

HB206: BAIL & PRETRIAL RELEASE AMENDMENTS

OVERVIEW

HB206 encourages a more thoughtful, individualized approach to **pretrial release determinations** by looking to expand the tools judges have available to them to address what monetary bail cannot: **public safety risk**.

KEY PROVISIONS

- Provides that judges should make pretrial release determinations using the least restrictive, reasonably available conditions that will ensure:
 - 1) Defendant's appearance in court;
 - 2) the safety of the public;
 - 3) the safety of witnesses and victims; and
 - 4) the integrity of the court process.
- Creates a fund at CCJJ to support the creation or development of pretrial release programs in the individual counties;
- Makes some changes to the rules on bond forfeiture to improve efficiency and effectiveness;
- Implements data collection and reporting requirements.

UTAH STATS AT A GLANCE

- ▶ 63% of inmates in SLCo, and over half of inmates statewide are pretrial detainees.
- ▶ Individuals who are offered but cannot afford monetary bail often serve more time in custody than they would under a standard sentence, at a cost to taxpayers of \$80-\$110/day.
- ▶ Research shows that the risk of recidivism for low risk individuals who spend more than a couple days in jail increases.

HB206 IS SUPPORTED BY:

- ✓ The Statewide Association of Prosecutors
- ✓ Utah Sheriffs' Association*
- ✓ Utah Judicial Council
- ✓ Commission on Criminal & Juvenile Justice
- ✓ Law Enforcement Legislative Advisory Cmte
- ✓ Utah State Bar
- ✓ Utah Association of Criminal Defense Attys
- ✓ Utah Association of Counties
- ✓ Americans for Prosperity
- ✓ Libertas Utah
- ✓ ACLU Utah

WHY HB206?

Currently, the most widely used pretrial release tool in our state is monetary bail. Monetary bail amounts are dictated by a schedule that looks only at the level of offense charged, and not individual circumstances.

Monetary bail works to incentivize an individual's appearance in court, but it is not intended to protect the public or victims from harm that could result if a person is released from custody.

HB206 preserves monetary bail as a condition of release and also expands the tools available to judges to adequately address an individual's public safety risk.

* The Sheriffs' Association supports the main concepts of HB206 but not the House floor amendment that mandates certain data collection practices.

HB206

Preserves monetary bail as a condition of pretrial release.

HB206S02 line 367

When making pretrial release determinations, a judge shall consider:

- the **safety and welfare** of the **public**;
- the **safety** of **witnesses and victims**;
- ensuring defendant's **appearance in court**;
- ensuring the **integrity** of the **court process**.

HB206S02 lines 311-319

Makes no changes as to who is eligible for bail and who may be detained under 77-20-1:

The State may seek the pretrial detention of a defendant charged with or arrested for:

- (1) a capital felony...;
- (2) a felony committed while on probation or parole, or while free on bail...;
- (3) a felony ... and the court finds the individual constitutes a substantial danger to others or the community;
- (4) a felony ... and the court finds the individual violated a material condition of release while previously on bail;
- (5) a domestic violence offense ... and the individual constitutes a substantial danger to an alleged victim if released on bail.

HB206S02 lines 280-297

Maintains a judge's ability to detain a defendant charged with any felony who was on probation or out on bail for a separate felony offense.

HB206S02 lines 287-293

Preserves judicial discretion regarding the factors that may be considered when making pretrial release determinations; **expands judicial discretion** with the types of conditions that may be imposed.

HB206S02 lines 373-392

NEW YORK

Eliminates monetary bail for most offenses (requiring instead the imposition of non-monetary conditions).

NY §510.10(1)

When making pretrial release determinations, a judge shall consider **only a defendant's flight risk**.

NY §545.10

Expands the category of individuals who are **eligible for bail**, **limits** those who **may be detained**:

The State may only seek the pretrial detention of a defendant:

- (1) charged with a felony and caused or attempted to cause serious physical injury to another person;
- (2) charged with an offense where the defendant would be subject to a sentence applied to a persistent violent felony offender;
- (3) charged with witness intimidation;
- (4) has willfully and persistently failed to appear in court in the instant case.

NY §545.20(1)

Removes a judge's ability to detain a defendant charged with certain felonies who was on probation for a separate felony offense.

NY 3579--A, p.5, line 1-2

Limits judicial discretion regarding the factors that may be considered when making pretrial release determinations.

NY § 510.30

March 9, 2020

To Members of the Senate Business and Labor Committee:

We write to voice our support for HB206, Bail and Pretrial Release Amendments, which gives Utah's judges more options to address public safety issues associated with releasing defendants accused of crimes. We also write because we are aware of inaccurate and misleading information about HB206, circulated by the American Bail Coalition, the national lobbyist for the bail bond industry. We write to address and correct these assertions.

As prosecutors, our primary duty is to pursue justice and ensure public safety. In the area of pretrial proceedings, where defendants have been accused of but not yet convicted of a crime, and are thus presumed innocent, the challenge is this: how to best manage the potential risk a pretrial defendant may pose – both the risk of not appearing in court when required and safety risk to the community- while not unnecessarily depriving that pretrial defendant of their liberty. We know that incarcerating low risk individuals is not only unnecessary: it is harmful. Unnecessary incarceration wastes taxpayer dollars, destabilizes families, results in job loss, and exposes low risk individuals to high risk, criminogenic influences while incarcerated.

Effective pretrial justice requires having a robust array of tools for judges to draw upon when imposing pretrial release conditions. Monetary bail can be one of those tools, but it should not be the only tool. Most in the criminal justice system recognize that our current pretrial practices—the imposition of an automatic, fixed monetary bail amount based on the level of offense – is not effective and results in wealth-based detention. The current system keeps low income individuals incarcerated, regardless of their risk factors, and allows even high risk individuals with the economic means to secure their release, with little to no conditions in place to address the public safety risks they may pose.

HB206 offers a more effective, individualized approach to pretrial release determinations by expanding the tools judges have available to them to address what monetary bail cannot: public safety risk. This bill is supported by the Statewide Association of Prosecutors (SWAP), the Sheriffs' Association, the Judicial Council, CCJJ, and the Utah Bar, among others.

We have been surprised and disappointed to see the misleading statements circulated by the bail industry, which plainly misrepresents HB206 and promotes an inaccurate narrative about what this bill actually does.

Assertion 1: "Utah's HB-206 would create a system in which any individual arrested for a crime would be automatically marked for release on their own recognizance and without the need for bail. This would apply to nearly all cases, including felonies."

Correction: This is blatantly false. HB206 does not create a system that would 'automatically mark' an arrested individual for release on their own recognizance, nor does it do anything close to this.

Professor Cassell supports HB206 as legislation that would give Utah judges “more options to address public safety issues associated with releasing defendants accused of crimes.”

Discussions to legislation should be based on fact and merit, not false or deceptive rhetoric designed to incite fear and alarm. These tactics should have no place at the legislature or in our policy debates.

In our view, HB206 is sound policy that expands judicial discretion and puts tools in judges’ hands to better manage the potential public safety risks pretrial individuals pose. Please feel free to contact us with any questions about this legislation or our individual positions.

Best,

Sim Gill
Salt Lake County District Attorney

David Leavitt
Utah County Attorney

Margaret Olson
Summit County Attorney

Ryan Peters
Juab County Attorney

Troy Rawlings
Davis County Attorney

Robert Van Dyke
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March 3, 2020

Representative Stephanie Pitcher
Senator Todd Weiler
Utah State Legislature
Capitol Building - 350 North State
Salt Lake City, UT 84114
Via email

RE: Endorsement of H.B. 206 – Bail and Pretrial Release Amendments

Dear Representative Pitcher and Senator Weiler:

I write in support of H.B. 206, which proposes amendments to Utah's law governing bail and pretrial release. This bipartisan bill was recently called to my attention. I teach criminal law and criminal procedure at the S.J. Quinney College of Law at the University of Utah and have recently been researching public safety issues associated with bail reform in other parts of the country. I support H.B. 206, which avoids problems with other bail reform efforts in other states and should give Utah's judges more options to address public safety issues associated with releasing defendants accused of crimes. The bill has also been endorsed by several important organizations focusing on protecting the public, including the Statewide Association of Prosecutors (SWAP) and the Utah Sheriff's Association.

H.B. 206 changes Utah law to ask the right question about pretrial release. Previously Utah law focused some pretrial release decisions on a defendant's ability to post money bail. The more salient question is whether releasing a defendant will jeopardize public safety or fail to assure the defendant's appearance at trial. H.B. 206 usefully updates current law and concentrates on this central issue. Indeed, the changes made by H.B. 206 appear to be relatively modest.

I write to you because I understand that recently some of my legal writings have been circulated to the Legislature to criticize H.B. 206. As you may know, along with Economics Professor Fowles at the University of Utah, last week I released a new empirical study of Chicago's bail reform efforts. See Cassell & Fowles, *Does Bail Reform Increase Crime? An Empirical Assessment of the Public Safety Implications of Bail Reform in Cook County, Illinois*, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3541091 (released Feb. 19, 2020). Our study found that, as implemented in Cook County, Illinois, bail reform led an increase in violent crimes and total crimes committed by pretrial releasees.

* The views expressed in this letter are solely those of the author in his individual capacity. No state funds were used to prepare or distribute this letter.

Of course, if H.B. 206 is adopted, it will be important for the Legislature to carefully examine its effects on release (and detention) decisions. In other words, as with many other laws, how the law is implemented will be important. In this area as in many others, empirically based criminal justice decision-making is a wise approach for the Legislature to follow and studying the relevant issues is very important.

In that connection, I understand that Utah's Judicial Council has been researching pretrial release issues since 2014 and in 2016 created a Standing Committee on Pretrial Release and Supervision that is working on these issues. I hope to make a presentation to the Standing Committee on Professor Fowles' and my research shortly. One area that deserves particularly close attention is how to implement a Public Safety Assessment (PSA). While H.B. 206 does not mandate use of a PSA, our research on Cook County suggests that the PSA used there was not successful in effectively identifying how many defendants could be safely released. We plan to provide the results of our research to the Standing Committee so that it may have that information while further developing any PSA instruments to be used in counties in this state.

I hope that this information clarifies my views on the pretrial release issues and Professor Fowles' and my recent study—as well as how H.B. 206 is a good bill that differs from other ill-judged bail reform measures that have recently been enacted elsewhere.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul G. Cassell". The signature is stylized and cursive.

Paul G. Cassell

COUNTY ATTORNEY
MARGARET H. OLSON

CRIMINAL DIVISION

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February 25, 2020

Representative Stephanie Pitcher
Senator Todd Weiler
Utah State Legislature
Capitol Building – 350 North State
Salt Lake City, Utah 84114

Re: HB 206/Bail and Pretrial Release Amendments

Dear Representative Pitcher and Senator Weiler:

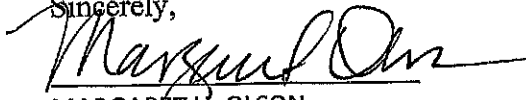
We endorse HB 206


A mission of the Summit County Attorney's Office is to ensure equal access to justice. We firmly believe that process and outcomes in criminal cases should not be different for people of means and connection than for people struggling in poverty or disenfranchisement. We affirm our commitment in seeking justice to be mindful of equal access principles.

HB 206 shifts the focus from the ability of the criminally accused to post money bail to the more appropriate focus on whether pretrial release will jeopardize public safety or whether a defendant will appear and defend the charge in a court of law.

We believe HB 206 is a positive step in the right direction.

Sincerely,


MARGARET H. OLSON
Summit County Attorney


PATRICIA S. CASSELL
Chief Prosecutor

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