bargain has been provided to the victim or the victim's legal guardian prior to the court's acceptance of the plea.

(7) The court shall not require victims and witnesses to state their addresses and telephone numbers in open court.

(8) Judges should give scheduling priority to those criminal cases where the victim is a minor in an effort to minimize the emotional trauma to the victim. Scheduling priorities for cases involving minor victims are subject to the scheduling priorities for criminal cases where the defendant is in custody.

Rule 4-605. Use of unpublished opinions in criminal cases.

Intent:

To establish a uniform standard for the use of unpublished opinions.

Applicability:

This rule shall apply to all courts of record and not of record.

Statement of the Rule:

Unpublished opinions, orders and judgments have no precedential value and shall not be cited or used in the courts of this state, except for purposes of applying the doctrine of the law of the case, res judicata, or collateral estoppel. For the purposes of this rule, any memorandum decision, per curiam opinion, or other disposition of the Court designated "not for official publication" shall be regarded as an unpublished opinion.

Utah Rules of Evidence

Rule 615. Exclusion of witnesses.

At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order on its own motion. This rule does not authorize exclusion of:

- (a) a party who is a natural person;
 - (b) an officer or employee of a party which is not a natural person designated as its representative by its attorney;
 - (c) a person whose presence is shown by a party to be essential to the presentation of the party's cause;
 - (d) a victim in a criminal or juvenile delinquency proceeding where the prosecutor agrees with the victim's presence; or
 - (e) a victim counselor while the victim is present unless the defendant establishes that the counselor is a material witness in that criminal or juvenile delinquency proceeding.
- (2) The court may exclude or excuse a victim from the courtroom if the victim becomes disruptive.
- (3) A victim in a criminal or juvenile delinquency proceeding who elects to be present in the courtroom may not be prevented from testifying, even after being present and having heard other testimony.
- (4) As used in this rule, "victim counselor":

means a person who is present in the courtroom to assist the victim and is employed by or volunteers at any office, institution, or center assisting victims of crimes and their families which offers crisis intervention or support, medical or legal services, or counseling; and

includes a "sexual assault counselor" as defined in Section 78-3c-3, Utah Code Annotated.

Rule 801. Definitions.

The following definitions apply under this article:

- (a) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.
- (b) Declarant. A "declarant" is a person who makes a statement.

(c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements which are not hearsay. A statement is not hearsay if:

(1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is (A) inconsistent with the declarant's testimony or the witness denies having made the statement or has forgotten, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or

(2) Admission by party-opponent. The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

Rule 803. Hearsay exceptions; availability of declarant immaterial.

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition or immediately thereafter.

(2) Excited utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then existing mental, emotional, or physical condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), Rule 902(12), or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) Absence of entry in records kept in accordance with the provisions of paragraph (6). Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of Paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) Public records and reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings and against the Government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

(9) Records of vital statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) Absence of public record or entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) Records of religious organization. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, baptismal, and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Family records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) Statements in documents affecting an interest in property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) Statements in ancient documents. Statements in a document in existence twenty years or more the authenticity of which is established.

(17) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) Learned treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) Reputation concerning personal or family history. Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.

(20) Reputation concerning boundaries or general history. Reputation in a community arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or State or nation in which located.

(21) Reputation as to character. Reputation of a person's character among associates or in the community.

(22) Judgment of previous conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the prosecution in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) Judgment as to personal, family or general history, or boundaries. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(24) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purpose of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

Rule 804. Hearsay exceptions; declarant unavailable.

(a) Definition of unavailability. "Unavailability as a witness" includes situations in which the declarant:

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or

(3) testifies to a lack of memory of the subject matter of the declarant's statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of the declarant's statement has been unable to procure the declarant's attendance by process or other reasonable means.

A declarant is not unavailable as a witness if the exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of the declarant's statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement under belief of impending death. In a civil or criminal action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, if the judge finds it was made in good faith.

(3) Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of personal or family history. (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption or marriage, ancestry, or other similar fact of personal or family history, even though the declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

Rule 806. Attacking and supporting credibility of declarant.

When a hearsay statement, or a statement defined in Rule 801(d)(2), (C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

Relevant Utah Cases

Protective Order Cases

1. *Strollo v Strollo* 828 P.2d 532 (UT App1992)
Set forth grounds for a PO: past conduct + present threat of future harm sufficient grounds
2. *State v Rudolph* 970 P.2d 1221 (S Ct. 1998)
Affirms that ex parte order continues to protect victim until PO served
3. *Murray City v. Culley* (unpublished 1998 WL 1758314 UT App)
Says "service" is not an element of 76-5-108(1) when read in conjunction with 76-1-501(2) and that service of process is relevant only to the culpable mental state required as well as to basic principles of due process and fairness
4. *Wall v Wall* (unpublished 1999 WL 33244824 UT App)
Held court could reasonably conclude that wife was in fear of future harm; PO upheld
5. *Bailey v Bayless (I)* 18 P.3d 1129 (UT App2001)
PO and stalking: victim must demonstrate that she is a cohabitant of respondent, she suffered physical abuse or domestic violence and she had an imminent fear of physical harm or present fear of future harm; court found victim's fear reasonable and real
6. *Jaynes v Waters* (unpublished 2001 WL 1549248 UT App)
Criminal trespass falls w/in statutory definition of domestic violence and therefore is a sufficient ground for PO
7. *Bailey v Bayless(II)* 52 P.3d 1158(S Ct 2002)
Appeal of Court of Appeals case; affirmed
8. *State v Hardy* 54 P. 3d 645 (2002)
PO indirect contact – enhanced on Plea in Abeyance – remedy motion to modify

DV Cases

1. *State v Farrow* 919 P.2d 50 (UT App1996)
Upheld warrantless arrest based upon probable cause in DV cases
2. *Salt Lake City v Johnson* 959 P.2d 1022 (UT App1998)
Under current statute at the time, victim had a right to request dismissal of crim charges and court had authority to grant ◊ led to change in statute to require prosecutor concurrence before dv case can be dismissed by the court at victim's request
3. *State v Holbert* 61 P.3d 291 (UT App2002)
Upheld use of prior bad acts to show motive and specific intent in DV prosecution

4. *West Valley City v Hutto* 5 P. 3d 1 (UT App 2000)
Defines "excited utterances" for purposes of use in this dv case; three prong test-startling event occurs, victim's statements relate to that event and victim still under stress of excitement of event; court reversed conviction because victim's statements not "excited utterances" under the 3 prong test
5. *Salt Lake City v Hernandez* (unpublished 2001WL311183 UT App)
"excited utterances" case; only 2 of 3 prongs present
6. *State v Comer* 2002 UT App 219
Court determined that a report of DV from an identified citizen informant does not trigger the emergency aid exception to the 4th Amendment warrantless entry into a home absent probable cause; however, warrantless entry was lawful in this case because it was supported by probable cause and accompanied by exigent circumstances

Stalking Cases

1. *Salt Lake City v Lopez* 935 P.2d 1259 (UT App1997)
Upheld stalking statute - not vague nor overbroad; defines emotional distress for purposes of stalking
2. *State v Schweitzer* 943 P. 2d 649 (UT App1997)
DV stalking; Court discretion to impose consecutive sentences upheld
3. *Bailey v Bayless(I)* 18 P.3d 1129 (2001)
PO based on stalking B not necessary to prove criminal elements of stalking
4. *Bailey v Bayless(II)* 52 P3d 1158 (2002)
PO ruling affirmed by S Ct
5. *State v Weisberg* 62 P3d 457 (2002)
Statute not vague; exhibiting weapon in manner that it "creates fear in a reasonable person" is proper instruction to jury

Other Relevant Cases

State v Spainhower (1999 UT App 280)
On appeal for conviction of witness tampering, Court stated that While proof of victim's subjective fear is not necessary (to the element of a threat that a reasonable person would be a threat to do bodily injury), neither is it irrelevant. Evidence that Y "acts did induce fear in an individual victim is probative of whether [the] acts were objectively [threatening].@The Court also stated that At is for the jury to evaluate allegedly threatening language and conduct and that in doing so, a jury may consider both content and context.