

BAIL AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rex P. Shipp

Senate Sponsor: _____

LONG TITLE

General Description:

This bill expands the offenses for which the right to bail is not available.

Highlighted Provisions:

This bill:

▶ provides that an individual does not have the right to bail for a class A misdemeanor if the individual constitutes a substantial danger or is likely to flee if released on bail; and

▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-20-1, as last amended by Laws of Utah 2020, Chapters 142 and 185

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

Section 1. Section **77-20-1** is amended to read:

77-20-1. Right to bail -- Pretrial status order -- Denial of bail -- Detention hearing -- Motion to modify.



28 (1) As used in this chapter:

29 (a) "Bail bond agency" means the same as that term is defined in Section 31A-35-102.

30 (b) "Financial condition" or "monetary bail" means any monetary condition that may be
31 imposed under Section 77-20-4 to secure an individual's pretrial release.

32 (c) "Pretrial release" or "bail" means release of an individual charged with or arrested
33 for a criminal offense from law enforcement or judicial custody during the time the individual
34 awaits trial or other resolution of the criminal charges.

35 (d) "Pretrial status order" means an order issued by the court exercising jurisdiction
36 over an individual charged with a criminal offense that sets the terms and conditions of the
37 individual's pretrial release or denies pretrial release and orders that the individual be detained
38 pending resolution of the criminal charges.

39 (e) "Surety" and "sureties" mean a surety insurer or a bail bond agency.

40 (f) "Surety insurer" means the same as that term is defined in Section 31A-35-102.

41 (2) An individual charged with or arrested for a criminal offense shall be admitted to
42 bail as a matter of right, except if the individual is charged with a:

43 (a) capital felony, when the court finds there is substantial evidence to support the
44 charge;

45 (b) felony committed while on probation or parole, or while free on bail awaiting trial
46 on a previous felony charge, when the court finds there is substantial evidence to support the
47 current felony charge;

48 (c) felony when there is substantial evidence to support the charge and the court finds
49 by clear and convincing evidence that the individual would constitute a substantial danger to
50 any other individual or to the community, or is likely to flee the jurisdiction of the court, if
51 released on bail;

52 (d) felony when the court finds there is substantial evidence to support the charge and
53 the court finds by clear and convincing evidence that the individual violated a material
54 condition of release while previously on bail; [or]

55 (e) class A misdemeanor, if the court finds:

56 (i) there is substantial evidence to support the charge; and

57 (ii) by clear and convincing evidence, that the individual would constitute a substantial
58 danger to any other individual or to the community, or is likely to flee the jurisdiction of the

59 court, if released on bail; or

60 [~~(e)~~] (f) domestic violence offense if the court finds:

61 (i) that there is substantial evidence to support the charge; and

62 (ii) by clear and convincing evidence, that the individual would constitute a substantial
63 danger to an alleged victim of domestic violence if released on bail.

64 (3) (a) A court exercising jurisdiction over an individual charged with or arrested for a
65 criminal offense shall issue a pretrial status order designating the conditions to be imposed
66 upon the individual's release or ordering that the individual be detained under this section
67 during the time the individual awaits trial or other resolution of the criminal charges.

68 (b) A court granting pretrial release shall impose the least restrictive reasonably
69 available conditions of release on the individual who is the subject of the pretrial status order
70 that the court determines will reasonably ensure:

71 (i) the individual's appearance in court when required;

72 (ii) the safety of any witnesses or victims of the offense allegedly committed by the
73 individual;

74 (iii) the safety and welfare of the public; and

75 (iv) that the individual will not obstruct or attempt to obstruct the criminal justice
76 process.

77 (c) (i) The court shall issue the pretrial status order without unnecessary delay.

78 (ii) If a prosecutor files a motion for detention under Subsection (6), the court may
79 delay issuing the pretrial status order until after hearing the motion to detain if the court finds:

80 (A) the prosecutor's motion states a reasonable case for detention; and

81 (B) detaining the defendant until after the motion is heard is in the interests of justice
82 and public safety.

83 (4) (a) Except as otherwise provided in this section or Section 78B-7-802, the court
84 shall order that an individual charged with a criminal offense be released on the individual's
85 own recognizance, on condition that the individual appear at all required court proceedings, if
86 the court finds that additional conditions are not necessary to reasonably ensure compliance
87 with Subsection (3)(b).

88 (b) The court shall impose additional release conditions if the court finds that
89 additional release conditions are necessary to reasonably ensure compliance with Subsection

- 90 (3)(b). The conditions imposed may include that the individual:
- 91 (i) not commit a federal, state, or local offense during the period of release;
 - 92 (ii) avoid contact with a victim or victims of the alleged offense;
 - 93 (iii) avoid contact with a witness or witnesses who may testify concerning the alleged
94 offense that are named in the pretrial status order;
 - 95 (iv) not use or consume alcohol, or any narcotic drug or other controlled substance
96 except as prescribed by a licensed medical practitioner;
 - 97 (v) submit to drug or alcohol testing;
 - 98 (vi) complete a substance abuse evaluation and comply with any recommended
99 treatment or release program;
 - 100 (vii) submit to electronic monitoring or location device tracking;
 - 101 (viii) participate in inpatient or outpatient medical, behavioral, psychological, or
102 psychiatric treatment;
 - 103 (ix) maintain employment, or if unemployed, actively seek employment;
 - 104 (x) maintain or commence an education program;
 - 105 (xi) comply with limitations on where the individual is allowed to be located or the
106 times the individual shall be or may not be at a specified location;
 - 107 (xii) comply with specified restrictions on personal associations, place of residence, or
108 travel;
 - 109 (xiii) report to a law enforcement agency, pretrial services program, or other designated
110 agency at a specified frequency or on specified dates;
 - 111 (xiv) comply with a specified curfew;
 - 112 (xv) forfeit or refrain from possession of a firearm or other dangerous weapon;
 - 113 (xvi) if the individual is charged with an offense against a child, is limited or denied
114 access to any location or occupation where children are, including any residence where children
115 are on the premises, activities including organized activities in which children are involved,
116 locations where children congregate, or where a reasonable person should know that children
117 congregate;
 - 118 (xvii) comply with requirements for house arrest;
 - 119 (xviii) return to custody for a specified period of time following release for
120 employment, schooling, or other limited purposes;

121 (xix) remain in the custody of one or more designated individuals who agree to
122 supervise and report on the behavior and activities of the individual charged and to encourage
123 compliance with all court orders and attendance at all required court proceedings;

124 (xx) comply with a financial condition; or

125 (xxi) comply with any other condition that is necessary to reasonably ensure
126 compliance with Subsection (3)(b).

127 (c) If the court determines a financial condition, other than an unsecured bond, is
128 necessary to impose on an individual as part of the individual's pretrial release, the court shall
129 consider the individual's ability to pay when determining the amount of the financial condition.

130 (5) In making a determination under Subsection (3), the court may rely on the
131 following:

132 (a) any form of pretrial services assessment;

133 (b) the nature and circumstances of the offense or offenses charged, including whether
134 the charges include a violent offense and the vulnerability of witnesses or alleged victims;

135 (c) the nature and circumstances of the individual, including the individual's character,
136 physical and mental health, family and community ties, employment status and history,
137 financial resources, past criminal conduct, history of drug or alcohol abuse, and history of
138 timely appearances at required court proceedings;

139 (d) the potential danger to another individual or individuals posed by the release of the
140 individual;

141 (e) if the individual was on probation, parole, or release pending an upcoming court
142 proceeding at the time the individual allegedly committed the offense;

143 (f) the availability of other individuals who agree to assist the individual in attending
144 court when required or other evidence relevant to the individual's opportunities for supervision
145 in the individual's community;

146 (g) the eligibility and willingness of the individual to participate in various treatment
147 programs, including drug treatment; or

148 (h) other evidence relevant to the individual's likelihood of fleeing or violating the law
149 if released.

150 (6) (a) If the criminal charges filed against the individual include one or more offenses
151 eligible for detention under Subsection (2) or Utah Constitution, Article I, Section 8, the

152 prosecution may file a motion for pretrial detention.

153 (b) Upon receiving a motion under Subsection (6)(a), the court shall set a hearing on
154 the matter as soon as practicable.

155 (c) The individual who is the subject of the detention hearing has the right to be
156 represented by counsel at the pretrial detention hearing and, if a court finds the individual is
157 indigent under Section [78B-22-202](#), the court shall appoint counsel to represent the individual
158 in accordance with Section [78B-22-203](#).

159 (d) The court shall give both parties the opportunity to make arguments and to present
160 relevant evidence at the detention hearing.

161 (7) After hearing evidence on a motion for pretrial detention, the court may detain the
162 individual if:

163 (a) the individual is accused of committing an offense that qualifies the individual for
164 detention under Subsection (2) or Utah Constitution, Article I, Section 8;

165 (b) the prosecution demonstrates substantial evidence to support the charge, and meets
166 all additional evidentiary burdens required under Subsection (2) or Utah Constitution, Article I,
167 Section 8; and

168 (c) the court finds that no conditions that may be imposed upon granting the individual
169 pretrial release will reasonably ensure compliance with Subsection (3)(b).

170 (8) (a) If an individual is charged with a criminal offense described in Subsection
171 (8)(b), there is a rebuttable presumption that the individual be detained.

172 (b) Criminal charges that create a rebuttable presumption of detention under
173 Subsection (8)(a) include:

174 (i) criminal homicide as defined in Section [~~75-5-201~~] [76-5-201](#); and

175 (ii) any offense for which the term of imprisonment may include life.

176 (c) The individual may rebut the presumption of detention by demonstrating, by a
177 preponderance of the evidence, that specified conditions of release will reasonably ensure
178 compliance with Subsection (3)(b).

179 (9) Except as otherwise provided, the court issuing a pretrial warrant of arrest shall
180 issue the initial pretrial status order.

181 (10) (a) An individual arrested for a violation of a jail release agreement or jail release
182 court order issued in accordance with Section [78B-7-802](#):

183 (i) may be denied pretrial release by the court under Subsection (2); and

184 (ii) if denied pretrial release, may not be released before the individual's initial
185 appearance before the court.

186 (b) Nothing in this section precludes or nullifies a jail release agreement or jail release
187 order required under Section [78B-7-802](#).

188 (11) (a) A motion to modify the initial pretrial status order may be made by a party at
189 any time upon notice to the opposing party sufficient to permit the opposing party to prepare
190 for hearing and to permit each alleged victim to be notified and be present.

191 (b) Hearing on a motion to modify a pretrial status order may be held in conjunction
192 with a preliminary hearing or any other pretrial hearing.

193 (c) The court may rely on information as provided in Subsection (5) and may base its
194 ruling on evidence provided at the hearing so long as each party is provided an opportunity to
195 present additional evidence or information relevant to bail.

196 (12) Subsequent motions to modify a pretrial status order may be made only upon a
197 showing that there has been a material change in circumstances.

198 (13) An appeal may be taken from an order of a court denying bail to the Utah Court of
199 Appeals pursuant to the Utah Rules of Appellate Procedure, which shall review the
200 determination under Subsection (7).

201 (14) For purposes of this section, any arrest or charge for a violation of Section
202 [76-5-202](#), Aggravated murder, is a capital felony unless:

203 (a) the prosecutor files a notice of intent to not seek the death penalty; or

204 (b) the time for filing a notice to seek the death penalty has expired and the prosecutor
205 has not filed a notice to seek the death penalty.