

Senator Lyle W. Hillyard proposes the following substitute bill:

BAIL BOND AND CRIMINAL PROCEDURE AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Utah Code of Criminal Procedure relating to arrests and bail.

Highlighted Provisions:

This bill:

- ▶ requires a peace officer to issue citations rather than arresting individuals for certain offenses;
- ▶ sets forth requirements for individuals to appear in court when issued a citation;
- ▶ amends parental notification requirements if the person cited is under 18 years of age;
- ▶ provides for pre-trial release requirements when the defendant is arrested without a warrant;
- ▶ provides conditions by which a custodial authority may hold a defendant for an extended period of time after a defendant's appearance or presentment in court;
- ▶ directs judges to order the release of a person who may be admitted to bail under the least restrictive means necessary to ensure the appearance of the accused in court and the safety of the public;
- ▶ provides that a court may order a defendant detained until the time of sentencing under certain circumstances;



- 26 ▶ makes the failure to appear in court pursuant to a citation a contemptible offense
- 27 under certain circumstances;
- 28 ▶ provides that a person may post bail by written undertaking or an equal amount of
- 29 cash bail;
- 30 ▶ provides that the clerk of the court shall enter a bench warrant for a person who
- 31 posts bail and fails to appear as required and that the bench warrant shall be entered:
- 32 • on the statewide warrant system; and
- 33 • with the National Crime Information Center if the original offense was a felony;
- 34 ▶ eliminates the provision that a surety may request an extension of the six-month
- 35 period to bring a defendant before the court or a county sheriff if the defendant
- 36 failed to appear as required by the court; and
- 37 ▶ makes technical corrections.

38 **Money Appropriated in this Bill:**

39 None

40 **Other Special Clauses:**

41 This bill provides a coordination clause.

42 **Utah Code Sections Affected:**

43 AMENDS:

- 44 41-22-16, as last amended by Laws of Utah 2005, Chapter 2
- 45 73-18-20, as last amended by Laws of Utah 2005, Chapter 2
- 46 73-18a-15, as last amended by Laws of Utah 2005, Chapter 2
- 47 77-7-18, as last amended by Laws of Utah 2012, Chapter 322
- 48 77-7-19, as last amended by Laws of Utah 2009, Chapter 292
- 49 77-7-20, as last amended by Laws of Utah 2014, Chapters 126 and 263
- 50 77-18a-1, as last amended by Laws of Utah 2009, Chapter 175
- 51 77-20-4, as last amended by Laws of Utah 2014, Chapter 170
- 52 77-20-7, as last amended by Laws of Utah 2011, Chapter 179
- 53 77-20-8, as last amended by Laws of Utah 1988, Chapter 160
- 54 77-20-9, as last amended by Laws of Utah 2008, Chapter 3
- 55 77-20b-101, as last amended by Laws of Utah 2011, Chapter 179
- 56 77-20b-102, as last amended by Laws of Utah 2000, Chapter 259

- 57 [77-20b-105](#), as enacted by Laws of Utah 2006, Chapter 332
- 58 [78A-2-220](#), as last amended by Laws of Utah 2013, Chapter 245
- 59 [78B-6-301](#), as renumbered and amended by Laws of Utah 2008, Chapter 3

60 REPEALS AND REENACTS:

- 61 [76-8-312](#), as last amended by Laws of Utah 1974, Chapter 32
- 62 [77-2-1.1](#), as enacted by Laws of Utah 1992, Chapter 33
- 63 [77-7-21](#), as last amended by Laws of Utah 2009, Chapter 292
- 64 [77-7-22](#), as enacted by Laws of Utah 1980, Chapter 15
- 65 [77-7-23](#), as last amended by Laws of Utah 1997, Chapters 10 and 215
- 66 [77-20-1](#), as last amended by Laws of Utah 2015, Chapter 99
- 67 [77-20-3](#), as last amended by Laws of Utah 1998, Chapter 293
- 68 [77-20-5](#), as last amended by Laws of Utah 1998, Chapter 293

69 REPEALS:

- 70 [77-7-24](#), as renumbered and amended by Laws of Utah 2005, Chapter 2
- 71 [77-7-25](#), as renumbered and amended by Laws of Utah 2005, Chapter 2
- 72 [77-7-26](#), as renumbered and amended by Laws of Utah 2005, Chapter 2

73 **Utah Code Sections Affected by Coordination Clause:**

- 74 [77-20-4](#), as last amended by Laws of Utah 2014, Chapter 170
- 75 [77-20-5](#), as last amended by Laws of Utah 1998, Chapter 293



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

78 Section 1. Section **41-22-16** is amended to read:

79 **41-22-16. Authorized peace officers -- Arrest provisions.**

80 (1) Any peace officer authorized under Title 53, Chapter 13, Peace Officer
81 Classifications, may enforce the provisions of this chapter and the rules promulgated under this
82 chapter.

83 (2) Whenever any person is arrested for any violation of the provisions of this chapter
84 or of the rules promulgated under this chapter, the procedure for the arrest is the same as
85 outlined in Sections [77-7-22](#)[;] and [77-7-23](#)[, and ~~[77-7-24](#)~~].

86 Section 2. Section **73-18-20** is amended to read:

87 **73-18-20. Enforcement of chapter -- Authority to stop and board vessels --**

88 **Disregarding law enforcement signal to stop as misdemeanor -- Procedure for arrest.**

89 (1) Any law enforcement officer authorized under Title 53, Chapter 13, Peace Officer
90 Classifications, may enforce the provisions of this chapter and the rules promulgated under this
91 chapter.

92 (2) Any law enforcement officer authorized under Title 53, Chapter 13, Peace Officer
93 Classifications, has the authority to stop and board any vessel subject to this chapter, whether
94 the vessel is on water or land. If that officer determines the vessel is overloaded, unseaworthy,
95 or the safety equipment required by this chapter or rules of the board is not on the vessel, that
96 officer may prohibit the launching of the vessel or stop the vessel from operating.

97 (3) An operator who, having received a visual or audible signal from a law
98 enforcement officer authorized under Title 53, Chapter 13, Peace Officer Classifications, to
99 bring his vessel to a stop, operates his vessel in willful or wanton disregard of the signal so as
100 to interfere with or endanger the operation of any vessel or endanger any person, or who
101 attempts to flee or elude the officer whether by vessel or otherwise is guilty of a class A
102 misdemeanor.

103 (4) Whenever any person is arrested for any violation of the provisions of this chapter
104 or of the rules promulgated under this chapter, the procedure for arrest is the same as outlined
105 in Sections [77-7-22](#) [~~through [77-7-24](#)~~] and [77-7-23](#).

106 Section 3. Section **73-18a-15** is amended to read:

107 **73-18a-15. Arrest for violation -- Procedure.**

108 Whenever any person is arrested for any violation of the provisions of this chapter or
109 rule promulgated under this chapter, the procedure for arrest is the same as specified in
110 Sections [77-7-22](#) [~~through [77-7-24](#)~~] and [77-7-23](#).

111 Section 4. Section **76-8-312** is repealed and reenacted to read:

112 **76-8-312. Bail jumping.**

113 A person arrested and charged with a felony offense who willfully fails to appear at
114 court at the time and place designated for appearance is guilty of a third degree felony.

115 Section 5. Section **77-2-1.1** is repealed and reenacted to read:

116 **77-2-1.1. Signing and filing of information.**

117 The prosecuting attorney shall:

118 (1) sign all informations; and

119 (2) cause all informations to be filed in court as provided for by the Utah Rules of
120 Criminal Procedure.

121 Section 6. Section 77-7-18 is amended to read:

122 **77-7-18. Citation on misdemeanor or infraction charge.**

123 ~~[Any person subject to arrest or prosecution on a misdemeanor or infraction charge may~~
124 ~~be issued and delivered]~~

125 (1) Except as provided in Subsections (3) or (4), a peace officer, who has detained a
126 person and intends to charge the person with a class B or C misdemeanor or an infraction, may
127 not deliver that person to a custodial facility unless the person is also charged with a felony as a
128 part of the same criminal episode. Instead, the officer shall refer the matter to a prosecutor who
129 shall screen the charges as provided in Title 77, Chapter 2, Prosecution, Screening, and
130 Diversion, or issue a citation that requires the person to appear at the court [of the magistrate]
131 with [territorial] jurisdiction. [The citation may be issued by: (1) a peace officer, in lieu of or
132 in addition to taking the person into custody; (2)]

133 (2) In addition to peace officers, the following individuals may issue citations for class
134 B or C misdemeanors or infractions:

135 (a) any public official of any county or municipality charged with the enforcement of
136 the law;

137 ~~[(3)]~~ (b) a port-of-entry agent as defined in Section 72-1-102;

138 ~~[(4)]~~ (c) an animal control officer of a special service district under Title 17D, Chapter
139 1, Special Service District Act, who is authorized to provide animal control service; and

140 ~~[(5)]~~ (d) a volunteer authorized to issue a citation under Section 41-6a-213.

141 (3) A peace officer may arrest and book a person in a custodial facility in lieu of
142 issuing a citation for:

143 (a) any class B misdemeanor violation of Title 41, Chapter 6a, Part 5, Driving Under
144 the Influence and Reckless Driving;

145 (b) a domestic violence offense as defined in Section 77-36-1;

146 (c) any offense involving an obstruction of justice; or

147 (d) any other class B or C misdemeanor or infraction if necessary to prevent a breach of
148 the peace.

149 (4) Nothing in this section prevents a peace officer from delivering a person to a

150 custodial facility for any other warrants or for any other legal reasons that may exist to detain
151 the person.

152 Section 7. Section 77-7-19 is amended to read:

153 **77-7-19. Appearance required by citation -- Arrest for failure to appear --**
154 **Transfer or dismissal of improperly filed cases.**

155 (1) A person receiving a citation issued pursuant to Section 77-7-18 shall appear
156 [~~before the magistrate~~] in the court designated in the citation on or before the time and date
157 specified in the citation unless [~~the uniform bail schedule adopted by the Judicial Council or~~
158 ~~Subsection 77-7-21(1) permits forfeiture of bail for the offense charged.];~~

159 (a) the citation states that the court will, within five to 14 days, notify the person of
160 when to appear; or

161 (b) the person is permitted to remit the fine and other penalties without a personal
162 appearance pursuant to the uniform fine schedule adopted by the Judicial Council, or by court
163 order under Section 77-7-21.

164 (2) A citation may not require a person to appear or contact the court sooner than five
165 days or later than 14 days following its issuance.

166 [~~(3) (a) A person who receives a citation and who fails to comply with Section 77-7-21~~
167 ~~on or before the time and date and at the court specified is subject to arrest.]~~

168 [~~(b) The magistrate may issue a warrant of arrest based upon a citation that was served~~
169 ~~and filed in accordance with Section 77-7-20.]~~

170 [~~(4) Except where otherwise provided by law, a citation or information issued for~~
171 ~~violations of Title 41, Motor Vehicles, shall state that the person receiving the citation or~~
172 ~~information shall appear before the magistrate who has jurisdiction over the offense charged.]~~

173 [~~(5) Any justice court judge may, upon the motion of either the defense attorney or~~
174 ~~prosecuting attorney, based on a lack of territorial jurisdiction or the disqualification of the~~
175 ~~judge, transfer cases to a justice court with territorial jurisdiction or the district court within the~~
176 ~~county.]~~

177 (3) If the person cited does not appear before the court as directed by the citation or the
178 court, or pay the fines if allowed by Section 77-7-21, the court may issue a bench warrant for
179 the person's arrest.

180 (4) A person's willful failure to appear on a citation constitutes contempt pursuant to

181 Subsection 78B-6-301(12).

182 ~~[(6)] (5) (a) Clerks and other administrative personnel serving the courts shall [ensure~~
183 ~~that all citations for violation of Title 41, Motor Vehicles, are filed in a court with jurisdiction~~
184 ~~and venue and shall refuse to receive]~~ identify for the judge any citations that should [be] have
185 been filed in another court.

186 ~~[(b) Fines, fees, costs, and forfeitures imposed or collected for violations of Title 41,~~
187 ~~Motor Vehicles, which are filed contrary to this section shall be paid to the entitled~~
188 ~~municipality or county by the state, county, or municipal treasurer who has received the fines,~~
189 ~~fees, costs, or forfeitures from the court which collected them.]~~

190 ~~[(c) The accounting and remitting of sums due shall be at the close of the fiscal year of~~
191 ~~the municipality or county which has received fines, fees, costs, or forfeitures as a result of any~~
192 ~~improperly filed citations.]~~

193 (b) Upon determining that the court lacks jurisdiction, the judge shall:

194 (i) transfer the case to a court with jurisdiction; or

195 (ii) dismiss the charges contained in the citation if no other court is readily identifiable
196 and notify the prosecutor of the dismissal.

197 (c) Fines, fees, costs, and forfeitures collected for cases transferred under this section
198 shall be transferred to the court receiving the case. If the case is dismissed, any fines, fees,
199 costs, and forfeitures collected shall be returned to the defendant.

200 Section 8. Section **77-7-20** is amended to read:

201 **77-7-20. Delivery of citation to defendant -- Filing in court -- Electronic filing --**
202 **Contents of citations.**

203 (1) A peace officer or ~~[public]~~ other authorized official who issues a citation pursuant
204 to Section **77-7-18** shall give the citation to the person cited and shall within five business days
205 electronically file the data from Subsections (2)(a) through (2)~~[(g)](h)~~ with the court specified
206 in the citation. The data transmission shall use the court's electronic filing interface. A
207 nonconforming filing is not effective.

208 (2) The citation issued under authority of this chapter shall contain the following data:

209 (a) the name, address, and phone number of the court before which the person is to
210 appear;

211 (b) the name and date of birth of the person cited;

- 212 (c) a brief description of the offense charged;
- 213 (d) the date, time, and place at which the offense is alleged to have occurred;
- 214 (e) the date on which the citation was issued;
- 215 (f) the name of the peace officer or ~~[public]~~ official who issued the citation, and the
- 216 name of the arresting person if an arrest was made by a private party and the citation was
- 217 issued in lieu of taking the arrested person before a magistrate;

- 218 (g) the ~~[time and]~~ date on or before and after which the person is to appear or a
- 219 statement that the court will notify the person of the time to appear;

220 ~~[(h) the address of the court in which the person is to appear;]~~

- 221 (h) whether the defendant was arrested and delivered to a custodial facility for other
- 222 reasons at the time the citation was issued;

- 223 (i) whether the offense is a domestic violence offense; and

- 224 (j) a notice containing substantially the following language:

225 READ CAREFULLY

226 This citation is not an information and will not be used as an information without your
 227 consent. If an information is filed you will be provided a copy by the court. You MUST
 228 appear in court on or before the time set in this citation or as directed by the court. IF YOU
 229 FAIL TO APPEAR, THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST. A
 230 WILLFUL FAILURE TO APPEAR CONSTITUTES CONTEMPT OF COURT.

- 231 (3) By electronically filing the data with the court, the peace officer or ~~[public]~~ official
- 232 ~~[certifies]~~ affirms to the court that:

- 233 (a) the citation or information, including the summons and complaint, was ~~[served~~
- 234 ~~upon]~~ delivered to the defendant ~~[in accordance with the law];~~

- 235 (b) the defendant committed the offense set forth in the ~~[served documents]~~ citation;
- 236 and

- 237 (c) the court to which the defendant was directed to appear ~~[is the proper court~~
- 238 ~~pursuant to Section 77-7-21]~~ has jurisdiction over the offense charged.

- 239 (4) Notwithstanding Subsection (1), if a citing law enforcement officer is not
- 240 reasonably able to access the efilng system, the citation need not be filed electronically if being
- 241 filed with a justice court.

- 242 (5) After a citation is issued, it is a class B misdemeanor for any peace officer or other

243 person to knowingly or intentionally dispose of that citation, other than by filing it with the
244 appropriate court.

245 Section 9. Section 77-7-21 is repealed and reenacted to read:

246 **77-7-21. Proceeding on citation -- Remittance of fine -- Parental notification**
247 **required.**

248 (1) (a) A citation filed with the court may, with the consent of the defendant, serve in
249 lieu of an information before trial. The person cited may plead guilty or no contest to the
250 charge listed and be sentenced.

251 (b) If provided by the uniform fine schedule adopted by the Judicial Council, or with
252 the court's approval, a person may remit the fine and other penalties without a personal
253 appearance before the court in any case charging a class B misdemeanor or lower offense,
254 unless the charge is:

255 (i) a domestic violence offense as defined in Section 77-36-1;

256 (ii) a violation of Section 41-6a-502, driving under the influence of alcohol, drugs, or a
257 combination of both or with specified or unsafe blood alcohol concentration;

258 (iii) a violation of Section 41-6a-517, driving with any measurable controlled substance
259 in the body; or

260 (iv) a violation of a local ordinance similar to the offenses described in Subsections

261 (1)(b)(i) through (iii).

262 (c) The remittal of fines and other penalties shall be entered as a conviction and treated
263 the same as if the accused pleaded no contest.

264 (d) If the person cited is under 18 years of age, the court shall promptly mail a copy of
265 the citation or a notice of the citation to the address given on the citation, to the attention of the
266 parent or guardian of the defendant.

267 (2) If the person pleads not guilty to the offense or offenses charged, further
268 proceedings shall be held in accordance with the Utah Rules of Criminal Procedure.

269 Section 10. Section 77-7-22 is repealed and reenacted to read:

270 **77-7-22. Persons arrested pursuant to warrant -- Presentment to court --**

271 **Notification to court.**

272 (1) A person arrested pursuant to a warrant:

273 (a) may, during court hours and if a judge is available, be delivered to the court issuing

274 the warrant;

275 (b) may be delivered to a custodial facility and, after booking, shall be released with
276 instructions to appear or contact the court if the person has met all conditions of release,
277 including posting any monetary bail set by the court;

278 (c) shall, if arrested on an out of state warrant pursuant to Section 77-7-18, be subject
279 to the conditions in Title 77, Chapter 30, Extradition;

280 (d) shall, if arrested and booked in the county in which the warrant was issued and is
281 not released pursuant to Subsection (1)(b), appear before the issuing court within three business
282 days of being booked; and

283 (e) shall, if arrested and booked in a county in which the warrant was not issued and is
284 not released pursuant to Subsection (1)(b), be delivered to the issuing county no later than the
285 second business day after the defendant's holds in the arresting county are resolved.

286 (2) If a person is released under this section, the arresting officer or custodial authority
287 shall:

288 (a) notify the issuing court of the defendant's arrest and release; and

289 (b) forward any monetary amounts, surety information, and proof of compliance with
290 release conditions to the court.

291 (3) Nothing in Subsection (1)(e) prevents a court from arranging for temporary
292 transport, or video hearings, before the defendant is released in the arresting county.

293 Section 11. Section 77-7-23 is repealed and reenacted to read:

294 **77-7-23. Delivery of person arrested without warrant to magistrate -- Release**
295 **unless probable cause to justify arrest -- Release if no formal charges filed -- Extensions**
296 **of time.**

297 (1) When an arrest is made without a warrant by a peace officer, the peace officer shall
298 immediately:

299 (a) deliver the person to the court with jurisdiction over the offense; or

300 (b) deliver the person to a custodial facility and submit to a magistrate a sworn
301 statement of probable cause in accordance with the Utah Rules of Criminal Procedure.

302 (2) The magistrate shall determine if probable cause exists to justify the continued
303 detention of the defendant. The magistrate will determine pre-trial release in accordance with
304 Title 77, Chapter 20, Bail.

305 (3) When an arrest is made by a private person, that person shall immediately contact a
306 peace officer, who shall, if appropriate, take custody of the arrestee and comply with
307 Subsection (1).

308 (4) The custodial authority shall release any arrested person not later than 24 hours
309 after delivery to the facility unless a magistrate has found probable cause under Subsection
310 (1)(b) or has ordered an extension of the time to do so.

311 (5) The custodial authority shall release any arrested person who remains in custody at
312 5:00 p.m. on the third business day after the probable cause determination, unless the custodial
313 authority receives from a prosecuting attorney or a court:

314 (a) notice of filing of an information or indictment, and a warrant or order of the court
315 setting monetary bail and any other conditions of release; or

316 (b) a judicial order extending the time to file an information or indictment.

317 (6) The custodial authority shall release the arrestee if a notice pursuant to Subsection
318 (4) or (5)(b) is not received by the expiration of the time set by the order.

319 Section 12. Section **77-18a-1** is amended to read:

320 **77-18a-1. Appeals -- When proper.**

321 (1) A defendant may, as a matter of right, appeal from:

322 (a) a final judgment of conviction, whether by verdict or plea;

323 (b) an order made after judgment that affects the substantial rights of the defendant;

324 (c) an order adjudicating the defendant's competency to proceed further in a pending
325 prosecution; or

326 (d) an order denying bail, as provided in Subsection [77-20-1(7)] 77-20-3(4).

327 (2) In addition to any appeal permitted by Subsection (1), a defendant may seek
328 discretionary appellate review of any interlocutory order.

329 (3) The prosecution may, as a matter of right, appeal from:

330 (a) a final judgment of dismissal, including a dismissal of a felony information
331 following a refusal to bind the defendant over for trial;

332 (b) a pretrial order dismissing a charge on the ground that the court's suppression of
333 evidence has substantially impaired the prosecution's case;

334 (c) an order granting a motion to withdraw a plea of guilty or no contest;

335 (d) an order arresting judgment or granting a motion for merger;

- 336 (e) an order terminating the prosecution because of a finding of double jeopardy or
- 337 denial of a speedy trial;
- 338 (f) an order granting a new trial;
- 339 (g) an order holding a statute or any part of it invalid;
- 340 (h) an order adjudicating the defendant's competency to proceed further in a pending
- 341 prosecution;
- 342 (i) an order finding, pursuant to Title 77, Chapter 19, Part 2, Competency for
- 343 Execution, that an inmate sentenced to death is incompetent to be executed;
- 344 (j) an order reducing the degree of offense pursuant to Section [76-3-402](#); or
- 345 (k) an illegal sentence.

346 (4) In addition to any appeal permitted by Subsection (3), the prosecution may seek

347 discretionary appellate review of any interlocutory order entered before jeopardy attaches.

348 Section 13. Section [77-20-1](#) is repealed and reenacted to read:

349 **77-20-1. Right to bail -- Denial of bail -- Hearing.**

350 (1) As used in this chapter:

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

352 (b) "Surety" and "sureties" mean a surety insurer or a bail bond agency.

353 (c) "Surety insurer" means the same as that term is defined in Section [31A-35-102](#).

354 (2) A person charged with or arrested for a criminal offense shall be eligible for

355 pre-trial release on conditions set by a magistrate or judge. However, a magistrate or judge

356 may deny pre-trial release if a person is arrested for, or charged with a:

357 (a) capital felony, and the court finds there is substantial evidence to support the

358 charge;

359 (b) felony supported by substantial evidence and the offense is alleged to have occurred

360 while the person was on probation, parole, or pre-trial release on a previous felony charge;

361 (c) felony supported by substantial evidence and the court finds by clear and

362 convincing evidence that the person would constitute a substantial danger to any other person,

363 the community, or is likely to flee the jurisdiction of the court if released and any available

364 conditions of release would not satisfactorily mitigate that risk; or

365 (d) felony supported by substantial evidence and the court finds that the person violated

366 a material condition of pre-trial release in the present case.

- 367 (3) For purposes of this chapter, any arrest or charge for a violation of Section
368 76-5-202, aggravated murder, is a capital felony unless:
- 369 (a) the prosecutor files a notice of intent not to seek the death penalty; or
370 (b) the time for filing a notice to seek the death penalty has expired and the prosecutor
371 has not filed a notice.
- 372 (4) A person arrested for a violation of a jail release agreement or jail release order
373 pursuant to Section 77-36-2.5:
- 374 (a) may not be released before the expiration of the time to file an information pursuant
375 to Section 77-7-23, or any allowed extension of that time; and
- 376 (b) may not be released before the defendant's initial appearance in court pursuant to
377 Section 77-36-2.6 if an information or indictment are filed alleging a violation of that section
378 and the person is in custody.
- 379 (5) If during the time described in Subsection (4)(a) the custodial authority is notified
380 by the appropriate prosecutorial authority that it declines to file charges, the person shall be
381 released on those charges.
- 382 (6) Any person eligible for pre-trial release may be released either on the person's own
383 recognizance or upon posting monetary bail. The magistrate or judge shall impose the least
384 restrictive conditions that will reasonably:
- 385 (a) ensure the appearance of the accused; and
386 (b) ensure the safety of an individual or individuals.
- 387 Section 14. Section **77-20-3** is repealed and reenacted to read:
- 388 **77-20-3. Pre-trial release -- Modifying conditions of release.**
- 389 (1) The initial order establishing conditions of release or denying bail shall be issued:
- 390 (a) by a magistrate at the time probable cause is determined; or
391 (b) by the court upon the filing of an information or indictment, if a defendant has not
392 previously been arrested.
- 393 (2) A bail commissioner may set monetary bail in a misdemeanor case in accordance
394 with Sections 10-3-920 and 17-32-1.
- 395 (3) Subsequent review and modifications shall be conducted in accordance with the
396 Utah Rules of Criminal Procedure.
- 397 (4) Notwithstanding Section 78A-7-118, an appeal may be taken from an order of any

398 court denying pre-trial release in accordance with the Utah Rules of Appellate Procedure and
399 Utah Rules of Criminal Procedure. The appellate court shall review if the determination is
400 made in accordance with Section [77-20-1](#).

401 Section 15. Section **77-20-4** is amended to read:

402 **77-20-4. Monetary bail to be posted in cash, by credit or debit card, or by written**
403 **undertaking.**

404 [~~(1) Bail may be posted:~~]

405 (1) For purposes of this chapter, "monetary bail" means any amount of financial
406 security that a court orders posted to ensure a person's continued appearance at court hearings.

407 (2) Except as provided in Subsection (3), the judge or magistrate shall set monetary
408 bail at a single amount per case. The defendant may post that amount by any of the following
409 methods:

410 (a) in cash;

411 (b) by [~~written undertaking with or without sureties at the discretion of the magistrate;~~
412 ~~or~~] execution of a bail bond guaranteed by a surety licensed under Title 31A, Chapter 35, Bail
413 Bond Act;

414 (c) by credit or debit card, at the discretion of the [~~judge or bail commissioner.~~]
415 custodial authority; or

416 (d) by written undertaking guaranteed by sureties with a net worth of at least twice the
417 amount of the undertaking, exclusive of property exempt from execution.

418 [~~(2) Bail may not be accepted without receiving in writing at the time the bail is posted~~
419 ~~the current mailing address and telephone number of the surety.~~]

420 (3) If a person has failed to appear at least one other time in the case or has a history of
421 failing to appear in other cases, a court may limit a defendant to posting a certain type of
422 monetary bail if the court determines that the restriction is necessary to reasonably guarantee
423 the defendant's appearance or ensure the safety of an individual or individuals.

424 [~~(3) Bail posted~~] (4) Amounts paid by debit or credit card, less the fee charged by the
425 financial institution, shall be tendered to the courts.

426 [~~(4) Bail~~] (5) Amounts refunded by the court may be refunded by credit to the debit or
427 credit card, or cash. The amount refunded shall be the full amount received by the court under
428 Subsection [(3)] (4), which may be less than the full amount of the bail set by the court.

429 ~~[(5)]~~ (6) Before refunding ~~[bail that is]~~ amounts posted ~~[by the defendant]~~ in cash, by
430 credit card, or by debit card, the court may apply the amount posted toward criminal judgement
431 accounts receivable, as defined in Section ~~[76-3-201.1]~~ 76-3-201, that are owed by the
432 defendant in the priority set forth in Section 77-38a-404.

433 (7) If a defendant fails to appear after posting monetary bail in the form of cash or
434 credit card payment in a case for which a personal appearance is not required by the uniform
435 fine schedule or court order, the court may enter a conviction and apply the monetary bail to
436 finances and other penalties. The court shall then close the case.

437 Section 16. Section 77-20-5 is repealed and reenacted to read:

438 **77-20-5. Qualifications of sureties -- Justification -- Requirements of undertaking.**

439 (1) Each surety described in Subsection 77-20-4(1)(d) shall justify by affidavit upon
440 the undertaking and each may be further examined upon oath by the magistrate or by the
441 prosecuting attorney in the presence of a magistrate, in respect to the surety's property and net
442 worth.

443 (2) The undertaking shall, in addition to other requirements, provide that each surety
444 submit to the jurisdiction of the court and irrevocably appoint the clerk of the court as the
445 surety's agent upon whom any papers affecting the surety's liability on the undertaking may be
446 served, and that the surety's liability may be enforced on motion and upon any notice the court
447 may require without the necessity of an independent action.

448 (3) The sureties shall also comply with Utah Rules of Civil Procedure, Rule 72.

449 Section 17. Section 77-20-7 is amended to read:

450 **77-20-7. Duration of liability on undertaking -- Notices to sureties -- Exoneration**
451 **if charges not filed.**

452 (1) (a) Except as provided in Subsection (1)(b), the principal and the sureties on ~~[the]~~ a
453 bail bond or other written undertaking are liable on the bail bond or undertaking during all
454 proceedings and for all court appearances required of the defendant up to and including the
455 surrender of the defendant for sentencing, irrespective of any contrary provision in the bond or
456 undertaking. Any failure of the defendant to appear when required is a breach of the conditions
457 of the bond or undertaking ~~[or bail]~~ and subjects ~~[it]~~ the bond or undertaking to forfeiture,
458 regardless of whether or not notice of appearance was given to the sureties. Upon sentencing,
459 the bond or undertaking shall be exonerated without motion.

460 (b) If the sentence includes a commitment to a jail or prison, the bond or undertaking
461 shall be exonerated when the defendant appears at the appropriate jail or prison, unless the
462 judge doesn't require the defendant to begin the commitment within seven days, in which case
463 the bond or undertaking is exonerated upon sentencing.

464 (c) For purposes of this section, an order of the court accepting a plea in abeyance
465 agreement and holding that plea in abeyance pursuant to Title 77, Chapter 2a, Pleas in
466 Abeyance, is considered to be the same as a sentencing upon a guilty plea.

467 (d) Any suspended or deferred sentencing is not the responsibility of the surety and the
468 bond is exonerated without any motion, upon acceptance of the court and the defendant of a
469 plea in abeyance, probation, fine payments, post sentencing reviews, or any other deferred
470 sentencing reviews or any other deferred sentencing agreement.

471 (e) If a surety issues a bond after [~~the~~] sentencing, the surety is liable on the
472 undertaking during all proceedings and for all court appearances required of the defendant up
473 to and including the defendant's appearance to commence serving the sentence imposed under
474 Subsection (1).

475 [~~(2) If no information or indictment charging a person with an offense is filed in court~~
476 ~~within 120 days after the date of the bail undertaking or cash receipt, the court may relieve a~~
477 ~~person from conditions of release at the person's request, and the bond or undertaking is~~
478 ~~exonerated without further order of the court unless the prosecutor requests an extension of~~
479 ~~time before the end of the 120-day period by:]~~

480 [~~(a) filing a notice for extension with the court; and]~~

481 [~~(b) serving the notice for extension upon the sureties and the person or his attorney:]~~

482 [~~(3) A court may extend bail and conditions of release for good cause:]~~

483 (2) If no information, indictment, or request to extend time to file by the prosecutor is
484 filed in court within 120 days after the ordered release on conditions, the court shall:

485 (a) relieve a person from the conditions of release;

486 (b) refund as provided in Subsection 77-20-4(5) any monetary bail to the person; and

487 (c) exonerate any bail bond or undertaking without further order of the court.

488 (3) A request to extend time:

489 (a) shall be served on any surety and the arrested person or the arrested person's
490 attorney;

491 (b) shall be granted by the court for a period of up to 60 days; or

492 (c) may be granted for a period of up to 120 days upon a showing of good cause.

493 (4) [~~Subsection (2)~~] An extension of time sought or granted under this section does not
494 prohibit the otherwise proper filing of charges against a person at any time.

495 (5) If the court does not set on a calendar any hearings on a case within 18 months of
496 the last court docket activity on a case, the undertaking of bail is exonerated without motion.

497 Section 18. Section ~~77-20-8~~ is amended to read:

498 **77-20-8. Grounds for detaining or releasing defendant on conviction and prior to**
499 **sentence.**

500 (1) Upon conviction~~;~~ for a felony, whether by plea or trial, the court shall order ~~[that]~~
501 the ~~[convicted]~~ defendant ~~[who is waiting imposition or execution of sentence]~~ be detained
502 until the time for sentencing, unless the court finds by clear and convincing evidence presented
503 by the defendant that the defendant is not likely to flee the jurisdiction of the court, and will not
504 pose a danger to the physical, psychological, or financial and economic safety or well-being of
505 any other person or the community if released.

506 (2) Upon conviction for a misdemeanor, whether by plea or trial, the court may order
507 the defendant be detained until the time for sentencing if the court finds by a preponderance of
508 the evidence that the defendant is likely to flee the jurisdiction of the court, or poses a danger to
509 the physical, psychological, or financial and economic safety or well-being of any other person
510 or the community if released.

511 [~~(2)~~] (3) If the court finds the defendant does not need to be detained, the court shall
512 order the release of the defendant on suitable conditions, which may include the conditions
513 under Subsection ~~77-20-10~~(2).

514 Section 19. Section ~~77-20-9~~ is amended to read:

515 **77-20-9. Disposition of forfeitures.**

516 If by reason of the neglect of the defendant to appear, money deposited ~~[instead of bail]~~
517 as a financial condition or money paid by sureties on surety bond is forfeited and the forfeiture
518 is not discharged or remitted, the clerk with whom it is deposited or paid shall, immediately
519 after final adjournment of the court, pay over the money forfeited as follows:

520 (1) the forfeited ~~[bail]~~ amount in cases in or appealed from district courts shall be
521 distributed as provided in Section ~~78A-5-110~~;

522 (2) the forfeited [~~bail~~] amount in cases in precinct justice courts or in municipal justice
523 courts shall be distributed as provided in Sections 78A-7-120 and 78A-7-121;

524 (3) the forfeited [~~bail~~] amount in cases in justice courts where the offense is not triable
525 in that court shall be paid into the General Fund; and

526 (4) the forfeited [~~bail~~] amount in cases not provided for in this section shall be paid
527 50% to the state treasurer and the remaining 50% to the county treasurer in the county in which
528 the violation occurred or the forfeited [~~bail~~] amount is collected.

529 Section 20. Section 77-20b-101 is amended to read:

530 **77-20b-101. Entry of nonappearance -- Notice to surety -- Release of surety on**
531 **failure of timely notice.**

532 (1) If a defendant who has posted bail fails to appear before the appropriate court as
533 required, the court shall within 30 days of the failure to appear issue a bench warrant that
534 includes the original case number. The court shall also direct that the surety be given notice of
535 the nonappearance. The clerk of the court shall:

536 (a) mail notice of nonappearance by certified mail, return receipt requested, within 30
537 days to the address of the surety;

538 (b) notify the surety as listed on the bond of the name, address, and telephone number
539 of the prosecutor;

540 (c) deliver a copy of the notice sent under Subsection (1)(a) to the prosecutor's office at
541 the same time notice is sent under Subsection (1)(a); [~~and~~]

542 (d) ensure that the name, address, and telephone number of the surety or its agent as
543 listed on the bond is stated on the bench warrant[-];

544 (e) mail notice of the failure to appear to the bail agent if the surety is different than the
545 producer's agent[-]; and

546 (f) send the bench warrant to the statewide warrant system.

547 (2) A bond shall be exonerated if the bench warrant is not entered on the statewide
548 warrant system.

549 [~~(2)~~] (3) The prosecutor may mail notice of nonappearance by certified mail, return
550 receipt requested, to the address of the surety as listed on the bond within 37 days after the date
551 of the defendant's failure to appear.

552 [~~(3)~~] (4) If notice of nonappearance is not mailed to a surety as listed on the bond, other

553 than the defendant, in accordance with Subsection (1) or ~~[(2)]~~ (3), the surety and its agent are
554 relieved of further obligation under the bond without motion if the surety's current name and
555 address or the current name and address of the surety's agent are on the bail bond in the court's
556 file.

557 ~~[(4)]~~ (5) (a) (i) If a defendant appears in court within seven calendar days after a
558 missed, scheduled court appearance, the court may reinstate the bond without further notice to
559 the bond company.

560 (ii) If the defendant, while in custody, appears on the case for which the bond was
561 posted, the court may not reinstate the bond without the consent of the bond company.

562 (b) If a defendant fails to appear within seven calendar days after a scheduled court
563 appearance, the court may not reinstate the bond without the consent of the surety.

564 (c) If the defendant is arrested and booked into a county jail booking facility pursuant
565 to a warrant for failure to appear on the original charges [~~and the court is notified of the arrest~~],
566 or the court recalls the warrant due to the defendant's having paid the fine and prior to entry of
567 judgment of forfeiture, the court shall exonerate the bond without motion.

568 (d) Unless the court makes a finding of good cause why the bond should not be
569 exonerated, it shall exonerate the bond if:

570 (i) the surety has delivered the defendant to the county jail booking facility in the
571 county where the original charge is pending;

572 (ii) the defendant has been released on a bond secured from a subsequent surety for the
573 original charge and the failure to appear;

574 (iii) after an arrest, the defendant has escaped from jail or has been released on the
575 defendant's own recognizance, pursuant to a pretrial release, under a court order regulating jail
576 capacity, or by a sheriff's release under Section [17-22-5.5](#);

577 (iv) the surety has transported or agreed to pay for the transportation of the defendant
578 from a location outside of the county back to the county where the original charge is pending,
579 and the payment is in an amount equal to government transportation expenses listed in Section
580 [76-3-201](#); or

581 (v) the surety demonstrates by a preponderance of the evidence that:

582 (A) at the time the surety issued the bond, it had made reasonable efforts to determine
583 that the defendant was legally present in the United States;

584 (B) a reasonable person would have concluded, based on the surety's determination,
585 that the defendant was legally present in the United States; and

586 (C) the surety has failed to bring the defendant before the court because the defendant
587 is in federal custody or has been deported.

588 (e) Under circumstances not otherwise provided for in this section, the court may
589 exonerate the bond if it finds that the prosecutor has been given reasonable notice of a surety's
590 motion and there is good cause for the bond to be exonerated.

591 (f) If a surety's bond has been exonerated under this section and the surety remains
592 liable for the cost of transportation of the defendant, the surety may take custody of the
593 defendant for the purpose of transporting the defendant to the jurisdiction where the charge is
594 pending.

595 Section 21. Section **77-20b-102** is amended to read:

596 **77-20b-102. Time for bringing defendant to court.**

597 [(1)] If notice of nonappearance has been mailed to a surety under Section **77-20b-101**,
598 the surety may bring the defendant before the court or surrender the defendant into the custody
599 of a county sheriff within the state within six months of the date of nonappearance, during
600 which time a forfeiture action on the bond may not be brought.

601 [~~(2) A surety may request an extension of the six-month time period in Subsection (1),
602 if the surety within that time:]~~

603 [~~(a) files a motion for extension with the court; and]~~

604 [~~(b) mails the motion for extension and a notice of hearing on the motion to the
605 prosecutor:]~~

606 [~~(3) The court may extend the six-month time in Subsection (1) for not more than 60
607 days, if the surety has complied with Subsection (2) and the court finds good cause.]~~

608 Section 22. Section **77-20b-105** is amended to read:

609 **77-20b-105. Revocation of bond.**

610 The surety is entitled to obtain the exoneration of its bond [~~prior to judgment~~] without
611 motion by providing written proof to the court and the prosecutor that:

612 (1) the defendant has been booked for failure to appear regarding the charge for which
613 the bond was issued; or

614 (2) the defendant is in custody and the surety has served the defendant's bond

615 revocation on the custodial authority.

616 Section 23. Section **78A-2-220** is amended to read:

617 **78A-2-220. Authority of magistrate.**

618 (1) Except as otherwise provided by law, a magistrate as defined in Section **77-1-3**
619 shall have the authority to:

620 (a) commit a person to incarceration prior to trial;

621 (b) set or deny bail under Section **77-20-1** and release upon the payment of bail and
622 satisfaction of any other conditions of release;

623 (c) issue to any place in the state summonses and warrants of search and arrest and
624 authorize administrative traffic checkpoints under Section **77-23-104**;

625 (d) conduct an initial appearance;

626 (e) conduct arraignments;

627 (f) conduct a preliminary examination to determine probable cause;

628 (g) appoint attorneys and order recoupment of attorney fees;

629 (h) order the preparation of presentence investigations and reports;

630 (i) issue temporary orders as provided by rule of the Judicial Council; and

631 (j) perform any other act or function authorized by statute.

632 (2) A judge of the justice court may exercise the authority of a magistrate specified in
633 Subsection (1) with the following limitations:

634 (a) a judge of the justice court may conduct an initial appearance, preliminary
635 examination, or arraignment as provided by rule of the Judicial Council; and

636 (b) a judge of the justice court may not ~~set bail~~ perform any act or function in a
637 capital felony ~~[nor deny bail in any]~~ case.

638 Section 24. Section **78B-6-301** is amended to read:

639 **78B-6-301. Acts and omissions constituting contempt.**

640 The following acts or omissions in respect to a court or its proceedings are contempts of
641 the authority of the court:

642 (1) disorderly, contemptuous, or insolent behavior toward the judge while holding the
643 court, tending to interrupt the course of a trial or other judicial proceeding;

644 (2) breach of the peace, boisterous conduct or violent disturbance, tending to interrupt
645 the due course of a trial or other judicial proceeding;

646 (3) misbehavior in office, or other willful neglect or violation of duty by an attorney,
647 counsel, clerk, sheriff, or other person appointed or elected to perform a judicial or ministerial
648 service;

649 (4) deceit, or abuse of the process or proceedings of the court, by a party to an action or
650 special proceeding;

651 (5) disobedience of any lawful judgment, order or process of the court;

652 (6) acting as an officer, attorney or counselor, of a court without authority;

653 (7) rescuing any person or property that is in the custody of an officer by virtue of an
654 order or process of the court;

655 (8) unlawfully detaining a witness or party to an action while going to, remaining at, or
656 returning from, the court where the action is on the calendar for trial;

657 (9) any other unlawful interference with the process or proceedings of a court;

658 (10) disobedience of a subpoena duly served, or refusing to be sworn or to answer as a
659 witness;

660 (11) when summoned as a juror in a court, neglecting to attend or serve, or improperly
661 conversing with a party to an action to be tried at the court, or with any other person,
662 concerning the merits of an action, or receiving a communication from a party or other person
663 in respect to it, without immediately disclosing the communication to the court; ~~and~~

664 (12) willfully failing to appear before a court pursuant to a citation issued under the
665 provisions of Section 77-7-18; and

666 [~~(12)~~] (13) disobedience by an inferior tribunal, magistrate or officer of the lawful
667 judgment, order or process of a superior court, or proceeding in an action or special proceeding
668 contrary to law, after the action or special proceeding is removed from the jurisdiction of the
669 inferior tribunal, magistrate or officer. Disobedience of the lawful orders or process of a
670 judicial officer is also a contempt of the authority of the officer.

671 Section 25. **Repealer.**

672 This bill repeals:

673 Section 77-7-24, **Notice to appear in court -- Contents -- Promise to comply --**

674 **Signing -- Release from custody -- Official misconduct.**

675 Section 77-7-25, **Keeping of records -- Making and forwarding of abstract upon**
676 **conviction or forfeiture of bail -- Form and contents -- Official misconduct.**

677 Section [77-7-26](#), **Improper disposition or cancellation of notice to appear or traffic**
678 **citation -- Official misconduct -- Misdemeanor.**

679 Section 26. **Coordinating H.B. 297 with S.B. 105 -- Superseding amendments.**

680 If this H.B. 297 and S.B. 105, Bail Amendments, both pass and become law, it is the
681 intent of the Legislature that:

682 (1) Section [77-20-4](#) in H.B. 297 supersede Section [77-20-4](#) in S.B. 105, when the
683 Office of Legislative Research and General Counsel prepares the Utah Code database for
684 publication; and

685 (2) Section [77-20-5](#) in H.B. 297 supersede Section [77-20-5](#) in S.B. 105, when the
686 Office of Legislative Research and General Counsel prepares the Utah Code database for
687 publication.