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PRETRIAL RELEASE MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Katy Hall

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to pretrial release.

Highlighted Provisions:

This bill:

- ▶ repeals statutes related to bail commissioners;
- ▶ defines terms related to bail and pretrial release;
- ▶ addresses the right to bail;
- ▶ amends provisions regarding pretrial release by a county sheriff or the county sheriff's designee;
- ▶ amends provisions regarding the written policy by a county sheriff for releasing an individual on the individual's own recognizance;
- ▶ amends provisions regarding pretrial release by a judge or magistrate;
- ▶ provides that a magistrate or judge may not base a determination about pretrial release solely on the nature of the offense that the individual was arrested for or charged with;
- ▶ addresses the modification of a pretrial status order when a defendant fails to appear at a required court appearance or when a defendant has not paid the amount of a financial condition within a certain period of time;
- ▶ grants an expedited right of appeal to a defendant who is ordered to be detained pretrial; and



28 ▶ makes technical and conforming changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **17-22-32**, as last amended by Laws of Utah 2022, Chapter 187

36 **77-20-102**, as enacted by Laws of Utah 2021, Second Special Session, Chapter 4

37 **77-20-201**, as enacted by Laws of Utah 2021, Second Special Session, Chapter 4

38 **77-20-203**, as renumbered and amended by Laws of Utah 2021, Second Special
39 Session, Chapter 4

40 **77-20-204**, as enacted by Laws of Utah 2021, Second Special Session, Chapter 4

41 **77-20-205**, as enacted by Laws of Utah 2021, Second Special Session, Chapter 4

42 **77-20-207**, as enacted by Laws of Utah 2021, Second Special Session, Chapter 4

43 **77-20-208**, as enacted by Laws of Utah 2021, Second Special Session, Chapter 4

44 **77-20-301**, as renumbered and amended by Laws of Utah 2021, Second Special
45 Session, Chapter 4

46 **77-20-302**, as renumbered and amended by Laws of Utah 2021, Second Special
47 Session, Chapter 4

48 **77-20-401**, as enacted by Laws of Utah 2021, Second Special Session, Chapter 4

49 ENACTS:

50 **77-20-209**, Utah Code Annotated 1953

51 REPEALS:

52 **10-3-921**, as last amended by Laws of Utah 1990, Chapter 283

53 **10-3-922**, as last amended by Laws of Utah 1990, Chapter 283

54 **17-32-1**, as last amended by Laws of Utah 2021, Second Special Session, Chapter 4

55 **17-32-2**, as last amended by Laws of Utah 2021, Second Special Session, Chapter 4

56 **17-32-3**, as last amended by Laws of Utah 1990, Chapter 283

57 **17-32-4**, as last amended by Laws of Utah 1990, Chapter 283

58

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

60 Section 1. Section **17-22-32** is amended to read:

61 **17-22-32. County jail reporting requirements.**

62 (1) As used in this section:

63 (a) "Commission" means the State Commission on Criminal and Juvenile Justice
64 created in Section [63M-7-201](#).

65 (b) (i) "In-custody death" means an inmate death that occurs while the inmate is in the
66 custody of a county jail.

67 (ii) "In-custody death" includes an inmate death that occurs while the inmate is:

68 (A) being transported for medical care; or

69 (B) receiving medical care outside of a county jail.

70 (c) "Inmate" means an individual who is processed or booked into custody or housed in
71 a county jail in the state.

72 (d) "Opiate" means the same as that term is defined in Section [58-37-2](#).

73 (2) Each county jail shall submit a report to the commission before June 15 of each
74 year that includes, for the preceding calendar year:

75 (a) the average daily inmate population each month;

76 (b) the number of inmates in the county jail on the last day of each month who identify
77 as each race or ethnicity included in the Standards for Transmitting Race and Ethnicity
78 published by the United States Federal Bureau of Investigation;

79 (c) the number of inmates booked into the county jail;

80 (d) the number of inmates held in the county jail each month on behalf of each of the
81 following entities:

82 (i) the Bureau of Indian Affairs;

83 (ii) a state prison;

84 (iii) a federal prison;

85 (iv) the United States Immigration and Customs Enforcement;

86 (v) any other entity with which a county jail has entered a contract to house inmates on
87 the entity's behalf;

88 (e) the number of inmates that are denied pretrial release and held in the custody of the
89 county jail while the inmate awaited final disposition of the inmate's criminal charges;

- 90 (f) for each inmate booked into the county jail:
- 91 (i) the name of the agency that arrested the inmate;
- 92 (ii) the date and time the inmate was booked into and released from the custody of the
- 93 county jail;
- 94 (iii) if the inmate was released from the custody of the county jail, the reason the
- 95 inmate was released from the custody of the county jail;
- 96 (iv) if the inmate was released from the custody of the county jail on a financial
- 97 condition, whether the financial condition was set by a [~~bail commissioner~~] county sheriff or a
- 98 court;
- 99 (v) the number of days the inmate was held in the custody of the county jail before
- 100 disposition of the inmate's criminal charges;
- 101 (vi) whether the inmate was released from the custody of the county jail before final
- 102 disposition of the inmate's criminal charges; and
- 103 (vii) the state identification number of the inmate;
- 104 (g) the number of in-custody deaths that occurred at the county jail;
- 105 (h) for each in-custody death;
- 106 (i) the name, gender, race, ethnicity, age, and known or suspected medical diagnosis or
- 107 disability, if any, of the deceased;
- 108 (ii) the date, time, and location of death;
- 109 (iii) the law enforcement agency that detained, arrested, or was in the process of
- 110 arresting the deceased; and
- 111 (iv) a brief description of the circumstances surrounding the death;
- 112 (i) the known, or discoverable on reasonable inquiry, causes and contributing factors of
- 113 each of the in-custody deaths described in Subsection (2)(g);
- 114 (j) the county jail's policy for notifying an inmate's next of kin after the inmate's
- 115 in-custody death;
- 116 (k) the county jail policies, procedures, and protocols:
- 117 (i) for treatment of an inmate experiencing withdrawal from alcohol or substance use,
- 118 including use of opiates;
- 119 (ii) that relate to the county jail's provision, or lack of provision, of medications used to
- 120 treat, mitigate, or address an inmate's symptoms of withdrawal, including methadone and all

121 forms of buprenorphine and naltrexone; and

122 (iii) that relate to screening, assessment, and treatment of an inmate for a substance use
123 or mental health disorder; and

124 (l) any report the county jail provides or is required to provide under federal law or
125 regulation relating to inmate deaths.

126 (3) (a) Subsection (2) does not apply to a county jail if the county jail:

127 (i) collects and stores the data described in Subsection (2); and

128 (ii) enters into a memorandum of understanding with the commission that allows the
129 commission to access the data described in Subsection (2).

130 (b) The memorandum of understanding described in Subsection (3)(a)(ii) shall include
131 a provision to protect any information related to an ongoing investigation and comply with all
132 applicable federal and state laws.

133 (c) If the commission accesses data from a county jail in accordance with Subsection
134 (3)(a), the commission may not release a report prepared from that data, unless:

135 (i) the commission provides the report for review to:

136 (A) the county jail; and

137 (B) any arresting agency that is named in the report; and

138 (ii) (A) the county jail approves the report for release;

139 (B) the county jail reviews the report and prepares a response to the report to be
140 published with the report; or

141 (C) the county jail fails to provide a response to the report within four weeks after the
142 day on which the commission provides the report to the county jail.

143 (4) The commission shall:

144 (a) compile the information from the reports described in Subsection (2);

145 (b) omit or redact any identifying information of an inmate in the compilation to the
146 extent omission or redaction is necessary to comply with state and federal law;

147 (c) submit the compilation to the Law Enforcement and Criminal Justice Interim
148 Committee and the Utah Substance Use and Mental Health Advisory Council before November
149 1 of each year; and

150 (d) submit the compilation to the protection and advocacy agency designated by the
151 governor before November 1 of each year.

152 (5) The commission may not provide access to or use a county jail's policies,
153 procedures, or protocols submitted under this section in a manner or for a purpose not
154 described in this section.

155 (6) A report including only the names and causes of death of deceased inmates and the
156 facility in which they were being held in custody shall be made available to the public.

157 Section 2. Section 77-20-102 is amended to read:

158 **77-20-102. Definitions.**

159 As used in this chapter:

160 (1) "Bail" means pretrial release.

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

162 ~~[(2)]~~ (3) "Bail bond agency" means the same as that term is defined in Section
163 31A-35-102.

164 ~~[(3)]~~ (4) "Bail bond producer" means the same as that term is defined in Section
165 31A-35-102.

166 ~~[(4) "Bail commissioner" means a bail commissioner appointed in accordance with~~
167 ~~Section 17-32-1.]~~

168 (5) "County jail official" means a county sheriff or the county sheriff's designee.

169 ~~[(5)]~~ (6) "Exonerate" means to release and discharge a surety, or a surety's bail bond
170 producer, from liability for a bail bond.

171 ~~[(6)]~~ (7) "Financial condition" [or "monetary bail"] means any monetary condition that
172 is imposed to secure an individual's pretrial release.

173 ~~[(7)]~~ (8) "Forfeiture" means:

174 (a) to divest an individual or surety from a right to the repayment of monetary bail; or

175 (b) to enforce a pledge of assets or real or personal property from an individual or
176 surety used to secure an individual's pretrial release.

177 ~~[(8)]~~ (9) "Magistrate" means the same as that term is defined in Section 77-1-3.

178 (10) (a) "Material change in circumstances" means an occurrence that would have
179 persuaded the magistrate or judge to decide differently if the occurrence had been known to the
180 magistrate or judge at the time of the pretrial status order.

181 (b) "Material change in circumstances" includes:

182 (i) a delay in prosecution;

183 (ii) the passage of time;
184 (iii) a reduction in the risk that the individual poses if released; or
185 (iv) a change in the services that the county or municipality has available to supervise
186 individuals on pretrial release.

187 (11) "Monetary bail" means a financial condition.

188 ~~[(9)]~~ (12) "Own recognizance" means the release of an individual without any
189 condition of release other than the individual's promise to:

190 (a) appear for all required court proceedings; and

191 (b) not commit any criminal offense.

192 ~~[(10)]~~ (13) "Pretrial detention hearing" means a hearing described in Section
193 [77-20-206](#).

194 ~~[(11)]~~ (14) "Pretrial release" ~~[or "bail"]~~ means the release of an individual from law
195 enforcement custody during the time the individual awaits trial or other resolution of criminal
196 charges.

197 ~~[(12)]~~ (15) "Pretrial risk assessment" means an objective, research-based, validated
198 assessment tool that measures an individual's risk of flight and risk of anticipated criminal
199 conduct while on pretrial release.

200 ~~[(13)]~~ (16) "Pretrial services program" means a program that is established to:

201 (a) gather information on individuals booked into a jail facility;

202 (b) conduct pretrial risk assessments; and

203 (c) supervise individuals granted pretrial release.

204 ~~[(14)]~~ (17) "Pretrial status order" means an order issued by a magistrate or judge that:

205 (a) releases the individual on the individual's own recognizance while the individual
206 awaits trial or other resolution of criminal charges;

207 (b) sets the terms and conditions of the individual's pretrial release while the individual
208 awaits trial or other resolution of criminal charges; or

209 (c) denies pretrial release and orders that the individual be detained while the
210 individual awaits trial or other resolution of criminal charges.

211 ~~[(15)]~~ (18) "Principal" means the same as that term is defined in Section [31A-35-102](#).

212 ~~[(16)]~~ (19) "Surety" means a surety insurer or a bail bond agency.

213 ~~[(17)]~~ (20) "Surety insurer" means the same as that term is defined in Section

214 31A-35-102.

215 [(+8)] (21) "Temporary pretrial status order" means an order issued by a magistrate
216 that:

217 (a) releases the individual on the individual's own recognizance until a pretrial status
218 order is issued;

219 (b) sets the terms and conditions of the individual's pretrial release until a pretrial status
220 order is issued; or

221 (c) denies pretrial release and orders that the individual be detained until a pretrial
222 status order is issued.

223 [(+9)] (22) "Unsecured bond" means an individual's promise to pay a financial
224 condition if the individual fails to appear for any required court appearance.

225 Section 3. Section 77-20-201 is amended to read:

226 **77-20-201. Right to bail -- Capital felony.**

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

229 (a) a capital felony when [~~the court finds~~] there is substantial evidence to support the
230 charge;

231 (b) a felony committed while on parole or on probation for a felony conviction, or
232 while free on bail awaiting trial on a previous felony charge, when [~~the court finds~~] there is
233 substantial evidence to support the current felony charge;

234 (c) a felony when there is substantial evidence to support the charge and the court
235 finds, by clear and convincing evidence, that:

236 (i) the individual would constitute a substantial danger to any other individual or to the
237 community[~~, or~~] after considering all available conditions of release that the court may impose
238 if the individual is released on bail; or

239 (ii) the individual is likely to flee the jurisdiction of the court[~~;~~] if the individual is
240 released on bail;

241 (d) a felony when [~~the court finds~~] there is substantial evidence to support the charge
242 and the court finds, by clear and convincing evidence, that the individual violated a material
243 condition of release while previously on bail;

244 (e) a domestic violence offense if [~~the court finds~~]:

- 245 (i) ~~[that]~~ there is substantial evidence to support the charge; and
- 246 (ii) the court finds, by clear and convincing evidence, that the individual would
- 247 constitute a substantial danger to an alleged victim of domestic violence ~~[if released on bail]~~
- 248 after considering all available conditions of release that the court may impose if the individual
- 249 is released on bail;
- 250 (f) the offense of driving under the influence or driving with a measurable controlled
- 251 substance in the body if:
- 252 (i) the offense results in death or serious bodily injury to an individual; ~~[and]~~
- 253 ~~[(ii) the court finds:]~~
- 254 ~~[(A)]~~ (ii) ~~[that]~~ there is substantial evidence to support the charge; and
- 255 ~~[(B)]~~ (iii) the court finds, by clear and convincing evidence, that the ~~[person]~~ individual
- 256 would constitute a substantial danger to the community ~~[if released on bail]~~ after considering
- 257 all available conditions of release that the court may impose if the individual is released on
- 258 bail; or
- 259 (g) a felony violation of Section 76-9-101 if:
- 260 (i) there is substantial evidence to support the charge; and
- 261 (ii) the court finds, by clear and convincing evidence, that the individual is not likely to
- 262 appear for a subsequent court appearance.
- 263 (2) Notwithstanding any other provision of this section, there is a rebuttable
- 264 presumption that an individual is a substantial danger to the community under Subsection
- 265 ~~[(1)(f)(ii)(B)]~~ (1)(f)(iii):
- 266 (a) as long as the individual has a blood or breath alcohol concentration of .05 grams or
- 267 greater if the individual is arrested for, or charged with, the offense of driving under the
- 268 influence and the offense resulted in death or serious bodily injury to an individual; or
- 269 (b) if the individual has a measurable amount of controlled substance in the
- 270 individual's body, the individual is arrested for, or charged with, the offense of driving with a
- 271 measurable controlled substance in the body and the offense resulted in death or serious bodily
- 272 injury to an individual.
- 273 (3) For purposes of Subsection (1)(a), any arrest or charge for a violation of Section
- 274 76-5-202, aggravated murder, is a capital felony unless:
- 275 (a) the prosecuting attorney files a notice of intent to not seek the death penalty; or

276 (b) the time for filing a notice to seek the death penalty has expired and the prosecuting
277 attorney has not filed a notice to seek the death penalty.

278 Section 4. Section 77-20-203 is amended to read:

279 **77-20-203. County sheriff authority to release an individual from jail on own**
280 **recognizance.**

281 (1) As used in this section:

282 (a) "Qualifying offense" means the same as that term is defined in Section 78B-7-801.

283 (b) "Violent felony" means the same as that term is defined in Subsection

284 76-3-203.5(1)(c)(i).

285 (2) [~~A county sheriff or a bail commissioner~~] A county jail official may release an
286 individual from a jail facility on the individual's own recognizance if:

287 (a) the individual was arrested without a warrant;

288 (b) the individual was not arrested for:

289 (i) a violent felony;

290 (ii) a qualifying offense;

291 (iii) the offense of driving under the influence or driving with a measurable controlled
292 substance in the body if the offense results in death or serious bodily injury to an individual; or

293 (iv) an offense described in Subsection 76-9-101(4);

294 (c) law enforcement has not submitted a probable cause statement to a court or
295 magistrate;

296 (d) the individual agrees in writing to appear for any future criminal proceedings
297 related to the arrest; and

298 (e) the individual qualifies for release under the written policy described in Subsection
299 (3) for the county.

300 (3) [~~(a)~~] A county sheriff shall create and approve a written policy for the county that
301 governs the release of an individual on the individual's own recognizance.

302 [~~(b)~~] (4) [~~The written policy shall~~] A written policy under Subsection (3) shall:

303 (a) describe the criteria an individual shall meet to be released on the individual's own
304 recognizance[.]; and

305 (b) include a presumption that an individual who has a recent history of failing to
306 appear for a mandatory court appearance:

307 (i) is unlikely to appear for any future criminal proceedings related to the arrest;
 308 (ii) is unlikely to be eligible for release on the individual's own recognizance under this
 309 section; and

310 (iii) be released on a financial condition that is a bail bond under Section 77-20-204 if
 311 the individual is eligible for release on a financial condition under Subsection 77-20-204(2).

312 ~~(e)~~ (5) A county sheriff may include in the written policy under Subsection (3) the
 313 criteria for release relating to:

314 ~~(i)~~ (a) criminal history;

315 ~~(ii)~~ (b) prior instances of failing to appear for a mandatory court appearance;

316 ~~(iii)~~ (c) current employment;

317 ~~(iv)~~ (d) residency;

318 ~~(v)~~ (e) ties to the community;

319 ~~(vi)~~ (f) an offense for which the individual was arrested;

320 ~~(vii)~~ (g) any potential criminal charges that have not yet been filed;

321 ~~(viii)~~ (h) the individual's health condition;

322 ~~(ix)~~ (i) any potential risks to a victim, a witness, or the public; and

323 ~~(x)~~ (j) any other similar factor a sheriff determines is relevant.

324 ~~(4)~~ (6) Nothing in this section prohibits a court and a county from entering into an
 325 agreement regarding release.

326 Section 5. Section 77-20-204 is amended to read:

327 **77-20-204. County sheriff authority to release an individual from jail on**
 328 **monetary bail.**

329 (1) As used in this section, "eligible felony offense" means a third degree felony
 330 violation under:

331 (a) Section 23-19-15;

332 (b) Section 23-20-4;

333 (c) Section 23-20-4.7;

334 (d) Title 76, Chapter 6, Part 4, Theft;

335 (e) Title 76, Chapter 6, Part 5, Fraud;

336 (f) Title 76, Chapter 6, Part 6, Retail Theft;

337 (g) Title 76, Chapter 6, Part 7, Utah Computer Crimes Act;

- 338 (h) Title 76, Chapter 6, Part 8, Library Theft;
- 339 (i) Title 76, Chapter 6, Part 9, Cultural Sites Protection;
- 340 (j) Title 76, Chapter 6, Part 10, Mail Box Damage and Mail Theft;
- 341 (k) Title 76, Chapter 6, Part 11, Identity Fraud Act;
- 342 (l) Title 76, Chapter 6, Part 12, Utah Mortgage Fraud Act;
- 343 (m) Title 76, Chapter 6, Part 13, Utah Automated Sales Suppression Device Act;
- 344 (n) Title 76, Chapter 6, Part 14, Regulation of Metal Dealers;
- 345 (o) Title 76, Chapter 6a, Pyramid Scheme Act;
- 346 (p) Title 76, Chapter 7, Offenses Against the Family;
- 347 (q) Title 76, Chapter 7a, Abortion Prohibition;
- 348 (r) Title 76, Chapter 9, Part 2, Electronic Communication and Telephone Abuse;
- 349 (s) Title 76, Chapter 9, Part 3, Cruelty to Animals;
- 350 (t) Title 76, Chapter 9, Part 4, Offenses Against Privacy;
- 351 (u) Title 76, Chapter 9, Part 5, Libel; or
- 352 (v) Title 76, Chapter 9, Part 6, Offenses Against the Flag.

353 (2) Except as provided in Subsection (7)(a), [~~a bail commissioner~~] a county jail official
 354 may fix a financial condition for an individual if:

- 355 (a) (i) the individual is ineligible to be released on the individual's own recognizance
 356 under Section 77-20-203;
- 357 (ii) the individual is arrested for, or charged with:
 - 358 (A) a misdemeanor offense under state law; or
 - 359 (B) a violation of a city or county ordinance that is classified as a class B or C
 360 misdemeanor offense;
- 361 (iii) the individual agrees in writing to appear for any future criminal proceedings
 362 related to the arrest; and
- 363 (iv) law enforcement has not submitted a probable cause statement to a magistrate; or
- 364 (b) (i) the individual is arrested for, or charged with, an eligible felony offense;
- 365 (ii) the individual is not on pretrial release for a separate criminal offense;
- 366 (iii) the individual is not on probation or parole;
- 367 (iv) the primary risk posed by the individual is the risk of failure to appear;
- 368 (v) the individual agrees in writing to appear for any future criminal proceedings

369 related to the arrest; and

370 (vi) law enforcement has not submitted a probable cause statement to a magistrate[-]

371 [~~(3) A bail commissioner~~] A county jail official may not fix a financial condition at a
372 monetary amount that exceeds:

373 [~~(a)~~] (A) \$5,000 for an eligible felony offense;

374 [~~(b)~~] (B) \$1,950 for a class A misdemeanor offense;

375 [~~(c)~~] (C) \$680 for a class B misdemeanor offense;

376 [~~(d)~~] (D) \$340 for a class C misdemeanor offense;

377 [~~(e)~~] (E) \$150 for a violation of a city or county ordinance that is classified as a class B
378 misdemeanor; or

379 [~~(f)~~] (F) \$80 for a violation of a city or county ordinance that is classified as a class C
380 misdemeanor.

381 [~~(4)~~] (3) If an individual is arrested for more than one offense, and the [~~bail~~
382 ~~commissioner~~] county jail official fixes a financial condition for release:

383 (a) [~~the bail commissioner~~] the county jail official shall fix the financial condition at a
384 single monetary amount; and

385 (b) the single monetary amount may not exceed the monetary amount under Subsection
386 (3) for the highest level of offense for which the individual is arrested.

387 [~~(5)~~] (4) Except as provided in Subsection (7)(b), an individual shall be released if the
388 individual posts a financial condition fixed by a [~~bail commissioner~~] county jail official in
389 accordance with this section.

390 [~~(6)~~] (5) [~~If a bail commissioner~~] If a county jail official fixes a financial condition for
391 an individual, law enforcement shall submit a probable cause statement in accordance with
392 Rule 9 of the Utah Rules of Criminal Procedure after the [~~bail commissioner~~] county jail
393 official fixes the financial condition.

394 [~~(7)~~] (6) Once a magistrate begins a review of an individual's case under Rule 9 of the
395 Utah Rules of Criminal Procedure:

396 (a) [~~a bail commissioner~~] a county jail official may not fix or modify a financial
397 condition for an individual; and

398 (b) [~~if a bail commissioner~~] if a county jail official fixed a financial condition for the
399 individual before the magistrate's review, the individual may no longer be released on the

400 financial condition.

401 ~~[(8)]~~ (7) Nothing in this section prohibits a court and a county from entering into an
402 agreement regarding release.

403 Section 6. Section **77-20-205** is amended to read:

404 **77-20-205. Pretrial release by a magistrate or judge.**

405 (1) (a) At the time that a magistrate issues a warrant of arrest, or finds there is probable
406 cause to support the individual's arrest under Rule 9 of the Utah Rules of Criminal Procedure,
407 the magistrate shall issue a temporary pretrial status order that:

408 (i) releases the individual on the individual's own recognizance during the time the
409 individual awaits trial or other resolution of criminal charges;

410 (ii) designates a condition, or a combination of conditions, to be imposed upon the
411 individual's release during the time the individual awaits trial or other resolution of criminal
412 charges; or

413 (iii) orders the individual be detained during the time the individual awaits trial or
414 other resolution of criminal charges.

415 (b) At the time that a magistrate issues a summons, the magistrate may issue a
416 temporary pretrial status order that:

417 (i) releases the individual on the individual's own recognizance during the time the
418 individual awaits trial or other resolution of criminal charges; or

419 (ii) designates a condition, or a combination of conditions, to be imposed upon the
420 individual's release during the time the individual awaits trial or other resolution of criminal
421 charges.

422 ~~[(2) (a) Except as provided in Subsection (2)(c), at an individual's first appearance
423 before the court, the magistrate or judge shall issue a pretrial status order that:]~~

424 ~~[(i) releases the individual on the individual's own recognizance during the time the
425 individual awaits trial or other resolution of criminal charges;]~~

426 ~~[(ii) designates a condition, or a combination of conditions, to be imposed upon the
427 individual's release during the time the individual awaits trial or other resolution of criminal
428 charges; or]~~

429 ~~[(iii) orders the individual be detained during the time the individual awaits trial or
430 other resolution of criminal charges.]~~

431 ~~[(b) In making a determination under Subsection (2)(a), the magistrate or judge may~~
432 ~~not give any deference to a magistrate's decision in a temporary pretrial status order.]~~

433 ~~[(c)]~~ (2) (a) Except as provided in Subsection (2)(b), the magistrate or judge shall issue
434 a pretrial status order at an individual's first appearance before the court.

435 (b) The magistrate or judge shall may delay the issuance of a pretrial status order
436 [described in Subsection (2)(a)] at an individual's first appearance before the court:

437 (i) until a pretrial detention hearing is held if a prosecuting attorney makes a motion for
438 pretrial detention as described in Section 77-20-206;

439 (ii) if a party requests a delay; or

440 (iii) if there is good cause to delay the issuance.

441 ~~[(d)]~~ (c) If a magistrate or judge delays the issuance of a pretrial status order under
442 Subsection ~~[(2)(c)]~~ (2)(b), the magistrate or judge shall extend the temporary pretrial status
443 order until the issuance of a pretrial status order.

444 (3) (a) When a magistrate or judge issues a pretrial status order, the pretrial status order
445 shall:

446 (i) release the individual on the individual's own recognizance during the time the
447 individual awaits trial or other resolution of criminal charges;

448 (ii) designate a condition, or a combination of conditions, to be imposed upon the
449 individual's release during the time the individual awaits trial or other resolution of criminal
450 charges; or

451 (iii) order the individual to be detained during the time that individual awaits trial or
452 other resolution of criminal charges.

453 (b) In making a determination about pretrial release in a pretrial status order, the
454 magistrate or judge may not give any deference to a magistrate's decision in a temporary
455 pretrial status order.

456 ~~[(3)]~~ (4) In making a determination about pretrial release [under Subsection (1) or (2)]
457 for a temporary pretrial status order or a pretrial status order, a magistrate or judge shall impose
458 only conditions of release that are reasonably available and necessary to reasonably ensure:

459 (a) the individual's appearance in court when required;

460 (b) the safety of any witnesses or victims of the offense allegedly committed by the
461 individual;

462 (c) the safety and welfare of the public; and

463 (d) that the individual will not obstruct, or attempt to obstruct, the criminal justice
464 process.

465 ~~[(4)]~~ (5) Except as provided in Subsection ~~[(5)]~~ (6), a magistrate or judge may impose
466 a condition, or combination of conditions, ~~[under Subsection (1) or (2)]~~ in a temporary pretrial
467 status order or a pretrial status order that requires an individual to:

468 (a) not commit a federal, state, or local offense during the period of pretrial release;

469 (b) avoid contact with a victim of the alleged offense;

470 (c) avoid contact with a witness who:

471 (i) may testify concerning the alleged offense; and

472 (ii) is named in the pretrial status order;

473 (d) not consume alcohol or any narcotic drug or other controlled substance unless
474 prescribed by a licensed medical practitioner;

475 (e) submit to drug or alcohol testing;

476 (f) complete a substance abuse evaluation and comply with any recommended
477 treatment or release program;

478 (g) submit to electronic monitoring or location device tracking;

479 (h) participate in inpatient or outpatient medical, behavioral, psychological, or
480 psychiatric treatment;

481 (i) maintain employment or actively seek employment if unemployed;

482 (j) maintain or commence an education program;

483 (k) comply with limitations on where the individual is allowed to be located or the
484 times that the individual shall be, or may not be, at a specified location;

485 (l) comply with specified restrictions on personal associations, place of residence, or
486 travel;

487 (m) report to a law enforcement agency, pretrial services program, or other designated
488 agency at a specified frequency or on specified dates;

489 (n) comply with a specified curfew;

490 (o) forfeit or refrain from possession of a firearm or other dangerous weapon;

491 (p) if the individual is charged with an offense against a child, limit or prohibit access
492 to any location or occupation where children are located, including any residence where

493 children are on the premises, activities where children are involved, locations where children
494 congregate, or where a reasonable person would know that children congregate;

495 (q) comply with requirements for house arrest;

496 (r) return to custody for a specified period of time following release for employment,
497 schooling, or other limited purposes;

498 (s) remain in custody of one or more designated individuals who agree to:

499 (i) supervise and report on the behavior and activities of the individual; and

500 (ii) encourage compliance with all court orders and attendance at all required court
501 proceedings;

502 (t) comply with a financial condition; or

503 (u) comply with any other condition that is reasonably available and necessary to
504 ensure compliance with Subsection ~~[(3)]~~ (4).

505 ~~[(5)]~~ (6) (a) If a county or municipality has established a pretrial services program, the
506 magistrate or judge shall consider the services that the county or municipality has identified as
507 available in determining what conditions of release to impose.

508 (b) The magistrate or judge may not order conditions of release that would require the
509 county or municipality to provide services that are not currently available from the county or
510 municipality.

511 (c) Notwithstanding Subsection ~~[(5)(a)]~~ (6)(a), the magistrate or judge may impose
512 conditions of release not identified by the county or municipality so long as the condition does
513 not require assistance or resources from the county or municipality.

514 ~~[(6)]~~ (7) (a) If the magistrate or judge determines that a financial condition, other than
515 an unsecured bond, is necessary to impose as a condition of release, the magistrate or judge
516 shall consider the individual's ability to pay when determining the amount of the financial
517 condition.

518 (b) If the magistrate or judge determines that a financial condition is necessary to
519 impose as a condition of release, and ~~[a bail commissioner]~~ a county jail official fixed a
520 financial condition for the individual under Section 77-20-204, the magistrate or judge may not
521 give any deference to:

522 (i) ~~[the bail commissioner's]~~ the county jail official's action to fix a financial condition;

523 or

524 (ii) the amount of the financial condition that the individual was required to pay for
525 pretrial release.

526 (c) If a magistrate or judge orders a financial condition as a condition of release, the
527 judge or magistrate shall set the financial condition at a single amount per case.

528 ~~[(7)]~~ (8) In making a determination about pretrial release ~~[under this section]~~ for a
529 temporary pretrial status order or a pretrial status order, the magistrate or judge may:

530 (a) rely upon information contained in:

531 (i) the indictment or information;

532 (ii) any sworn or probable cause statement or other information provided by law
533 enforcement;

534 (iii) a pretrial risk assessment;

535 (iv) an affidavit of indigency described in Section [78B-22-201.5](#);

536 (v) witness statements or testimony; or

537 (vi) any other reliable record or source, including proffered evidence; and

538 (b) consider:

539 (i) the nature and circumstances of the offense, or offenses, that the individual was
540 arrested for, or charged with, including:

541 (A) whether the offense is a violent offense; and

542 (B) the vulnerability of a witness or alleged victim;

543 (ii) the nature and circumstances of the individual, including the individual's:

544 (A) character;

545 (B) physical and mental health;

546 (C) family and community ties;

547 (D) employment status or history;

548 (E) financial resources;

549 (F) past criminal conduct;

550 (G) history of drug or alcohol abuse; and

551 (H) history of timely appearances at required court proceedings;

552 (iii) the potential danger to another individual, or individuals, posed by the release of
553 the individual;

554 (iv) whether the individual was on probation, parole, or release pending an upcoming

555 court proceeding at the time the individual allegedly committed the offense or offenses;

556 (v) the availability of:

557 (A) other individuals who agree to assist the individual in attending court when
558 required; or

559 (B) supervision of the individual in the individual's community;

560 (vi) the eligibility and willingness of the individual to participate in various treatment
561 programs, including drug treatment; or

562 (vii) other evidence relevant to the individual's likelihood of fleeing or violating the
563 law if released.

564 (9) A magistrate or judge may not base a determination about pretrial release for a
565 temporary pretrial status order or a pretrial status order solely on the nature of the offense that
566 the individual was arrested for or charged with.

567 ~~[(8)]~~ (10) An individual arrested for violation of a jail release agreement, or a jail
568 release court order, issued in accordance with Section 78B-7-802:

569 (a) may not be released before the individual's first appearance before a magistrate or
570 judge; and

571 (b) may be denied pretrial release by the magistrate or judge ~~[under Subsection (2)].~~

572 Section 7. Section 77-20-207 is amended to read:

573 **77-20-207. Modification of pretrial status order -- Failure to appear.**

574 (1) ~~[A motion]~~ A party may move to modify a pretrial status order ~~[may be made]:~~

575 (a) ~~[by a party]~~ at any time after a pretrial status order is issued; and

576 (b) only upon a showing that there has been a material change in circumstances.

577 (2) (a) Notwithstanding Subsection (1), a defendant may move to modify a pretrial
578 status order if:

579 (i) the magistrate or judge imposed a financial condition as a condition of release in the
580 pretrial status order; and

581 (ii) the defendant is unable to pay the financial condition within seven days after the
582 day on which the pretrial status order is issued.

583 (b) For a motion under Subsection (2)(a), there is a rebuttable presumption that the
584 defendant does not have the ability to pay the financial condition.

585 ~~[(2)]~~ (3) (a) If a party makes a motion to modify the pretrial status order, the party shall

586 provide notice to the opposing party sufficient to permit the opposing party to prepare for a
587 hearing and to permit each alleged victim to be notified and be present.

588 (b) A hearing on a motion to modify a pretrial status order may be held in conjunction
589 with a preliminary hearing or any other pretrial hearing.

590 ~~[(3)]~~ (4) In ruling upon a motion to modify a pretrial status order, the judge may:

591 (a) rely on information as provided in Subsection ~~[77-20-205(7)]~~ 77-20-205(8);

592 (b) base the judge's ruling on evidence provided at the hearing so long as each party is
593 provided an opportunity to present additional evidence or information relevant to pretrial
594 release; and

595 (c) (i) for a motion to modify a pretrial status order under Subsection (1), modify the
596 pretrial status order, including the conditions of release, upon a finding that there has been a
597 material change in circumstances[-]; or

598 (ii) for a motion to modify a pretrial status order under Subsection (2), modify the
599 pretrial status order by reducing the amount of the financial condition or imposing nonfinancial
600 conditions of release upon a finding that the defendant is unable to pay the amount of the
601 financial condition in the pretrial status order.

602 (5) In modifying a pretrial status order upon a motion by a party, or on the court's own
603 motion, there is a rebuttable presumption that a bail bond be imposed as a condition of release
604 in a modified pretrial status order if:

605 (a) the defendant was released on the individual's own recognizance or on nonfinancial
606 conditions;

607 (b) the defendant willfully failed to appear at a required court appearance or has failed
608 to appear at a required court appearance more than once; and

609 (c) a bench warrant was issued.

610 (6) Subsections 77-20-205(3) through (10) apply to a determination about pretrial
611 release in a modified pretrial status order.

612 Section 8. Section **77-20-208** is amended to read:

613 **77-20-208. Release from conditions when charges not filed in specified time**
614 **period.**

615 (1) If a prosecuting attorney does not file an information, indictment, or a request to
616 extend time under Subsection (2), within 120 days after the day on which a ~~[bail~~

617 ~~commissioner]~~ county jail official released the individual on a financial condition under
618 Section 77-20-203 or within 120 days after the day on which a temporary pretrial status order
619 was issued for the individual:

620 (a) the individual shall be relieved from any condition of pretrial release;

621 (b) the court shall refund any monetary bail in accordance with Subsection
622 77-20-402(5); and

623 (c) if a bail bond was used to post monetary bail, the bail bond shall be exonerated
624 without further order of the court.

625 (2) A request to extend time shall:

626 (a) be served on:

627 (i) the individual and the individual's attorney; and

628 (ii) if a bail bond was used to post monetary bail, the surety; and

629 (b) except as provided in Subsection (3), be granted for a period of up to 60 days.

630 (3) The magistrate may grant a request to extend time for a period of up to 120 days
631 upon a showing of good cause.

632 (4) Nothing in this section prohibits the filing of charges against an individual at any
633 time.

634 Section 9. Section 77-20-209 is enacted to read:

635 **77-20-209. Right to expedited appeal of pretrial detention.**

636 (1) If a magistrate or judge issues a pretrial status order that orders the individual be
637 detained during the time the individual awaits trial or other resolution of criminal charges, the
638 individual has the right to an expedited appeal of the pretrial status order.

639 (2) An individual has a right to an expedited appeal under Subsection (1) even if:

640 (a) the individual is no longer detained;

641 (b) the individual is sentenced; or

642 (c) the individual entered into a plea agreement with the prosecution.

643 Section 10. Section 77-20-301 is amended to read:

644 **77-20-301. Grounds for detaining or releasing defendant on conviction and prior**
645 **to sentence.**

646 (1) Upon conviction, by plea or trial, the court shall order that the convicted defendant
647 who is waiting imposition or execution of sentence be detained, unless the court finds, by clear

648 and convincing evidence, presented by the defendant that the defendant:

649 (a) is not likely to flee the jurisdiction of the court if released; and

650 (b) will not pose a danger to the physical, psychological, or financial and economic
651 safety or well-being of any other person or the community if released.

652 (2) If the court finds the defendant does not need to be detained, the court shall order
653 the release of the defendant on suitable conditions, including conditions of release described in
654 Subsection [~~77-20-205(4)~~] 77-20-205(5).

655 Section 11. Section **77-20-302** is amended to read:

656 **77-20-302. Grounds for detaining defendant while appealing the defendant's**
657 **conviction -- Conditions for release while on appeal.**

658 (1) The court shall order that a defendant who has been found guilty of an offense in a
659 court of record and sentenced to a term of imprisonment in jail or prison, and who has filed an
660 appeal or a petition for a writ of certiorari, be detained, unless the court finds:

661 (a) the appeal raises a substantial question of law or fact likely to result in:

662 (i) reversal;

663 (ii) an order for a new trial; or

664 (iii) a sentence that does not include a term of imprisonment in jail or prison;

665 (b) the appeal is not for the purpose of delay; and

666 (c) by clear and convincing evidence presented by the defendant, that the defendant:

667 (i) is not likely to flee the jurisdiction of the court if released; and

668 (ii) will not pose a danger to the physical, psychological, or financial and economic
669 safety or well-being of any other person or the community if released.

670 (2) (a) If the court makes a finding under Subsection (1) that justifies not detaining the
671 defendant, the court shall order the release of the defendant, subject to only conditions of
672 release that are reasonably available and necessary to reasonably ensure the appearance of the
673 defendant as required and the safety of any other individual, property, and the community.

674 (b) The conditions under Subsection (2)(a) may include conditions described in
675 Subsection [~~77-20-205(4)~~] 77-20-205(5).

676 (c) The court may, in the court's discretion, amend an order granting release to impose
677 additional or different conditions of release.

678 (3) If the defendant is found guilty of an offense in a court not of record and files a

679 timely notice of appeal in accordance with Subsection 78A-7-118(1) for a trial de novo, the
680 court shall stay all terms of a sentence, unless at the time of sentencing the judge finds by a
681 preponderance of the evidence that the defendant poses a danger to another person or the
682 community.

683 (4) If a stay is ordered, the court may order postconviction restrictions on the
684 defendant's conduct as appropriate, including:

- 685 (a) continuation of any pretrial restrictions or orders;
- 686 (b) sentencing protective orders under Section 78B-7-804;
- 687 (c) drug and alcohol use;
- 688 (d) use of an ignition interlock; and
- 689 (e) posting appropriate monetary bail.

690 (5) The provisions of Subsections (3) and (4) do not apply to convictions for an offense
691 under Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.

692 (6) Any stay authorized by Subsection (3) is lifted upon the dismissal of the appeal by
693 the district court.

694 Section 12. Section 77-20-401 is amended to read:

695 **77-20-401. Payment of monetary bail to sheriff or bail commissioner -- Specific**
696 **payment methods.**

697 (1) Subject to Subsection 77-20-402(2), if an individual has been required by a [~~bail~~
698 ~~commissioner~~] county jail official, or ordered by a magistrate or judge, to post monetary bail as
699 a condition of pretrial release, the individual may post the amount of monetary bail with the
700 [~~bail commissioner~~] county jail official:

- 701 (a) in money, by cash, certified or cashier's check, personal check with check guarantee
702 card, money order, or credit card, if the [~~bail commissioner~~] county jail official has chosen to
703 establish any of those options; or
- 704 (b) by a bail bond issued by a surety.

705 (2) [~~A bail commissioner~~] A county jail official shall deliver any monetary bail
706 received under Subsection (1) to the appropriate court within three days after the day on which
707 the monetary bail is received by the [~~bail commissioner~~] county jail official.

708 Section 13. **Repealer.**

709 This bill repeals:

- 710 Section **10-3-921**, Fines -- Collection by bail commissioner -- Disposition.
- 711 Section **10-3-922**, Term of bail commissioners -- Salary -- Bond and oath.
- 712 Section **17-32-1**, Appointment of bail commissioners.
- 713 Section **17-32-2**, Collection of fines by bail commissioners -- Disposition.
- 714 Section **17-32-3**, Term of bail commissioners -- No additional compensation --
- 715 **Bond and oath.**
- 716 Section **17-32-4**, Oaths and bonds to be filed.