

DOMESTIC VIOLENCE

UCA 77-36-1(4)

Definition

“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.**”

Criminal Offense involving:

Any:

- Actual commission
- Attempt
- Conspiracy or
- Solicitation

To commit:

- Violence or physical harm or
- Threat of violence or physical harm

COHABITANT – UCA 78B-7-102

Definition:

An emancipated person OR person aged 16 years 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.** Related by blood or marriage to the other party by consanguinity or affinity to the second degree
- D.** Has or had child(ren) with the other party
- E.** Is biological parent of other party's unborn child
- F.** Is or was living in same residence with other party
- G.** Is or was in consensual sexual relationship with other party

But, NOT including:

Natural/adoptive/stepparent of a minor

Natural/adoptive/foster/step siblings under age 18

DOMESTIC VIOLENCE ELIGIBLE OFFENSES

UCA 77-36-1(4)

With ONE exception, all domestic violence crimes are merely criminal offenses that qualify to have the DV tag attached. Utah Criminal Code recognizes the below offenses as qualifying offenses.

Aggravated assault	76-5-103
Aggravated cruelty to animal	76-9-301(4)
Assault	76-5-102
Criminal homicide	76-5-201
Harassment	76-5-106
Electronic Comm Harassment	76-9-201
Kidnapping (incl. Child & Agg)	76-5-301-302
Mayhem	76-5-105
Propelling a Bodily Substance	76-5-102.9
Sex offenses	76-5-401-416
Sexual exploitation of minor	76-5b-201
Stalking	76-5-106.5
Unlawful detention	76-5-304
Propelling a bodily substance	76-5-102.9
Protective Order Violation	76-5-108
Offenses against prop	76-6-101-302
Poss deadly weapon with intent	76-10-507
Discharge of firearm	76-10-508

Child abuse	76-5-114
Threaten use of dang weapon	76-10-506
Threatening violence	76-5-107
Witness tampering	76-8-508
Retaliation - witness or victim	76-8-508.3
Unlaw dist of intimate image	76-5b-203
Unlaw dist of counterfeit intimate image	76-5b-205
Sexual battery	76-9-702.1
Voyeurism	76-9-702.7
Damage/interrupt comm device	76-6-108
Vio of jail release agreement	78B-7-806(1)

****Disorderly Conduct (76-9-102) CANNOT be charged*** as a DV offense but can be plead to as DV if resulting from a plea negotiation from another DV offense.

NOTE: *This is not an exhaustive list. Other criminal offenses, if meeting the definition of domestic violence, can also be charged with a DV tag, i.e. : lewdness, or cruelty to an animal, if involving violence or physical harm or threat. Details must be clearly articulated.*

ENHANCEMENT OF DV OFFENSES

UCA 77-36-1.1

MISDEMEANOR CHARGING: DV charges may be **enhanced one level** if a prior conviction* for a **DV offense exists within the prior ten (10) years** of the current offense (five (5) years if **property damage**)

FELONY CHARGING: DV charges may be enhanced to a third degree felony (F3) if:

- (1) new DV is chargeable as a class A misdemeanor AND one (1) or more previous DV offense conviction/commissions occurred within prior 10 years, (5 years if property damage) OR
- (2) new DV is chargeable as a class B misdemeanor AND two (2) or more previous DV offense conviction/commissions occurred within prior 10 years (5 years if property damage) See [77-36-1.1\(4\)](#) for specific requirements.

*Prior conviction includes finding of **guilt, guilty plea** or **plea in abeyance** (regardless of whether the plea in abeyance has been dismissed upon completion).

NOTE: While a prosecutor may file the enhancement, law enforcement should be charging at the appropriate enhanced level of severity to ensure higher bail amounts are set at the jail for repeat offenders.

DV IN THE PRESENCE OF A CHILD

UCA 76-5-114

This offense is a separate charge and the only DV offense, as a stand-alone charge. All other DV offenses are criminal charges with a DV tag attached.

This offense is charged in addition to any or all other DV offenses charged under UCA 77-36-1(4).

This offense is chargeable for each child exposed to DV, so three children exposed results in three counts charged.

(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 commits domestic violence in the presence of a child 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
(76-5-114(2)(a) or (b) = Felony 3)

- (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
(76-5-114(2)(a) or (b) = Felony 3)
- (c) intentionally or knowingly impedes the breathing or the circulation of blood of another individual by the actor's use of unlawful force or violence by applying pressure to the neck or throat of an individual or obstruction the nose, mouth, or airway of an individual, in the presence of a child;
or
- (d) 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.
(76-5-114(2)(c) = Class B)

PREDOMINANT AGGRESSOR

UCA 77-36-2.2(3)

Note: The focus is on the **predominant** aggressor, not primary or initial aggressor, therefore:

Predominant aggressor is not automatically the party who starts the domestic incident.

Predominant aggressor is not automatically the party who has the least severity or amount of injury.

A careful analysis must be completed: (*additional comments in italics*)

- (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.

PREDOMINANT AGGRESSOR FACTORS TO CONSIDER PER STATUTE:

In determining who the predominant aggressor was, the officer shall consider:

- (a) **any prior complaints of domestic violence;**
 - includes V's statements about prior violence previously reported to police anywhere*
 - includes V's statements about prior violence not previously reported to police*
 - not limited to complaints made by this victim*
- (b) **the relative severity of injuries inflicted on each person;**
 - scratches are a defensive injury the majority of the time*
 - location of bite may also indicate a defensive injury*
- (c) **the likelihood of future injury to each of the parties; and**
 - compare height and weight of parties involved*
BUT do not rely on this factor alone as smaller individuals are capable of injury to a bigger individual
 - threat continues after police arrive*
- (d) **whether one of the parties acted in self defense**
 - reasonable force against imminent threat*

Predominant Aggressor – Additional factors for analysis consideration:

- Are injuries consistent with amount of force claimed to have been used*
- Have there been past incidents that would cause one person to react in a manner likely to cause injury*
- Verbal provocation is never sufficient to cause domestic violence*
- Lack of fear in either party may indicate the predominant aggressor*
- Consider escalated emotions/hysterical or low affect/shut down*
- Consider impact of trauma on a party*
- Talk to kids about parents in general – not just about that specific incident; they know who the predominant aggressor is in the family*
- Statements of witnesses/neighbors – may be excited utterances*
- Triggering behaviors – initiating through verbal or other minor physical provocation*

CRIME SCENE & EVIDENCE COLLECTION

- **OFFICER SAFETY**: If both parties are present, separate and position them where they cannot see or hear each other.
- Ideally officers should be positioned so they can see each other during initial interactions with subjects

- **CRIME SCENE**: Describe observations on arrival
- Document crime scene in detail
- Take photos / video – check quality/lighting
 - Crime scene – general and specific to damage
 - People involved or witnesses
 - Injuries / lack of injuries

- **EVIDENCE COLLECTION**:
- Any broken items, glass, sheetrock fragments, door jam splinters, torn clothing, etc.
- Weapons/object used; consider evidence/safekeep
- Digital: Cell, GPS, Surveillance/doorbell video, etc.

- **PEOPLE**: Identify & talk to everyone
- Determine and document cohabitant relationship
- Describe emotional state (of anyone involved)
- Condition of clothing / hair/ makeup\
- Condition of home and/or children as observed
- Injuries documented, old and new
- History of abuse

- Involving same parties or different
- Reported to police / non-reported

- **STATEMENTS:** Talk to all victim/witness/parties
- Identify who called 911, others in area, who victim may have confided in, etc.
- Capture any spontaneous/excited statements, etc.
- Parties – statements, observations of looks/actions
- Children – provide positive interaction, brief inquiry/hello to more in-depth as child is able
 - Record names for report and make DCFS referral

- **MEDICAL:** Don't ask – just have dispatched
- Medical care – for any visible/nonvisible injury
- Names of EMS responders, nurses, doctors, etc.
- Confirm / rule out sexual abuse – past/present
- Confirm / rule out strangulation – past/present

- **CRIME ELEMENTS:**
- Document all threats, verbal or other: to victim/child
- Document coercion or force factors
- Responses to 'feelings' and 'sensory' questions

- **LETHALITY ASSESSMENT:**
- Controlling, stalking behaviors documented
- Suicide threat/attempt – past/present
- Orders: past/present, involving same/different parties
 - Protective, Stalking, Dating, Sexual, etc.

DUTIES OF LAW ENFORCEMENT OFFICERS

UCA 77-36-2.1 -- 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 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders](#), and [Title 78B, Chapter 7, Part 2, 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 Subsections [78B-7-802\(8\)](#) and [\(9\)](#) .

POWERS AND DUTIES TO ARREST

UCA 77-36-2.2

- (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 shall issue a citation to any person that the peace officer has probable cause to believe has committed an act of domestic violence.
 - (b)**
 - (i)** 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.

- (ii) For purposes of Subsection [\(2\)\(b\)\(i\)](#), "serious bodily injury" and "dangerous weapon" mean the same as those terms are defined in Section [76-1-101.5](#).
- (c) If a peace officer does not immediately exercise arrest powers or initiate criminal proceedings by citation or otherwise, the officer shall notify the victim of the right to initiate a criminal proceeding and of the importance of preserving evidence, in accordance with the requirements of Section [77-36-2.1](#).

JAIL RELEASE AGREEMENTS (JRA)

UCA 78B-7-801, 802

78B-7-801(1) **Jail release agreement (JRA)** is a written agreement that is entered into by an individual who is **arrested or issued a citation**, regardless of whether the individual is booked into jail.

*Prior to release on citation, the releasing officer may issue the JRA. If booked into jail, the jail staff will issue the JRA prior to release. **BEST PRACTICE is always to book into jail for increased BCI accuracy/tracking and safety of the victim. However, some circumstances may require a release on citation.***

(5) Qualifying offense for JRA:

- (a) domestic violence
- (b) offense against child/vulnerable adult, or
- (c) attempt/commission of sexual battery or

Section 76-5-4 Sexual Offenses

78B-7-802(5)(a)(i) **Where to waive JRA:** After an individual is arrested or cited for a qualifying offense, an adult victim may waive any condition of a JRA by:

- (A) appearing at the police agency that arrested or issued the citation
- (B) appearing at the jail or correctional facility that released the arrested individual, or

- (C) appearing at the court of jurisdiction where charge are filed (*but not before filing*)

78B-7-802(5)(a)(ii-iv) **Who can waive JRA:**

- (ii) adult victim of the alleged qualifying offense
- (iii) non-offending parent/guardian of an alleged minor victim UNLESS the minor suffered:
 - a. bodily injury as a result of the offense
 - b. attempt/summoned emergency aid
 - c. threat of bodily injury.

THEN approval of the court must be obtained prior to waiver of JRA on behalf of the minor.

TRAUMA INFORMED INTERVIEWS (TIVI TM©)

- ☐ Build a positive rapport
- ☐ Provide safe location where victim can relax out of visual of suspect
- ☐ Acknowledge recalling events may be difficult
- ☐ Allow for or attend to their needs, i.e. kids crying
- ☐ Use open ended questions
- ☐ Do NOT interrupt victim narratives
- ☐ Use silence as a tool – don't rush to next question
- ☐ Ask sensory and 'feeling' based questions
- ☐ Recognize factors most important to survive and explore details, senses, feelings of those factors
- ☐ Avoid questions that require sequence, i.e. NOT 'What happened next?' DO ask 'What else happened?'
- ☐ Use topic headlines and then ask the question, i.e. "I want to talk about the hallway. Tell me everything you remember happening in the hallway?"

STRANGULATION ASSESSMENT CARD

SIGNS	SYMPTOMS	CHECKLIST
- Red eyes or spots (Petechiae) - Neck swelling - Nausea or vomiting - Unsteady - Loss/lapse of memory - Urinated - Defecated - Possible loss of consciousness - Ptosis - droopy eyelid - Droopy face - Seizure - Tongue injury - Lip injury - Mental status changes - Voice changes	- Neck pain - Jaw pain - Scalp pain (from hair pulling) - Sore throat - Difficulty breathing - Difficulty swallowing - Vision changes (spots, tunnel vision, flashing lights) - Hearing changes - Light headedness - Headache - Weakness or numbness to arms or legs - Voice changes	S Scene & Safety. Take in the scene. Make sure you and the victim are safe. T Trauma. The victim is traumatized. Be kind. Ask: what do you remember? See? Feel? Hear? Think? R Reassure & Resources. Reassure the victim that help is available and provide resources. A Assess. Assess the victim for signs and symptoms of strangulation and TBI. N Notes. Document your observations. Put victim statements in quotes. G Give. Give the victim an advisal about delayed consequences. L Loss of Consciousness. Victims may not remember. Lapse of memory? Change in location? Urination? Defecation? E Encourage. Encourage medical attention or transport if life-threatening injuries exist.

DELAYED CONSEQUENCES	TRANSPORT
Victims may look fine and say they are fine, but just underneath the skin there would be internal injury and/or delayed complications. Internal injury may take a few hours to be appreciated. The victim may develop delayed swelling, hematomas, vocal cord immobility, displaced laryngeal fractures, fractured hyoid bone, airway obstruction, stroke or even delayed death from a carotid dissection, bloodclot, respiratory complications, or anoxic brain damage. Taliaferro, E., Hawley, D.I., McClane, G.E. & Strack, G. (2009). Strangulation in Intimate Partner Violence. <i>Intimate Partner Violence: A Health-Based Perspective</i>. Oxford University Press, Inc.	If the victim is Pregnant or has life-threatening injuries which include: - Difficulty breathing - Difficulty swallowing - Petechial hemorrhage - Vision changes - Loss of consciousness - Urinated - Defecated

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FIVE MYTHS ABOUT STRANGULATION

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1

MYTH

STRANGULATION AND CHOKING ARE THE SAME THING

FACT

STRANGULATION is the external application of physical force that impedes either air or blood to or from the brain.

CHOKING is an internal obstruction of the airway by a foreign object.

SOLUTION

Use a diagram. Compare to the flow of electrical current. Compare to the flow of air/water through a closed system (fish tank).

2

MYTH

STRANGULATION ALWAYS LEAVES VISIBLE INJURIES

FACT

Studies show that over half the victims of strangulation lack visible external injury. A victim without visible external injury can still die from strangulation.

SOLUTION

Demonstrate cutting off blood flow to your fingertips by squeezing your wrist with your other hand. Upon release of the grip, you will likely have no identifiable marks. If you do, they will be very short in duration.

3

MYTH

IF THE VICTIM CAN SPEAK, SCREAM, OR BREATHE, THEY ARE NOT BEING STRANGLED

FACT

Since strangulation involves obstruction of blood flow, a person can have complete obstruction and continue breathing until the moment they die from lack of oxygenated blood flow to the brain.

SOLUTION

Again, grab your wrist and squeeze. You can still breathe, yet blood flow is obstructed to the fingertips. If this was the victim's neck, they could still have an open trachea (windpipe) but have lack of blood flow to the brain.

4

MYTH

STRANGULATION CANNOT BE HARMFUL BECAUSE MANY PEOPLE PRACTICE IT (MARTIAL ARTS, MILITARY, LAW ENFORCEMENT)

FACT

Martial arts are a form of combat. The military and law enforcement use strangulation as a lethal form of force.

RISK

There are numerous incidents of death resulting from strangulation. This can even occur during otherwise supervised events, such as sporting events, law enforcement training, etc.

5

MYTH

STRANGULATION VICTIMS SHOULD BE ABLE TO DETAIL THEIR ATTACK

FACT

Trauma impacts the brain's ability to store memory. In addition, the hippocampus (part of the brain where memory is stored) is the most sensitive to oxygen deprivation.

When a victim is strangled, both factors can impact the ability to recall.

SOLUTION

Give the example of how limiting the flow of electricity to a digital recording device will prevent it from recording.



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LETHALITY ASSESSMENT PROTOCOL (LAP)

LAP is a brief evidence-based risk assessment tool specifically for law enforcement use that consists of 11 questions. It assesses the victims' level of risk for homicide by the IPV offender. The success lies within building collaboration with community-based victim service providers. Go to www.udvc.org or <https://udvc.org/lethality-assessment-program> for more information on LAP use and training.

LETHALITY ASSESSMENT PROTOCOL (LAP)

UCA 77-36-2.1

Officers are required to complete a LAP on victims of domestic violence between intimate partners. LAP is a brief evidence-based risk assessment tool specifically for law enforcement use that consists of 12 questions. It assesses the victims' level of risk for homicide by the IPV offender. The success lies in building collaboration with community-based and system-based victim service providers. Working together, law enforcement officers and victim service providers can better support victims with various processes including, but not limited to, counseling, housing, medical, financial, legal, and other needs. Go to www.udvc.org or contact the Statewide Information and Analysis Center for more information on lethality assessment use and training.

DATING RELATIONSHIP AND INTIMATE PARTNER DEFINITIONS - UCA 77-36-2.1

For purposes of this section: Dating relationship means

- Social relationship of a romantic or intimate nature, or
- Relationship which has romance or intimacy as a goal by one or both parties, regardless of whether the relationship involves sexual intimacy

It does not include casual fraternization in a business, educational, or social context.

Intimate partner means an emancipated individual under Section 15-2-1 or an individual who is 16 years old or older who:

- is or was a spouse of the other party;
- Is or was living as if a spouse of the other party;
- Has or had one or more children in common with the other party;
- Is the biological parent of the other party's unborn child;
- Is or was in a consensual sexual relationship with other party; or
- Is or was in a dating relationship with the other party.

IMPORTANT PHONE NUMBERS

Victim Advocates UHP # (801) 965-4747

Local Advocate:

Shelter number:

DCFS (855) 323-3237

Prosecutor:

Local SANE

(sex assault/ strangulation exam)

Utah Prosecution Council (UPC) (385) 258-4117

SA/DV Resource Prosecutor

Crime Victim Legal Clinic (800) 621-7444

Utah Domestic Violence (800) 897-5465

Coalition (UDVC)

NOTES

Admonition and Wavier of Rights

You have the right to remain silent.

Anything you say can and will be used against you in a court of law.

You have the right to talk to a lawyer and have him present with you while you are being questioned.

If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one.

If you decide to answer questions now without having counsel present, you may stop answering questions at any time.

Also, you may request counsel at any time during questioning.

Do you understand each of these rights I have explained to you?

Having these rights in mind, do you wish to talk to me/us now?

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