

2nd Sub HB220 Frequently Asked Questions

Question: Have we moved away from a wealth-based system of pretrial release practices?

Answer: No. The implementation of last year's HB206 has had unintended consequences which has held defendants who should have been released and released defendants who should have been held. The financial condition of defendants has not been successfully implemented into law.

Q: Are Penny Warrants "purely Covid-related" and unrelated to last year's HB206?

A: No. The Utah Supreme Court's Administrative order for court operations during a pandemic was issued on October 2, 2020. It is certainly the case that the timing of this order coincided almost to the day that HB206 became law but a review of the number of penny warrants starting in October, it is just as plausible that both the rule AND the law created an accumulative effect. The law required judges to apply a "least restrictive means" standard which certainly included the issuance of Penny Warrants. To declare definitively that the rise in Penny Warrants is "purely covid-related" is an unreasonable assumption.

Numbers of Penny Warrants:

Justice Courts:

2020-06	1
2020-08	4
2020-10	314
2020-11	603
2020-12	855
2021-01	717
2021-02	1002

District Courts:

2020-03	2
2020-04	5
2020-05	3
2020-10	92
2020-11	114
2020-12	75
2021-01	131
2021-02	112

(Data provided by Utah Courts)

Q: Does HB206 threaten public safety?

A: Yes. Opponents of HB220 point to data coming from Salt Lake County to argue that public safety has been improved with the passage of last year's HB206. While the Salt Lake County data looks promising, it is important to note that Utah's largest county has greater resources and existing, well established pretrial services. Last year's bill did not have any fiscal note/funding to implement the changes to pretrial services for all 29 counties yet the provisions of the law were still expected to be followed. The law left judges statewide with only two options: Release defendants with little to no restrictions or hold defendants with no ability to be released. The extreme nature of the decisions without administrative processes to ensure judges had sufficient information created disparate and inconsistent outcomes.... which have verifiably threatened public safety.

Q: Are there valid examples being shared by law enforcement of defendants who are a threat to the public being released and defendants who should be released being unduly held over?

A: Yes. 29 duly elected county sheriffs, along with Chiefs of Police from across the state, have stepped forward to provide specific examples. The attempts to disprove their accounts are strained and done under narrow interpretations of what constitutes a successful application of the law. For example, if a defendant with prior convictions of crimes against children is caught with child pornography and hidden cameras in the children's rooms and bathrooms are discovered and this suspect is subsequently released less than two hours after his arrest, it is NOT a success story of strong public safety and the protection of victims that the defendant ultimately attended his scheduled hearing. The family impacted by this tragedy will argue that the system failed them... and they are right.

To suggest that members of law enforcement are confused or not being honest about the circumstances happening in the communities that they serve is wrong.

Q: Have warrants increased as a result of HB206?

A: Yes. While there are competing graphs being shared that suggest otherwise, here is what the BCI data is showing from '18, '19 and '20. Specifically, here is the data year over year from '19 and '20 looking at the impact in the year and months that covid was a factor.

BCI WARRANT DATA 2018 - 2020

The number of warrants entered or on statewide from January 1 - September 30, 2018 = 14,221

October 1 - December 31, 2018 = 4,862

The number of warrants entered or on statewide from January 1 - September 30, 2019 = 22,216

October 1 - December 31, 2019 = 9,086

The number of warrants entered or on statewide from January 1 - September 30, 2020 = 20,691

October 1 - December 31, 2020 = 20,021

AN INITIAL ANALYSIS OF THE EFFECT OF HB206 ON THE CUSTODY STATUS OF FELONY DOMESTIC VIOLENCE AND OTHER FELONY CASES BOOKED AT THE SALT LAKE COUNTY JAIL

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HB206 has only been in effect since October 2020 yet some clear trend lines are visible with respect to the impact of HB206 on the pretrial custody status of felony domestic violence and other serious cases. **For 1st degree felonies and other serious cases, the net effect has been that pretrial release is less likely in those categories of cases.**

Prior to HB206, the courts set bail according to a standard bail schedule. Under that framework, individuals charged with serious and violent offenses could secure release by bonding out on the high bail amounts associated with the severity level of their booking.

For example, pre-HB206:

- Case # 191401782. 8 distinct felony filings in 2019, including 6 in a 3- month period. Every case alleged assault or stalking against the same victim. In each subsequent case, the bail amount was further increased, the defendant bails on each increased amount, and is released on each case.
- Case # 191904618 - 5 prior convictions of DV against same victim, active protective order in place. Aggravated assault against same victim (ex-wife) with children present. 100K bond paid by commercial bond company after 3 days in jail.
- Case #191402694 – alleged gang member, attempted murder case, released on 500K bond, less than 24 hours after booking by commercial bail bond company. Rebooked 6 months later for witness tampering, against the witnesses in the murder case.

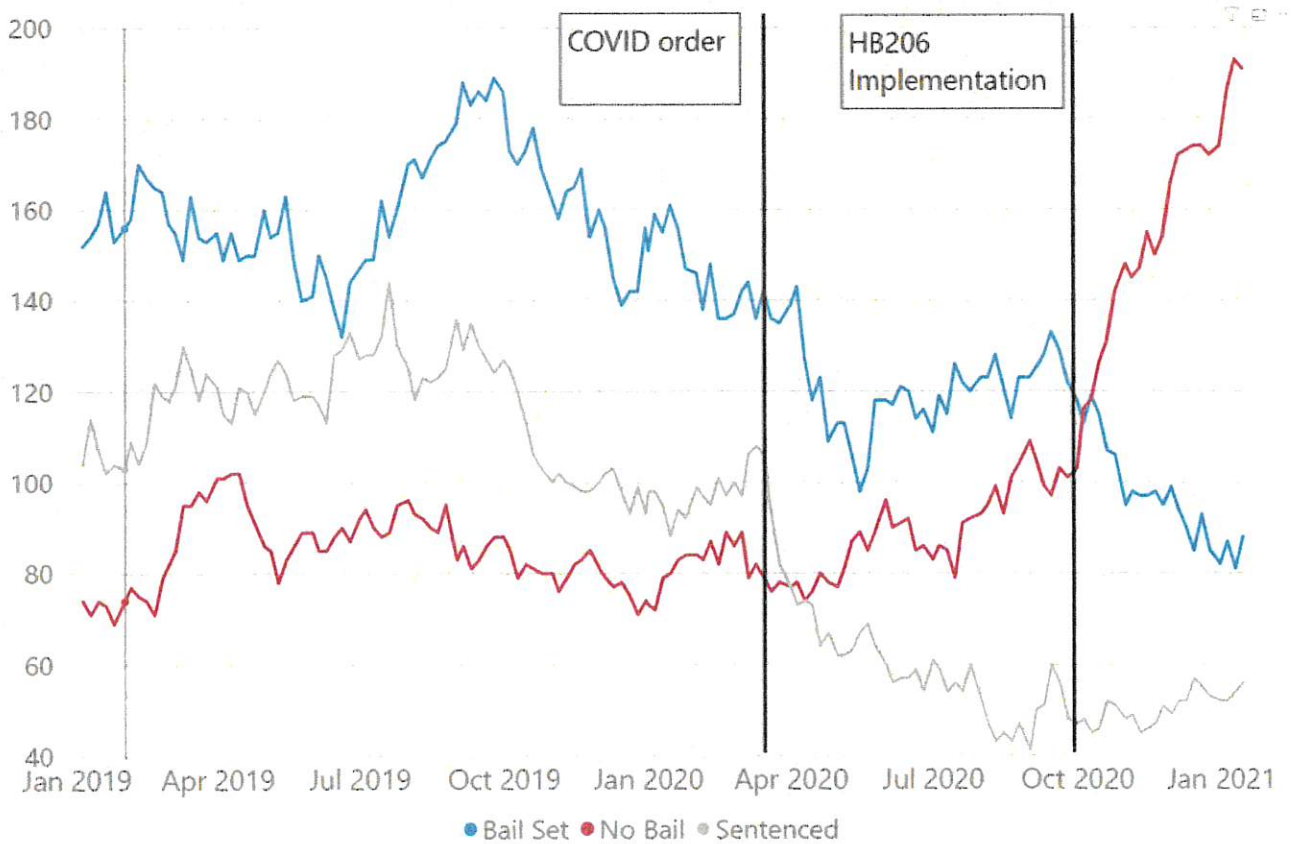
HB206 moved pretrial release decision-making away from a standard bail schedule tied to charge type, and instead requires an individualized inquiry on the pretrial conditions appropriate for each case. The below metrics compare the 3 months since HB206 implementation against 3 months prior. Since HB206:

- The percentage of individuals who bonded out on Felony Domestic Violence cases has dropped by 38%.
- The percentage of people individuals who bonded out on Felony Domestic Violence cases within one week of booking dropped by 41%
 - Our review identified 11 cases of someone with an F1 Rape charge who bonded out within a week from July-September 2020. That dropped to 1 case in October-December 2020.
- The percentage of first-degree felony bookings that were released within 7 days dropped from 33% to 16%.

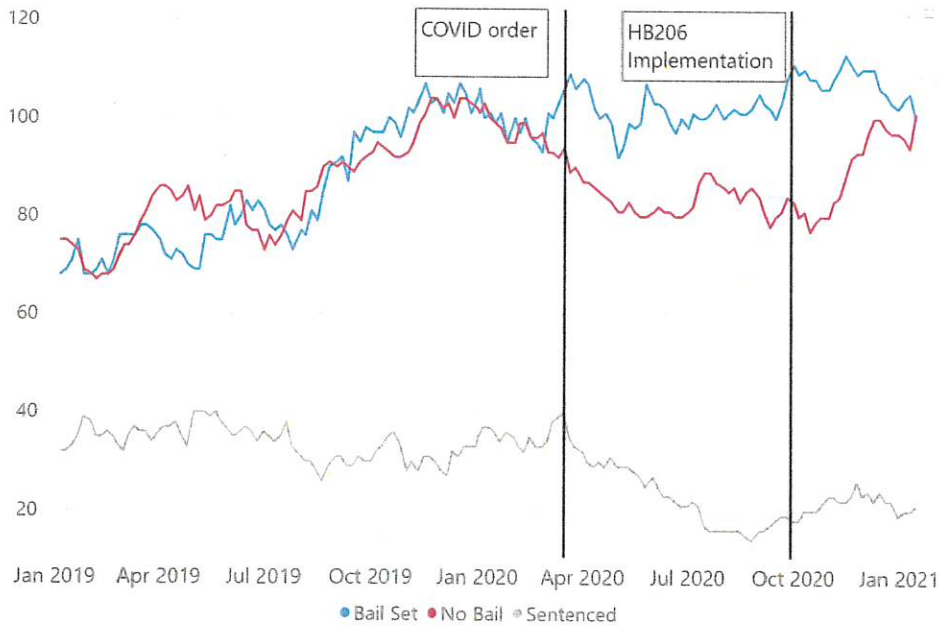
For those charged with Felony Domestic Violence offense, Felony Sex Offenses, Weapons Offenses, and those charged with any type of Felony 1 charges, the **number of individuals subject to no bail holds has increased significantly** since HB206 went into effect on October 1, 2020.

The below dashboard views reflect counts of individuals in jail (on the vertical axis), sorted by case type and custody condition over time.

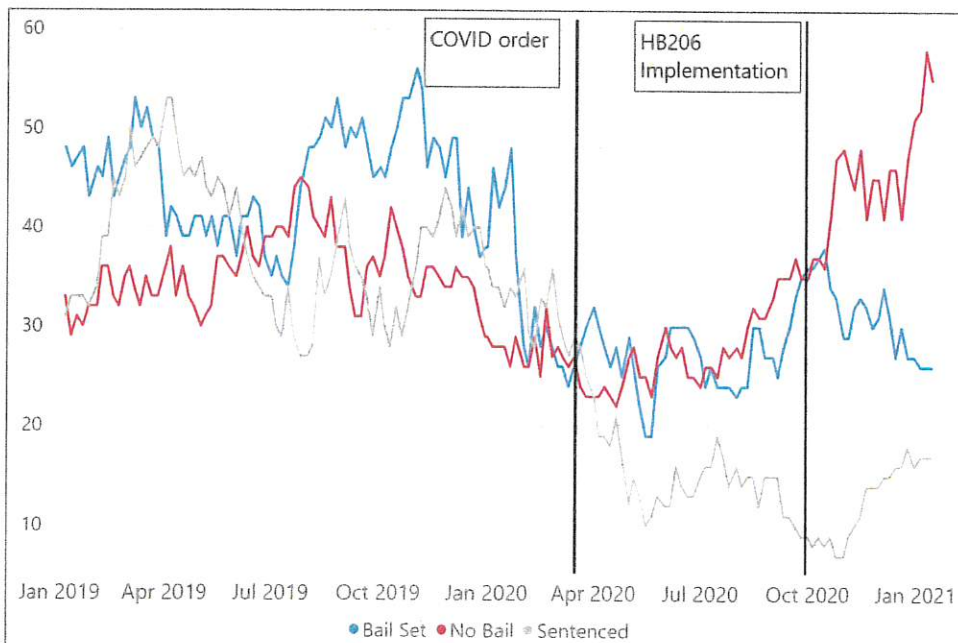
Individual in Jail on Felony Domestic Violence Cases:



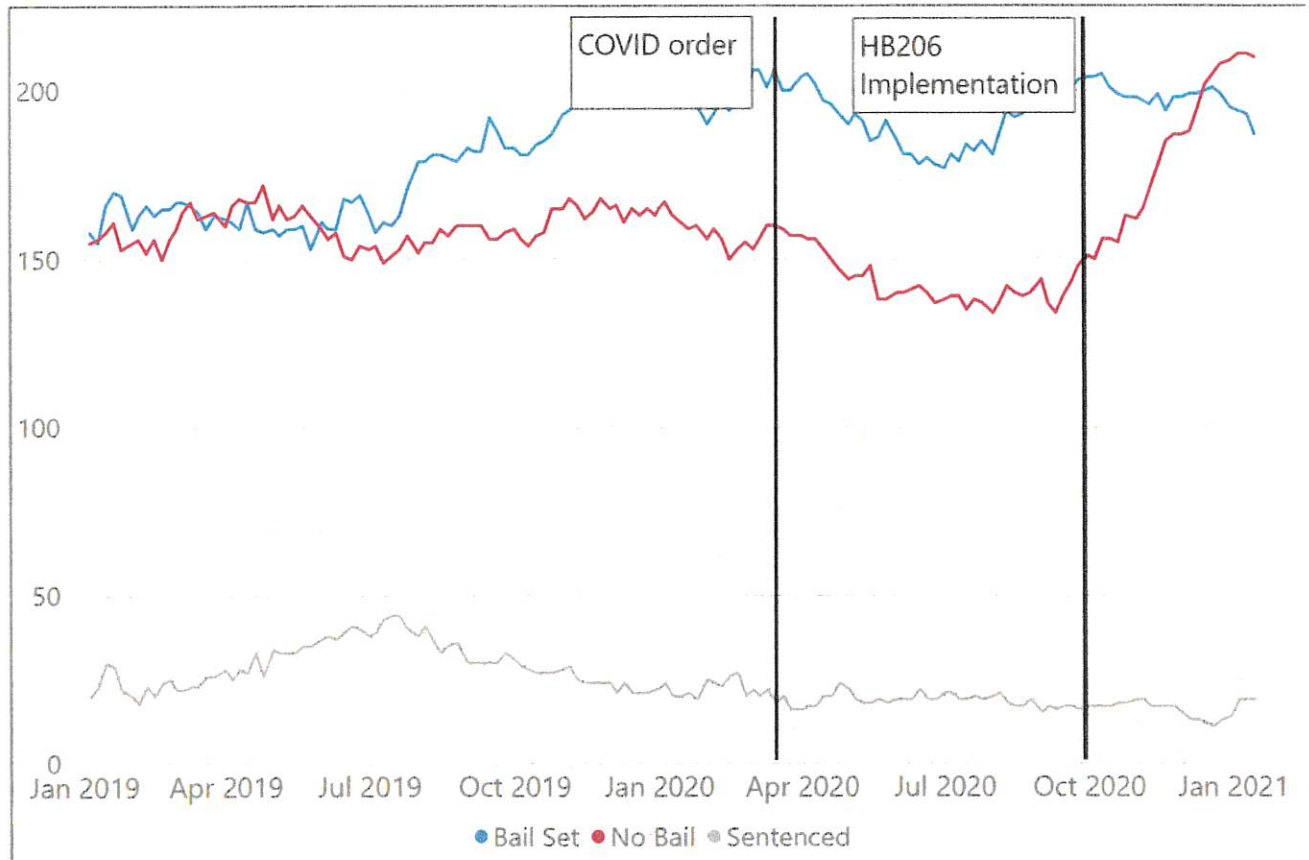
Individuals in Jail on Felony Sex Offense Cases:



Individual in Jail on Weapons Charges



Individuals in Jail on All 1st Degree Felonies



SUPPORTERS OF HB220 2ND
SUBSTITUTE:

Utah Sheriffs Association

Utah Chiefs of Police Association

Utah Association of Criminal Defense Lawyers

Utah Office of the Attorney General

Utah Statewide Association of Prosecutors

Libertas Institute

Law Enforcement Legislative Committee

(unanimous support 3/1/21) which is comprised of:

Utah Chiefs of Police Association

Utah Sheriffs' Association

Utah Statewide Association of Prosecutors

Utah Department of Public Safety

Utah Peace Officers Association

Utah Department of Corrections

Utah Attorney General's Office

https://www.hinews.com/news/crime_courts/man-charged-arrested-for-distributing-child-sexual-abuse-material/article_5d5dd905-2160-51fa-9cf5-3f2fc8216a41.html

Man charged, arrested for distributing child sexual abuse material

By Jackson Wilde staff writer Oct 12, 2020

A Hyde Park man accused of possessing child sexual abuse material and multiple “custom-built” concealed cameras has been charged with multiple felonies in the 1st District Court.

Kurt Allen Jensen, 62, has been charged with 11 counts of second-degree sexual exploitation of a minor. Indicting documents allege Jensen distributed at least 50 files of child sexual abuse material on multiple occasions.

On Aug. 31, Utah Internet Crimes Against Children Task Force agents observed peer-to-peer distribution of child sexual abuse material from Jensen’s Hyde Park address. After executing a search warrant on Jensen’s home on Oct. 7, according to documents filed with the court, agents disconnected an internet router and believed child sexual abuse material had been actively downloading when they arrived.

While searching the home agents found multiple “custom-built” hidden cameras located in the home. Documents state one camera was located in a bathroom air duct pointed at a bathtub, and other cameras were found in a nearby bedroom that children are believed to frequent. Forensic searches of SD cards, agents wrote, depict Jensen setting up the cameras and “placing them in specific spots.”

Agents wrote that other materials believed to be for creating additional hidden cameras were found in the home including a shower fixture with a “camera affixed to the back, and a soap box with wiring affixed to the inside by putty.”

Jensen was booked in the Cache County Jail on Oct. 7 and released without bail.

The following day, prosecutors filed a motion for a no-bail arrest warrant based on the probable cause statement and Jensen’s criminal history — he was charged with second-degree sexual abuse of a child in 1993 and a class-A voyeurism in 2007.

Defense counsel for Jensen requested a detention hearing prior to the issuance of a warrant based on Utah House Bill 206 — which took effect on Oct. 1 and amends bail and pretrial release conditions — and stated he had already been released with pretrial supervision and an ankle monitor.

Cache County Sheriff's Office Lt. Roy Hall said the number of pretrial detainees has gone down around 90 percent since HB 206 took effect. Under the formerly used bail schedule someone with similar charges would likely have had to post \$100,000 bail, Hall said, but the language of the bill grants "the least restrictive available conditions" for release.

"It's just unconscionable to me," Hall said. "I'm very concerned for public safety with this bill."

Hall said he understood the issues the bill is trying to address, but was "not optimistic" when the bill was introduced. For Hall, the bill is not only demoralizing for officers and financially deflating for bail bonds businesses, but it also threatens public safety when "habitual offenders" are released.

"This bill is going to get somebody killed," Hall said.

The bill passed on March 11 with a 25-1 vote during the Utah State legislature general session.

During the session, bill sponsor Sen. Todd Weiler, R-Woods Cross, expressed the wide-ranging support of the bill from organizations representing prosecutors, defense attorneys and law enforcement throughout the state. According to Weiler, the then-used bail schedule only took into consideration the severity of the offense charged and not the defendant's circumstances — effectively leaving those without the necessary resources to sit in jail longer than their wealthy counterparts.

Weiler said over half of inmates statewide are pretrial detainees and have not been convicted of crimes.

"House Bill 206 preserves monetary bail as a condition of release but also expands the tools available to judges to adequately address an individual's public safety risk," Weiler said. "What this bill does is provide that judges should make pretrial release determinations using the least restrictive, reasonably available conditions."

Sen. Lyle Hillyard, R-Logan, supported the bill, stating it would help protect the families and the employment of first time offenders. Hillyard said someone held on \$50,000 bail, for instance, would have to pay \$5,000 cash to a standard bail bondsman.

"Many people don't have \$5,000 cash," Hillyard said. "We've changed the law somewhat, you can post a credit card, but not very many people have a \$50,000 limit on their credit card."

An initial appearance for Jensen has yet to be scheduled.