

WASHINGTON COUNTY JUSTICE COURT, WASHINGTON COUNTY, UTAH

NOTIFICATION OF ENHANCEMENT – DOMESTIC VIOLENCE

Defendant: _____, Case No. _____

IF YOU ARE CONVICTED of a Domestic Violence Offense, this conviction may be used to make a later Domestic Violence Offense more serious by raising the classification of that offense. This form provides notification of the current provisions of Utah State Law regarding enhancement and the minimum/maximum penalties applicable to the different classifications of offenses. It also describes the specific elements of your current charges, and the restriction on firearms. It does not notify you of other collateral consequences.

DEFINITIONS AND ELEMENTS

77-36-1(4): "**Domestic violence**" or "**domestic violence offense**" 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**" or "**domestic violence offense**" also means commission or attempt to commit, any of the following offenses by one cohabitant against another: aggravated assault; assault; criminal homicide; harassment; electronic communication harassment; kidnapping, child kidnapping, or aggravated kidnapping; mayhem; sexual offenses; stalking; unlawful detention, or unlawful detention of a minor; violation of a protective order or ex parte protective order; any offense against property (described in Title 76, Chapter 6, Part 1-3); possession of 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 a conviction of disorderly conduct is the result of a plea agreement in which the defendant was originally charged with a domestic violence offense; or child abuse. (Statutory references for the above offenses are listed in this statute. The elements of the misdemeanor offenses for which you may be charged at this time as a domestic violence offense are addressed on the back of this form.)

78B-7-102 (2), (3): "**Cohabitant**" means a person who is emancipated or 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 or had 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. "Cohabitant" does not include: (a) the relationship of a natural, adoptive, or step-parent to a minor; or (b) the relationship between natural, adoptive, step, or foster siblings who are under 18 years of age.

ENHANCEMENT/FIREARMS RESTRICTION

77-36-1.1: 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 within a five-year period after the conviction commits or is convicted of a domestic violence offense that is a misdemeanor, the offense charged and the punishment for that subsequent offense is **enhanced by one degree** above the offense and punishment otherwise provided in the statutes described in Section 77-36-1. ("*Enhanced by one degree*" means a class C misdemeanor would be enhanced to a class B misdemeanor; a class B misdemeanor would be enhanced to a class A misdemeanor; and a class A misdemeanor would be enhanced to a 3rd degree felony.) For purposes of this section, a plea of guilty or no contest to any domestic violence offense in Utah, which is held in abeyance is considered a conviction, even if the charge has been subsequently reduced or dismissed pursuant to the agreement.

URCrP 11(g) and 22(c)(2): If the defendant pleads guilty, no contest, or guilty and mentally ill to a misdemeanor crime of domestic violence (or is otherwise convicted), it is unlawful for the defendant to possess, receive or transport any firearm or ammunition.

PENALTIES

Minimum / Maximum Sentences

Class C Misdemeanor:	0 days to 90 days jail	AND/OR	\$0 to \$1,475 in fines and surcharges (plus interest)
Class B Misdemeanor:	0 days to 6 months in jail	AND/OR	\$0 to \$1,950 in fines and surcharges (plus interest)
Class A Misdemeanor:	0 days to 1 year in jail	AND/OR	\$0 to \$4,793 in fines and surcharges (plus interest)
Third Degree Felony:	0 days to 5 years in prison	AND/OR	\$0 to \$9,543 in fines and surcharges (plus interest)

77-36-5: The court shall assess against the defendant, as restitution, any costs for services or treatment provided to the victim and affected children of the victim or the defendant by the Division of Child and Family Services.

I understand this Notification of Enhancement as explained here and as orally explained to me.

_____ (Date) _____ (Defendant's signature)

ELEMENTS (“Domestic Violence Offenses”)

[] Class-B-Misdemeanor Assault 76-5-102: A person commits this offense if the person (a) attempts, with unlawful force or violence, to do bodily injury to another; or (b) commits an act with unlawful force or violence, that causes bodily injury to another or creates a substantial risk of bodily injury to another.

[] Class-B-Misdemeanor Criminal Mischief 76-6-106: A person commits this offense if the person (a) intentionally and unlawfully tampers with the property of another and as a result recklessly endangers human health or safety; or (b) intentionally damages, defaces, or destroys the property of another, if the actor’s conduct causes or is intended to cause pecuniary loss of less than \$500 in value; or (c) recklessly or willfully shoots or propels a missile or other object at or against a motor vehicle, bus, airplane, boat, locomotive, train, railway car, or caboose, whether moving or standing, if the actor’s conduct causes or is intended to cause pecuniary loss of less than \$500 in value.

[] Class-B-Misdemeanor Commission of Domestic Violence in the Presence of a Child (Child Abuse) 76-5-109.1: A person commits this offense if the person commits an act of domestic violence in the presence of a child.

[] Class-B-Misdemeanor Damage to or Interruption of a Communication Device 76-6-108: A person commits this offense if the actor attempts to prohibit or interrupt, or prohibits or interrupts, another person’s use of a communication device when the other person is attempting to or has communicated a desire to summon emergency aid, and in the process the actor: (a) uses force, intimidation, or any other form of violence; (b) destroys, disables, or damages a communication device; or (c) commits any other act in an attempt to prohibit or interrupt the person’s use of a communication device to summon emergency aid.

[] Class-B-Misdemeanor Harassment 76-5-106: A person commits this offense if, with intent to frighten or harass another, the person communicates a written or recorded threat to commit any violent felony.

[] Class-B-Misdemeanor Unlawful Detention 76-5-304: A person commits this offense if the actor intentionally or knowingly, without authority of law, and against the will of the victim, detains or restrains the victim, under circumstances not constituting kidnapping, child kidnapping or aggravated kidnapping.

[] Class-B-Misdemeanor Criminal Trespass 76-6-206: A person commits this offense if:
(a) the person enters or remains unlawfully on property and (i) intends to cause annoyance or injury to any person or damage to any property, including the use of graffiti as defined in Section 76-6-107; (ii) intends to commit any crime, other than theft or a felony; or (iii) is reckless as to whether his presence will cause fear for the safety of another;
(b) knowing the person’s entry or presence is unlawful, the person enters or remains on property as to which notice against entering is given by: (i) personal communication to the actor by the owner or someone with apparent authority to act for the owner; (ii) fencing or other enclosure obviously designed to exclude intruders; or (iii) posting of signs reasonably likely to come to the attention of intruders; or
(c) the person enters a condominium unit in violation of Subsection 57-8-7(8).

[] Class-B-Misdemeanor Unlawful Firearm Discharge 76-10-508: A person commits this offense if the person discharges any kind of dangerous weapon or firearm: (i) from an automobile or other vehicle; (ii) from, upon, or across any highway; (iii) at any road signs placed upon any highways of the state; (iv) at any communications equipment or property of public utilities including facilities, lines, poles, or devices of transmission or distribution; (v) at railroad equipment or facilities including any sign or signal; (vi) within Utah State Park buildings, designated camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches; or (vii) without written permission to discharge the dangerous weapon from the owner or person in charge of the property within 600 feet of: (A) a house, dwelling, or any other building; or (B) any structure in which a domestic animal is kept or fed, including a barn, poultry yard, corral, feeding pen, or stockyard.

[] Class-C-Misdemeanor Disorderly Conduct 76-9-102: A person is guilty of disorderly conduct if the person (a) refuses to comply with the lawful order of a law enforcement officer to move from a public place, or knowingly creating a hazardous or physically offensive condition, by any act which serves no legitimate purpose; or (b) intending to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, the person: (i) engages in fighting or in violent, tumultuous, or threatening behavior; (ii) makes unreasonable noises in a public place; (iii) makes unreasonable noises in a private place which can be heard in a public place; or (iv) obstructs vehicular / pedestrian traffic. Disorderly Conduct involves Domestic Violence if such conviction is the result of a plea agreement in which you were originally charged with any of the domestic violence offenses described herein.

[] Class-B-Misdemeanor Sodomy 76-5-403: A person commits this offense when the person engages in any sexual act with a person who is 14 years of age or older involving the genitals of one person and the mouth or anus of another.

[] Class-B-Misdemeanor Unlawful Sexual Activity with a Minor 76-5-401: A person commits this offense if the actor: (a) has sexual intercourse with the minor; (b) engages in any sexual act with the minor involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; (c) causes the penetration, however slight, of the genital or anal opening of the minor by any foreign object, substance, instrument or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant.

[] Attempt 76-4-101: A person is guilty of an attempt to commit a crime if he engages in conduct constituting a substantial step toward commission of the crime; and (a) intends to commit the crime, or (b) when causing a particular result is an element of the crime, he acts with an awareness that his conduct is reasonably certain to cause that result. An attempted class B misdemeanor offense is a class C misdemeanor. An attempted class A misdemeanor offense is a class B misdemeanor.