

Personal Security

Utah Citizens' Counsel Personal Security Committee

Article 5. All Utahns have the right to security of person, especially freedom from physical harm and psychological abuse, whether experienced within the family or in the community at large.

Introduction

Our 2016 Personal Security Report focused on domestic violence-related homicides, and the prominent role of guns in such murders as well as suicides. Utah's rate of domestic violence-related homicides remained significantly higher than the national rate, although use of the Lethality Assessment Protocol by law enforcement helped reduce those numbers. Concerns about ineffective rape policies focused on the under-testing of rape kits, lax campus rape protocols, Utah's failure to join the Prison Rape Elimination Act, and failure to enact an enforceable hate crimes law. This 2017 report updates these issues and adds examination of the role of dating violence and the debate over gun legislation.

Domestic Violence and Guns

The presence of a firearm during a domestic dispute boosts by five times the likelihood of a woman's homicide.¹ Despite its low overall homicide rate, Utah's domestic violence-related homicides account for 42% of total homicides, compared with a 30% rate nationally. Firearms were the source of nearly 60% of Utah's domestic violence-related homicides (2010-13), and nearly 40% of the murderers had a domestic violence record.² Federal law requires that anyone under protective orders or with a domestic violence record shall not possess or purchase firearms,³ but states rarely enforce it. House Bill (HB) 206, sponsored by Representative Brian King, aligns Utah law with federal law, and thus helps ensure its enforcement.⁴

Substantial progress against domestic violence-related homicides has been achieved through the adoption of the Lethality Assessment Protocol (LAP). When LAP-trained police officers arrive at the scene of a domestic violence incident, they administer LAP's 11-point questionnaire. If it indicates a high level of danger, officers immediately put the victim in contact with a domestic violence shelter. Since July 2015, LAP has been adopted by 46 Utah police departments and employed in over 4000 situations. The Utah Domestic Violence Coalition reports that 3/4 of the questionnaire outcomes classified victims as 'high risk,' and that nearly half of those individuals took advantage of the offered services.⁵

In addition to the use of LAP, domestic violence-related murders would be further reduced by expanding the legal definition of victims of domestic violence beyond biological parents, co-habitants, and married or divorced couples. **Dating conflicts account for 25% of violence between intimate partners, yet violence or threatened violence against romantic partners is not treated as domestic violence** and fails to receive the same level of response by law enforcement.⁶ Ned Searle, director of the Office on Domestic and Sexual Violence, calls for Utah's adoption of the more inclusive federal intimate partner classification, which also includes "a person who has been in a social relationship of a romantic or intimate nature with the abuser..."⁷ Such a Utah law would not only mirror federal law but create symmetry with HB 50

(2013), which extended protective orders to cover those who are, or have been, in a dating relationship. It would also enhance police authority to handle such situations.⁸

Criticism of police occurred when a Sandy woman and her son were recently killed after informing police of her ex-boyfriend's threatening behavior. Her 911 call included allegations of stalking and text messages from him that referenced his guns and included pictures of her children. She gave his name to police, who told him to stop contacting her. Police suggested that she apply for protective orders, but the killings occurred before the woman completed the requisite paperwork. The police chief said that, unlike domestic violence cases, officers were not required in dating conflicts to conduct an interview with the accused and possibly arrest him.⁹

A study in the *American Journal of Medicine* found that Americans were ten times more likely to die from firearms than citizens in 22 other highly developed nations. The authors conclude that "firearms are killing us rather than protecting us."¹⁰ However, the National Rifle Association (NRA), despite evidence to the contrary, advocates that citizens should arm themselves rather than consent to the regulation of guns or gun ownership."¹¹

Governor Gary Herbert vetoed a 'permitless carry' bill in 2013 that would have allowed anyone to carry a concealed firearm without a required test. It would have superseded the current 'concealed carry' law and thus ended the mandatory background checks supported by 80% of Utahns.¹² Utah's Bureau of Criminal Investigation (BCI) confirmed that 342 'concealed carry' permits were denied in 2015-16 due to domestic violence convictions or protective orders. In 2016 alone, 1,583 'concealed carry' permits were denied and 1,630 revoked because background checks revealed issues "from outstanding warrants to mental illness to drug offenses."¹³

Opposing views of preventing gun violence were on display during the 2017 legislative session. Despite growing success in other states,¹⁴ two 'permitless carry' bills were rejected in Utah's 2017 session. Governor Herbert's threatened veto apparently killed HB 112. HB 237, a revised version of HB 112, would have added a ban on carrying firearms for anyone convicted of domestic violence or under certain protective orders. Unexpected pushback from the NRA sank the bill, apparently because it allowed a penalty enhancement--a class A misdemeanor--for carrying a firearm, whether used or not, by such a person during a domestic violence incident. One of the sponsors promises another attempt for 'permitless carry' in the 2018 session.¹⁵

During the same session, the 2017 Legislature expanded access to firearms. Despite concerns stemming from teenage immaturity and suicide patterns, age eligibility for 'concealed carry' permits was lowered in HB 198 to include 18-21 year-olds.¹⁶ The sponsor's rationale mirrors the NRA perspective--access to firearms would allow college-age women to legally and effectively resist rape.¹⁷

Rape Kits and Campus Rapes

Rising attention to the low numbers of convictions in reported rape cases and the backlog of untested rape kits resulted in the "truly revolutionary" new reality created by HB 200.¹⁸ Every rape kit must be submitted by local law enforcement to the state crime lab within 30 days; forensic testing must be completed within a time frame to be determined administratively; and victims must have access to a tracking system.¹⁹ The \$2.4 million fiscal note was intended to fund new personnel to manage the additional lab work, design the tracking system, and train

police officers. Because only half the sum was appropriated, the bill's sponsor, Representative Angela Romero, confirmed plans to request the other \$1.2 million in 2018.²⁰

The newly inaugurated Unified State Laboratory will facilitate the processing of rape kits with the added benefits of advanced technology, robotics, and additional personnel.²¹ Grant money should close out the backlog of rape kits within a year.²²

Under the Obama Administration, the Title IX Office for Civil Rights (OCR) began to investigate sexual assault complaints on college campuses because the institutions themselves were rarely addressing or even acknowledging them.²³ The *Salt Lake Tribune* received a Pulitzer Prize for revealing victims' stories that exposed Brigham Young University's policy of prioritizing its Honor Code over addressing sexual assault complaints, and Utah State University's failure to pursue multiple sexual assault complaints against a student-athlete.²⁴

After a months-long study by an internal advisory council on campus response to sexual assault, BYU accepted all the council's recommendations. Most importantly, an 'amnesty clause' will now result in suspension of the University's Honor Code regarding the student's own conduct arising from a specific sexual assault complaint.²⁵ USU's in-house report proposed eight recommendations to improve its sexual assault process, while denying it engaged in a "cover-up" or "preferential treatment" for a USU athlete.²⁶ Other Utah institutions have also committed to wide-ranging reforms after student complaints brought federal attention.²⁷ Utah's Higher Education Board of Regents has approved policies that make it possible to track transfer students with a sexual misconduct history.²⁸

The new U.S. Secretary of Education, Betsy DeVos, citing work overload and concern for the rights of the accused, issued plans in June 2017 to cut 40 OCR positions and suspend major areas of civil rights oversight, including campus sexual assault policies.²⁹ In September 2017, Secretary DeVos rescinded earlier Obama Administration policy that had instructed campuses to use a "preponderance of the evidence" standard in determining the guilt of the accused and instead directed them to use the higher "clear and convincing evidence" standard for determining guilt.³⁰

The Department of Justice (DOJ) confirms that only Utah and Arkansas have failed to join the Prison Rape Elimination Act (PREA) designed to prevent the estimated 200,000 annual inmate sexual assaults. All other states are either in compliance or documenting their steps toward compliance. Governor Herbert's office maintains that Utah prefers to follow its own guidelines to achieve the same goal. Noncompliance deprived Utah of DOJ grants worth \$146,132 for corrections and other community programs in 2016 alone.³¹

Hate Crimes

Hate crimes are vastly underreported, and rely on data compiled from voluntary submissions by local law enforcement. The FBI has long identified African-Americans (race) and Jews (religion) as the primary victims of hate crimes. In the run-up to the divisive 2016 election, Muslims suffered a 67% surge of attacks.³² Despite the 1,239 hate crimes during its 20 year history, **Utah's "toothless" hate crimes law has never been used in a successful prosecution.**³³

A robust but unsuccessful hate crimes bill proposed in 2016 provided the inspiration for 2017's SB 72.³⁴ The bill title, "Victim Selection Penalty Enhancement," emphasized protection of all

victims assaulted because of their perceived identity in a group despised by the assailant(s). Support from the Utah Law Enforcement Legislative Committee and the Utah Sheriff's Association could not overcome strong opposition from certain Senators.³⁵ Senator Daniel Thatcher, the bill's sponsor, remains optimistic that reducing the legal punishments and a broader public educational effort will bring passage in 2018.³⁶

Commendations

- **The Legislature for its passage of HB 206** promoting the safety of family members by **prohibiting the domestic violence abuser's access to firearms**
- **The 46 police departments that have successfully adopted LAP**, and thereby effectively and verifiably reduced the number of domestic homicides.
- **The Legislature for its passage of HB 200 mandating the submission and processing of all rape kits** by the Utah State Crime lab within given timelines and a tracking system
- **BYU for its hiring of two full-time positions** (Title IX Coordinator and a Victim Advocate) **to undergird the Amnesty Clause that waives the Honor Code** during sexual assault investigations³⁷
- ***Salt Lake Tribune* reporters**, including Erin Albery, Jessica Miller, Alex Stuckey, and others, working under Managing Editor Sheila McCann, for receiving the **2017 Pulitzer Prize for Local Accountability Reporting**

Recommendations

- **The Legislature should add dating conflicts to the category of domestic violence** to establish consistency with Utah's protective orders and enhance police authority.
- **The Legislature should not allow 'permitless carry'** to void the background check and firearm training presently required for the 'concealed carry' permit.
- **The Legislature must provide the additional \$1.2 million necessary** to comply with the standards contained in HB 200 **to collect and test all rape kits** in the given time frames.
- **Governor Herbert should reconsider Utah's non-compliance with PREA standards** by endorsing its provisions and taking advantage of DOJ grant monies.
- **The Legislature should endorse a strong, effective hate crimes bill** modeled on the hate crimes bills introduced in the 2016 and 2017 sessions.

Endnotes for Article 5 (Personal Security)

¹ Jenn Oxborow, "Op-ed: Take Guns Out of Domestic Abusers' Hands," *Salt Lake Tribune*, March 4, 2017, accessed March 5, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=5000468>.

² Mariah Noble, "Domestic Violence Accounted for Nearly a Third of Utah Homicides in 2016," *Salt Lake Tribune*, January 4, 2017, accessed June 20, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=4719154>. The 42% figure for Utah is an average over 16 years.

³ 18 U.S.C. 922(g)(9).

⁴ Lee Davidson, "Domestic Violence Gun Bill Sails through Panel," *Salt Lake Tribune*, February 11, 2017, accessed February 11, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=4928759>.

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⁶ Editorial, "Utah Must Face Its Problem of Domestic Violence," *Salt Lake Tribune*, June 16, 2017, accessed June 17, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=5411207>.

⁷ 18 U.S.C.2266(7).

⁸ Pat Reavy, "Sandy Police Defend Domestic Violence Policies," *Deseret News*, June 20, 2017, accessed August 11, 2017, <http://www.deseretnews.com/article/865683359/Sandy-police-defend-domestic-violence>.

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¹⁰ Erin Grinshteyn and David Hemenway, "Violent Death Rates: The US Compared with Other High-Income OECD Countries, 2010," *The American Journal of Medicine*, March 2016, 29: 3, 266-273.

¹¹ Melissa Jeltsen, "The NRA Wants To Solve Domestic Violence By Arming Victims. It Probably Won't Work," *Huffington Post*, July 15, 2017, accessed July 29, 2017, http://www.huffingtonpost.com/entry/nra-guns-domestic-violence_us_5967dd57e4b01741; Libby Isenstein, "The States with the Most Gun Laws See the Fewest Gun-Related Deaths," *The Atlantic*, August 28, 2015, accessed August 4, 2017, <http://www.theatlantic.com/politics/archives/2015/08/the-states-with-the-most-gun-laws-see>.

¹² "Utah Ready for Hatch to Move On; More Progressive than You Might Think," *Public Policy Polling*, August 24, 2016, accessed July 15, 2017, <http://www.publicpolicypolling.com/main/utah/>.

¹³ Robert Gehrke, "Perry Bill Takes Solid Steps on Domestic Violence, but Trips on Concealed-Gun Issue," *Salt Lake Tribune*, February 1, 2017, accessed February 1, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=4886641>.

¹⁴ Charles C.W. Cooke, "Constitutional Carry Marches On," *National Review*, January 25, 2017, accessed May 29, 2017, <http://www.nationalreview.com/node/444212/print>.

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¹⁶ Lee Davidson, "House Approves Allowing Concealed Gun Permits for Utahns as Young as 18," *Salt Lake Tribune*, Feb 22, 2017, accessed February 22, 2017, <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=4967744>.

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¹⁹ Jessica Miller, "'This is a Victory for Everyone': Utah Lawmakers Pass \$1.2 Million Bill Mandating Testing of All Rape Kits," *Salt Lake Tribune*, March 9, 2017, accessed March 9, 2017,

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²² Mariah Noble, "Rape Kit Testing for SLC Backlog has Yielded Rape Charges in Five Cases," *Salt Lake Tribune*, July 11, 2017, accessed July 11, 2017,

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²³ It defies credibility that 89% of U.S. colleges reported no incidents of rape in 2015. See Amy Becker, "Newly Released Campus Sexual Violence Data Don't Tell Full Story," *American Association of University Women*, May 10, 2017, accessed September 24, 2017, <http://www.aauw.org/article/newly-released-campus-sexual-violence-data>.

²⁴ Jennifer Napier-Pearce, "Salt Lake Tribune Wins Reporting Award for BYU, Utah State Sex-Assault Coverage," *Salt Lake Tribune*, April 4, 2017, accessed April 4, 2017,

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²⁵ Tad Walsh, "BYU Adopts Amnesty Clause, Other 'Sweeping Changes' to Help Sexual Assault Victims," *Deseret News*, October 26, 2016, accessed October 26, 2016, <http://www.deseretnews.com/article/865665672/BYU-advisory-council-recommends>.

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