

PROTECTIVE ORDER AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill concerns jail release agreements and jail release court orders.

Highlighted Provisions:

This bill:

- ▶ amends the definitions of "jail release agreement" and "jail release court order";
- ▶ amends certain expiration provisions for a jail release agreement or a jail release court order; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-7-801, as last amended by Laws of Utah 2022, Chapter 430

78B-7-802, as last amended by Laws of Utah 2021, Second Special Session, Chapter 4

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

Section 1. Section **78B-7-801** is amended to read:

78B-7-801. Definitions.

As used in this part:

(1) (a) "Jail release agreement" means a written agreement that is entered into by an individual who is arrested or issued a citation, regardless of whether the individual is booked into jail:

(i) under which the arrested or cited individual agrees to not engage in any of the following:

(A) telephoning, contacting, or otherwise communicating with the alleged victim,

- 33 directly or indirectly;
- 34 (B) threatening or harassing the alleged victim; or
- 35 (C) knowingly entering onto the premises of the alleged victim's residence or on
36 premises temporarily occupied by the alleged victim, unless, with advance notice to the alleged
37 victim, the individual is accompanied by a law enforcement officer for the purpose of
38 retrieving the individual's personal belongings; and
- 39 (ii) that specifies other conditions of release from jail or arrest.
- 40 (b) "Jail release agreement" includes a written agreement that includes the conditions
41 described in Section (1)(a) entered into by a minor who is taken into custody or placed in
42 detention or a shelter facility under Section 80-6-201.
- 43 (2) "Jail release court order" means a written court order that:
- 44 (a) orders an arrested or cited individual not to engage in any of the following:
- 45 (i) telephoning, contacting, or otherwise communicating with the alleged victim,
46 directly or indirectly;
- 47 (ii) threatening or harassing the alleged victim; or
- 48 (iii) knowingly entering onto the premises of the alleged victim's residence or on
49 premises temporarily occupied by the alleged victim, unless, with advance notice to the alleged
50 victim, the individual is accompanied by a law enforcement officer for the purpose of
51 retrieving the individual's personal belongings; and
- 52 (b) specifies other conditions of release from jail.
- 53 (3) "Minor" means the same as that term is defined in Section 80-1-102.
- 54 (4) "Offense against a child or vulnerable adult" means the commission or attempted
55 commission of an offense described in:
- 56 (a) Section 76-5-109, child abuse;
- 57 (b) Section 76-5-109.2, aggravated child abuse;
- 58 (c) Section 76-5-109.3, child abandonment;
- 59 (d) Section 76-5-110, abuse or neglect of a child with a disability;
- 60 (e) Section 76-5-111, abuse of a vulnerable adult;
- 61 (f) Section 76-5-111.2, aggravated abuse of a vulnerable adult;
- 62 (g) Section 76-5-111.3, personal dignity exploitation of a vulnerable adult;
- 63 (h) Section 76-5-111.4, financial exploitation of a vulnerable adult;

64 (i) Section 76-5-114, commission of domestic violence in the presence of a child; or

65 (j) Section 76-9-702.1, sexual battery.

66 (5) "Qualifying offense" means:

67 (a) domestic violence;

68 (b) an offense against a child or vulnerable adult; or

69 (c) the commission or attempted commission of an offense described in Section
70 76-9-702.1 or Title 76, Chapter 5, Part 4, Sexual Offenses.

71 Section 2. Section **78B-7-802** is amended to read:

72 **78B-7-802. Conditions for release after arrest for domestic violence and other**
73 **offenses -- Jail release agreements -- Jail release court orders.**

74 (1) Upon arrest or issuance of a citation for a qualifying offense and before the
75 individual is released under Section 77-20-204 or 77-20-205, the individual may not telephone,
76 contact, or otherwise communicate with the alleged victim, directly or indirectly.

77 (2) (a) After an individual is arrested or issued a citation for a qualifying offense, the
78 individual may not be released before:

79 (i) the matter is submitted to a magistrate in accordance with Section 77-7-23; or

80 (ii) the individual signs a jail release agreement.

81 (b) If an arrested individual is booked into jail, the arresting officer shall ensure that the
82 information presented to the magistrate includes whether the alleged victim has made a waiver
83 described in Subsection (5)(a).

84 (c) If the magistrate determines there is probable cause to support the charge or charges
85 of one or more qualifying offenses, the magistrate shall issue a temporary pretrial status order,
86 as defined in Section 77-20-102, in accordance with Section 77-20-205.

87 (d) The magistrate may not release an individual arrested for a qualifying offense
88 unless the magistrate issues a jail release court order or the arrested individual signs a jail
89 release agreement.

90 (3) (a) If an individual charged with a qualifying offense fails to either schedule an
91 initial appearance or to appear at the time scheduled by the magistrate within 96 hours after the
92 time of arrest, the individual shall comply with the release conditions of a jail release
93 agreement or jail release court order until the individual makes an initial appearance.

94 (b) If the prosecutor has not filed charges against an individual who was arrested for a

95 qualifying offense and who appears in court at the time scheduled by the magistrate under
96 Subsection (2), or by the court under Subsection (3)(b)(ii), the court:

97 (i) may, upon the motion of the prosecutor and after allowing the individual an
98 opportunity to be heard on the motion, extend the release conditions described in the jail
99 release court order or the jail release agreement by no more than three court days; and

100 (ii) if the court grants the motion described in Subsection (3)(b)(i), shall order the
101 arrested individual to appear at a time scheduled before the end of the granted extension.

102 (c) (i) If the prosecutor determines that there is insufficient evidence to file charges
103 before an initial appearance scheduled under Subsection (3)(a), the prosecutor shall transmit a
104 notice of declination to either the magistrate who signed the jail release court order or, if the
105 releasing agency obtains a jail release agreement from the released arrestee, to the statewide
106 domestic violence network described in Section 78B-7-113.

107 (ii) A prosecutor's notice of declination transmitted under this Subsection (3)(c) is
108 considered a motion to dismiss a jail release court order and a notice of expiration of a jail
109 release agreement.

110 (4) Except as provided in Subsections (3) and (11) or otherwise ordered by a court, a
111 jail release agreement or jail release court order expires at midnight after the earlier of:

112 (a) the arrested or cited individual's initial scheduled court appearance described in
113 Subsection (3)(a);

114 (b) the day on which the prosecutor transmits the notice of the declination under
115 Subsection (3)(c); or

116 (c) 30 days after the day on which the individual is arrested or issued a citation, unless
117 an initial court appearance described in Subsection (3)(a) is scheduled but has not yet taken
118 place.

119 (5) (a) (i) After an individual is arrested or issued a citation for a qualifying offense, an
120 alleged victim who is not a minor may waive in writing any condition of a jail release
121 agreement by:

122 (A) appearing in person to the law enforcement agency that arrested the individual or
123 issued the citation to the individual for the qualifying offense;

124 (B) appearing in person to the jail or correctional facility that released the arrested
125 individual from custody; or

126 (C) appearing in person to the clerk at the court of the jurisdiction where the charges
127 are filed.

128 (ii) An alleged victim who is not a minor may waive in writing the release conditions
129 prohibiting:

130 (A) telephoning, contacting, or otherwise communicating with the alleged victim,
131 directly or indirectly; or

132 (B) knowingly entering on the premises of the alleged victim's residence or on
133 premises temporarily occupied by the alleged victim.

134 (iii) Except as provided in Subsection (5)(a)(iv), a parent or guardian may waive any
135 condition of a jail release agreement on behalf of an alleged victim who is a minor in the
136 manner described in Subsections (5)(a)(i) and (ii).

137 (iv) A parent or guardian may not, without the approval of the court, waive the release
138 conditions described in Subsection (5)(a)(ii) on behalf of an alleged victim who is a minor, if
139 the alleged victim who is a minor:

140 (A) allegedly suffers bodily injury as a result of the qualifying offense;

141 (B) summons or attempts to summon emergency aid for the qualifying offense; or

142 (C) after the time at which the qualifying offense is allegedly committed and before the
143 time at which the arrested or cited individual signs the jail release agreement, discloses to a law
144 enforcement officer that the arrested or cited individual threatened the alleged victim who is a
145 minor with bodily injury.

146 (v) Upon waiver, the release conditions described in Subsection (5)(a)(ii) do not apply
147 to the arrested or cited individual.

148 (b) A court or magistrate may modify a jail release agreement or a jail release court
149 order in writing or on the record, and only for good cause shown.

150 (6) (a) When an individual is arrested or issued a citation and subsequently released in
151 accordance with Subsection (2), the releasing agency shall:

152 (i) notify the arresting law enforcement agency of the release, conditions of release, and
153 any available information concerning the location of the alleged victim;

154 (ii) make a reasonable effort to notify the alleged victim of the release; and

155 (iii) before releasing the individual who is arrested or issued a citation, give the
156 arrested or cited individual a copy of the jail release agreement or the jail release court order.

157 (b) (i) When an individual arrested or issued a citation for domestic violence is
158 released under this section based on a jail release agreement, the releasing agency shall transmit
159 that information to the statewide domestic violence network described in Section 78B-7-113.

160 (ii) When an individual arrested or issued a citation for domestic violence is released
161 under this section based upon a jail release court order or if a jail release agreement is modified
162 under Subsection (5)(b), the court shall transmit that order to the statewide domestic violence
163 network described in Section 78B-7-113.

164 (c) This Subsection (6) does not create or increase liability of a law enforcement officer
165 or agency, and the good faith immunity provided by Section 77-36-8 is applicable.

166 (7) An individual who is arrested for a qualifying offense that is a felony and released
167 in accordance with this section may subsequently be held without bail if there is substantial
168 evidence to support a new felony charge against the individual.

169 (8) At the time an arrest is made or a citation is issued for a qualifying offense, the
170 arresting officer shall provide the alleged victim with written notice containing:

171 (a) the release conditions described in this section, and notice that the alleged
172 perpetrator will not be released, before appearing before the court with jurisdiction over the
173 offense for which the alleged perpetrator was arrested, unless:

174 (i) the alleged perpetrator enters into a jail release agreement to comply with the release
175 conditions; or

176 (ii) the magistrate issues a jail release order that specifies the release conditions;

177 (b) notification of the penalties for violation of any jail release agreement or jail release
178 court order;

179 (c) the address of the appropriate court in the district or county in which the alleged
180 victim resides;

181 (d) the availability and effect of any waiver of the release conditions; and

182 (e) information regarding the availability of and procedures for obtaining civil and
183 criminal protective orders with or without the assistance of an attorney.

184 (9) At the time an arrest is made or a citation is issued for a qualifying offense, the
185 arresting officer shall provide the alleged perpetrator with written notice containing:

186 (a) notification that the alleged perpetrator may not contact the alleged victim before
187 being released, including telephoning, contacting, or otherwise communicating with the alleged

188 victim, directly or indirectly;

189 (b) the release conditions described in this section and notice that the alleged
190 perpetrator will not be released, before appearing before the court with jurisdiction over the
191 offense for which the alleged perpetrator was arrested, unless:

192 (i) the alleged perpetrator enters into a jail release agreement to comply with the release
193 conditions; or

194 (ii) the magistrate issues a jail release court order;

195 (c) notification of the penalties for violation of any jail release agreement or jail release
196 court order; and

197 (d) notification that the alleged perpetrator is to personally appear in court on the next
198 day the court is open for business after the day of the arrest.

199 (10) (a) A pretrial or sentencing protective order issued under this part supersedes a jail
200 release agreement or jail release court order.

201 (b) If a court dismisses the charges for the qualifying offense that gave rise to a jail
202 release agreement or jail release court order, the court shall dismiss the jail release agreement
203 or jail release court order.

204 (11) (a) This section does not apply if the individual arrested for the qualifying offense
205 is a minor who is under 18 years old, unless the qualifying offense is domestic violence.

206 (b) A jail release agreement signed by, or a jail release court order issued against, a
207 minor expires on the earlier of:

208 (i) the day of the minor's initial court appearance described in Subsection (3)(a);

209 (ii) the day on which the prosecutor transmits the notice of declination under
210 Subsection (3)(c);

211 (iii) 30 days after the day on which the minor is arrested or issued a citation, unless an
212 initial court appearance described in Subsection (3)(a) is scheduled but has not yet taken place;

213 or

214 (iv) the day on which the juvenile court terminates jurisdiction.