

# Pretrial Release and Detention

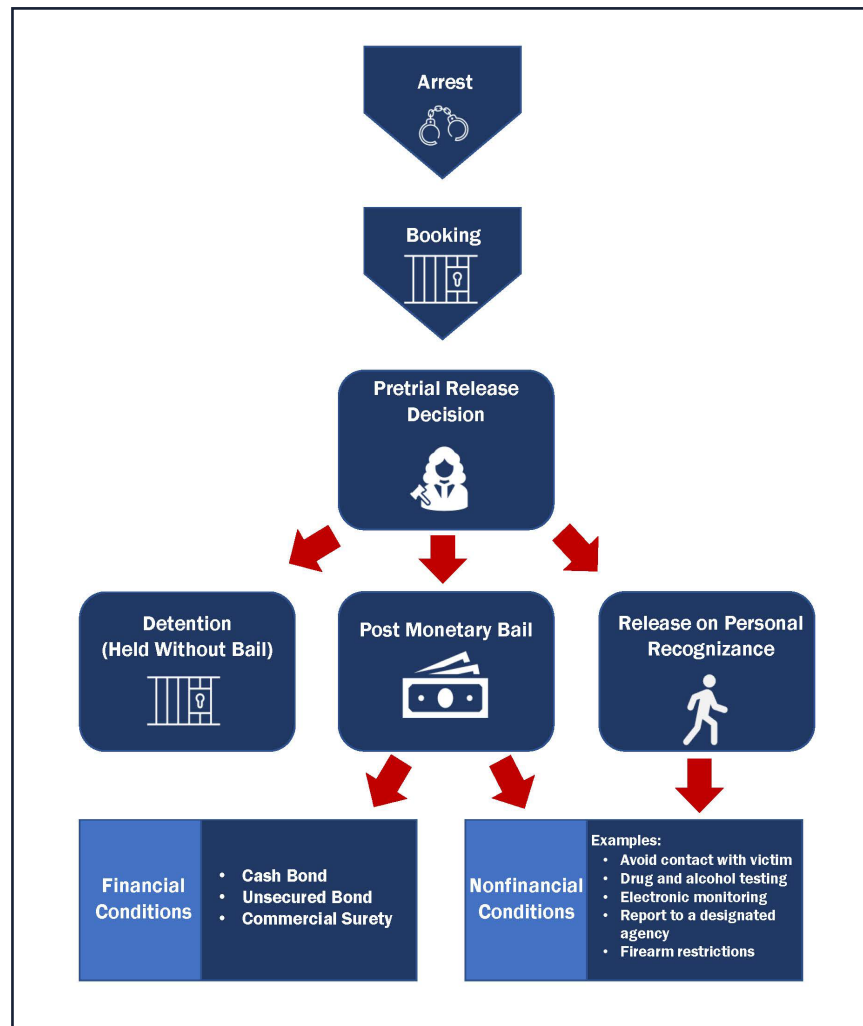
## Overview of Utah Law and National Trends

### Frequently Used Terms

- **“Bail”** or **“admission to bail”** generally means the process of releasing a defendant from custody on conditions that assure both public safety and the defendant’s appearance in court.
- **“Bond”** or **“bail bond”** is an agreement with the court that the defendant will appear in court to face the criminal charges, and a commercial surety can be included in that agreement.
- **“Monetary bail”** is the financial condition for bail.
- **“Pretrial risk assessment”** is the scientifically validated instrument that attempts to measure the likelihood of failure to appear, the likelihood of committing crimes during the pretrial period, and, sometimes, the propensity for violence.
- **“Pretrial services”** are services performed by agencies or programs that actively monitor a defendant and administer a *pretrial risk assessment*.
- **“Release on personal recognizance”** is a form of nonfinancial pretrial release in which the defendant signs a written agreement to appear in court when required and released from jail.
- **“Surety”** is a person who is primarily liable for paying another’s debts or performing another’s obligations.

These terms are drawn from the [Judicial Council Committee Report](#) to the Utah Judicial Council on Pretrial Release and Supervision, November 23, 2015.

### Pretrial Release and Detention Process



### Financial Conditions for Release

- **Cash Bail/Bond:** Defendant pays the amount of money posted by the court for release. If the defendant makes all of the court appearances, the money is returned to the defendant. But if the defendant fails to appear, the money is forfeited to the court.
- **Unsecured Bond:** Defendant agrees to pay an amount of money to the court if the defendant fails to appear. The agreement between the defendant and the court is not secured by cash, bond, or other collateral.
- **Commercial Surety/Surety Bond:** An agent for a surety (bail bondsman) signs an agreement with the court, secured by an amount of money, in which the surety guarantees that the defendant will appear in court. The surety charges the defendant no less than 10% of the amount paid to the court. The surety is liable for the full amount of the money if the defendant fails to appear in court.

## Utah's Pretrial Release and Detention Laws

### Utah Constitution

[Article I, Section 8](#): Offenses bailable.

[Article I, Section 9](#): Excessive bail and fines – Cruel punishments.

### Utah Code

[Title 77, Chapter 20, Bail](#)

[Title 77, Chapter 20b, Bail Surety](#)

[Title 31A, Chapter 35, Bail Bond Act](#)

[Title 17, Chapter 32, Bail Commissioners](#)

Municipality Bail Commissioners: [§ 10-3-920](#), [§ 10-3-921](#), [§ 10-3-922](#)

Juveniles and Bail: [§ 78A-6-113](#); [§ 80-6-207](#) (Effective Sept. 1st)

### Utah Rules of Criminal Procedure

[Rule 6](#): Warrant of arrest or summons.

[Rule 7](#): Initial proceedings for class A misdemeanors and felonies.

[Rule 7A](#): Procedures for arraignment on class B and C misdemeanors, or infractions.

[Rule 9](#): Proceedings for persons arrested without a warrant on suspicion of a crime.

[Rule 9A](#): Procedures for persons arrested pursuant to an arrest warrant.

[Rule 27](#): Stays of sentence pending motions for new trial or appeal from courts of record.

[Rule 41](#): Unsecured Bonds.

### Judicial Council Code of Judicial Administration

[Appendix J. Ability to Pay Matrix.](#)

## Recent Changes to Utah's Pretrial Release and Detention Laws

### [G.S. 2021, H.B. 220](#) – Pretrial Detention Amendments (Schultz/Cullimore)

This bill: (1) repealed various requirements for pretrial release and detention created in H.B. 206, including the least restrictive conditions requirement, the presumptions for release and detention, and the list of release conditions; (2) modified the procedures for pretrial detention hearings; and (3) modified the procedures and timelines for bail forfeiture.

### [G.S. 2020, H.B. 206](#) – Bail and Pretrial Release Amendments (Pitcher/Weiler)

This bill amended aspects of pretrial release and detention, including: (1) requiring courts to set the least restrictive conditions for release; (2) creating a presumption for release; (3) creating a list conditions for release; (4) requiring courts to consider the ability of a defendant to pay monetary bail; (5) modifying procedures for pretrial detention hearings; (6) creating a funding mechanism for pretrial release programs; and (7) requiring the Administrative Office of the Courts to collect pretrial release and detention data.

## Overview of Relevant Pretrial Release Rules and Recent Changes

In October 2020, the Supreme Court amended the Utah Rules of Criminal Procedure to conform to H.B. 206.

[Rule 6](#): Requires a judge to include pretrial release conditions when issuing an arrest warrant. The 2020 changes to Rule 6 give discretion to the court to decide whether monetary bail is a necessary condition for pretrial release and require a court to consider an individual's ability to pay if monetary bail is ordered.

[Rule 7](#) and [7A](#): Outlines the procedures courts follow for the earliest court proceeding for different levels of offenses. Requires courts to issue a pretrial status order, which includes any pretrial release conditions, at the defendant's first court proceeding. The 2020 changes amended these rules to directly reference Utah Code [Section 77-20-1](#).

[Rule 9](#): For cases where law enforcement arrests an individual without a warrant, the individual must be presented to a magistrate for a pretrial release determination. The magistrate should be given the results of the pretrial risk assessment to use in the determination. The 2020 changes added the requirement that a magistrate "impose the least restrictive reasonably available conditions."

[Rule 9A](#): If an individual was arrested pursuant to an arrest warrant under Rule 6, after the individual is arrested, a magistrate may change the pretrial release conditions described in the warrant if the defendant cannot meet the pretrial release requirements described in the warrant. The magistrate must be presented with the results of the pretrial risk assessment when changing the pretrial release conditions.

[Rule 41](#): First created in October 2020, this rule outlines the use of unsecured bonds and the procedures for collecting the bond if the defendant fails to appear at a required hearing.



# Pretrial Release Laws Across the United States

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All 50 state legislatures have acted to change pretrial policy in some way since 2012. Between 2012 and 2019, nearly 1,000 bills were enacted in the U.S.

## Legislative Themes

- Reducing arrests that result in a jail stay by using citations and increasing deflection as well as community alternatives to the justice system.
- Reducing pretrial population numbers in jails, specifically where defendants are not detained for flight or public safety concerns.
- Reducing the role of money in the system by eliminating bail schedules and providing guidance to courts to evaluate individual cases.

## National Trends

### 1. Legislative Guidance for the Courts

Legislation that encourages courts to prioritize release, reduce monetary amounts, set attainable conditions, and individualize the process by focusing on individual risk and not charge nor a bail schedule.

### 2. Conditions of Release and Pretrial Services

Legislation requiring the least onerous conditions or expanding conditions of release, including creating or encouraging expansion of pretrial service programs that provide supervision or supportive services.

### 3. Reducing Pretrial Populations

Legislation expanding citation in lieu of arrest, deflection, diversion, and other alternatives to jail.

### 4. Constitutional and Foundational Changes

Legislation modifying constitutional bail provisions and victims' rights in the pretrial process.

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