

Effective 11/16/2021

**Part 2
Preconviction Bail**

Effective until 7/1/2024

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

- (1) An individual charged with, or arrested for, a criminal offense shall be admitted to bail as a matter of right, except if the individual is charged with:
- (a) a capital felony when there is substantial evidence to support the charge;
 - (b) a felony committed while on parole or on probation for a felony conviction, or while free on bail awaiting trial on a previous felony charge, when there is substantial evidence to support the current felony charge;
 - (c) a felony when there is substantial evidence to support the charge and the court finds, by clear and convincing evidence, that:
 - (i) the individual would constitute a substantial danger to any other individual or to the community after considering available conditions of release that the court may impose if the individual is released on bail; or
 - (ii) the individual is likely to flee the jurisdiction of the court if the individual is released on bail;
 - (d) a felony when there is substantial evidence to support the charge and the court finds, by clear and convincing evidence, that the individual violated a material condition of release while previously on bail;
 - (e) a domestic violence offense if:
 - (i) there is substantial evidence to support the charge; and
 - (ii) the court finds, by clear and convincing evidence, that the individual would constitute a substantial danger to an alleged victim of domestic violence after considering available conditions of release that the court may impose if the individual is released on bail;
 - (f) the offense of driving under the influence or driving with a measurable controlled substance in the body if:
 - (i) the offense results in death or serious bodily injury to an individual;
 - (ii) there is substantial evidence to support the charge; and
 - (iii) the court finds, by clear and convincing evidence, that the individual would constitute a substantial danger to the community after considering available conditions of release that the court may impose if the individual is released on bail; or
 - (g) a felony violation of Section 76-9-101 if:
 - (i) there is substantial evidence to support the charge; and
 - (ii) the court finds, by clear and convincing evidence, that the individual is not likely to appear for a subsequent court appearance.
- (2) Notwithstanding any other provision of this section, there is a rebuttable presumption that an individual is a substantial danger to the community under Subsection (1)(f)(iii):
- (a) as long as the individual has a blood or breath alcohol concentration of .05 grams or greater if the individual is arrested for, or charged with, the offense of driving under the influence and the offense resulted in death or serious bodily injury to an individual; or
 - (b) if the individual has a measurable amount of controlled substance in the individual's body, the individual is arrested for, or charged with, the offense of driving with a measurable controlled substance in the body and the offense resulted in death or serious bodily injury to an individual.

- (3) For purposes of Subsection (1)(a), any arrest or charge for a violation of Section 76-5-202, aggravated murder, is a capital felony unless:
- (a) the prosecuting attorney files a notice of intent to not seek the death penalty; or
 - (b) the time for filing a notice to seek the death penalty has expired and the prosecuting attorney has not filed a notice to seek the death penalty.

Amended by Chapter 408, 2023 General Session

Effective 7/1/2024

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

- (1) An individual charged with, or arrested for, a criminal offense shall be admitted to bail as a matter of right, except if the individual is charged with:
- (a) a capital felony when there is substantial evidence to support the charge;
 - (b) a felony committed while on parole or on probation for a felony conviction, or while free on bail awaiting trial on a previous felony charge, when there is substantial evidence to support the current felony charge;
 - (c) a felony when there is substantial evidence to support the charge and the court finds, by clear and convincing evidence, that:
 - (i) the individual would constitute a substantial danger to any other individual or to the community after considering available conditions of release that the court may impose if the individual is released on bail; or
 - (ii) the individual is likely to flee the jurisdiction of the court if the individual is released on bail;
 - (d) a felony when there is substantial evidence to support the charge and the court finds, by clear and convincing evidence, that the individual violated a material condition of release while previously on bail;
 - (e) a domestic violence offense if:
 - (i) there is substantial evidence to support the charge; and
 - (ii) the court finds, by clear and convincing evidence, that the individual would constitute a substantial danger to an alleged victim of domestic violence after considering available conditions of release that the court may impose if the individual is released on bail;
 - (f) the offense of driving under the influence or driving with a measurable controlled substance in the body if:
 - (i) the offense results in death or serious bodily injury to an individual;
 - (ii) there is substantial evidence to support the charge; and
 - (iii) the court finds, by clear and convincing evidence, that the individual would constitute a substantial danger to the community after considering available conditions of release that the court may impose if the individual is released on bail;
 - (g) a felony violation of Section 76-9-101 if:
 - (i) there is substantial evidence to support the charge; and
 - (ii) the court finds, by clear and convincing evidence, that the individual is not likely to appear for a subsequent court appearance; or
 - (h) except as provided in Subsection (4), the offense of driving under the influence or driving with a measurable controlled substance in the body:
 - (i) if committed while on parole or on probation for a driving under the influence or driving with a measurable controlled substance in the body conviction; or
 - (ii) while the individual is out of custody awaiting trial on a previous driving under the influence or driving with a measurable controlled substance in the body charge, when the court finds there is substantial evidence to support the current charge.

- (2) Notwithstanding any other provision of this section, there is a rebuttable presumption that an individual is a substantial danger to the community under Subsection (1)(f)(iii):
 - (a) as long as the individual has a blood or breath alcohol concentration of .05 grams or greater if the individual is arrested for, or charged with, the offense of driving under the influence and the offense resulted in death or serious bodily injury to an individual; or
 - (b) if the individual has a measurable amount of controlled substance in the individual's body, the individual is arrested for, or charged with, the offense of driving with a measurable controlled substance in the body and the offense resulted in death or serious bodily injury to an individual.
- (3) For purposes of Subsection (1)(a), any arrest or charge for a violation of Section 76-5-202, aggravated murder, is a capital felony unless:
 - (a) the prosecuting attorney files a notice of intent to not seek the death penalty; or
 - (b) the time for filing a notice to seek the death penalty has expired and the prosecuting attorney has not filed a notice to seek the death penalty.
- (4) For purposes of Subsection (1)(h), there is a rebuttable presumption that an individual would not constitute a substantial danger to any other person or the community if:
 - (a) the court orders the person to participate in an inpatient drug and alcohol treatment program; or
 - (b) the court orders the person to participate in home confinement through the use of electronic monitoring as described in Section 41-6a-506.

Amended by Chapter 197, 2024 General Session

77-20-202 Collection of pretrial information.

- (1) When an individual is arrested without a warrant for an offense and booked at a jail facility, an employee at the jail facility, or an employee of a pretrial services program, shall submit the following information to the court with the probable cause statement:
 - (a) identification information for the individual, including:
 - (i) the individual's legal name and any known aliases;
 - (ii) the individual's date of birth;
 - (iii) the individual's state identification number;
 - (iv) the individual's mobile phone number; and
 - (v) the individual's email address;
 - (b) the individual's residential address;
 - (c) any pending criminal charge or warrant for the individual, including the offense tracking number of the current offense for which the individual is booked;
 - (d) the individual's probation or parole supervision status;
 - (e) whether the individual was on pretrial release for another criminal offense prior to the booking of the individual for the current criminal offense if the employee knows that the individual was on pretrial release for a prior criminal offense;
 - (f) the individual's financial circumstances to the best of the individual's knowledge at the time of booking, including:
 - (i) the individual's current employer;
 - (ii) the individual's monthly income, including any alimony or child support that contributes to the individual's monthly income;
 - (iii) the individual's monthly expenses, including any alimony or child support obligation that the individual is responsible for paying;

- (iv) the individual's ownership of, or any interest in, personal or real property, including any savings or checking accounts or cash;
- (v) the number, ages, and relationships of any dependents;
- (vi) any financial support or benefit that the individual receives from a state or federal government; and
- (vii) any other information about the individual's financial circumstances that may be relevant;
- (g) any ties the individual has to the community, including:
 - (i) the length of time that the individual has been at the individual's residential address;
 - (ii) any enrollment in a local college, university, or trade school; and
 - (iii) the name and contact information for any family member or friend that the individual believes would be willing to provide supervision of the individual;
- (h) the results of a lethality assessment completed in accordance with Section 77-36-2.1, if any; and
- (i) whether the individual is under the influence of alcohol or a controlled substance to a degree that would endanger the individual or another individual if the individual is released.
- (2) Upon request, the jail facility, or the pretrial services program, shall provide the information described in Subsection (1) to the individual, the individual's attorney, or the prosecuting attorney.
- (3) Any information collected from an individual under Subsection (1) is inadmissible in any court proceeding other than:
 - (a) a criminal proceeding addressing the individual's pretrial release or indigency for the offense, or offenses, for which the individual was arrested or charged with; or
 - (b) another criminal proceeding regarding prosecution for providing a false statement under Subsection (1).
- (4) Nothing in this section prohibits a court and a county from entering into an agreement regarding information to be submitted to the court with a probable cause statement.

Amended by Chapter 181, 2024 General Session

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

- (1) As used in this section:
 - (a)
 - (i) "Qualifying domestic violence offense" means the same as that term is defined in Subsection 77-36-1.1(4).
 - (ii) "Qualifying domestic violence offense" does not include criminal mischief as described in Section 76-6-106.
 - (b) "Qualifying offense" means the same as that term is defined in Section 78B-7-801.
 - (c) "Violent felony" means the same as that term is defined in Section 76-3-203.5.
- (2) Except as provided in Subsection (3), a county jail official may release an individual from a jail facility on the individual's own recognizance if:
 - (a) the individual was arrested without a warrant;
 - (b) the individual was not arrested for:
 - (i) a violent felony;
 - (ii) a qualifying offense;
 - (iii) the offense of driving under the influence or driving with a measurable controlled substance in the body if the offense results in death or serious bodily injury to an individual; or
 - (iv) an offense described in Subsection 76-9-101(4);
 - (c) law enforcement has not submitted a probable cause statement to a court or magistrate;

- (d) the individual agrees in writing to appear for any future criminal proceedings related to the arrest; and
 - (e) the individual qualifies for release under the written policy described in Subsection (4) for the county.
- (3) A county jail official may not release an individual from a jail facility if the individual is subject to a 72-hour hold placed on the individual by the Department of Corrections as described in Section 64-13-29.
- (4)
- (a) A county sheriff shall create and approve a written policy for the county that governs the release of an individual on the individual's own recognizance.
 - (b) The written policy shall describe the criteria an individual shall meet to be released on the individual's own recognizance.
 - (c) A county sheriff may include in the written policy the criteria for release relating to:
 - (i) criminal history;
 - (ii) prior instances of failing to appear for a mandatory court appearance;
 - (iii) current employment;
 - (iv) residency;
 - (v) ties to the community;
 - (vi) an offense for which the individual was arrested;
 - (vii) any potential criminal charges that have not yet been filed;
 - (viii) the individual's health condition;
 - (ix) any potential risks to a victim, a witness, or the public; and
 - (x) any other similar factor a sheriff determines is relevant.
- (5)
- (a) Except as provided in Subsection (5)(b)(ii), a jail facility shall detain an individual for up to 24 hours from booking if:
 - (i) the individual is on supervised probation or parole and that information is reasonably available; and
 - (ii) the individual was arrested for:
 - (A) a violent felony; or
 - (B) a qualifying domestic violence offense.
 - (b) The jail facility shall:
 - (i) notify the entity supervising the individual's probation or parole that the individual is being detained; and
 - (ii) release the individual:
 - (A) to the Department of Corrections if the Department of Corrections supervises the individual and requests the individual's release; or
 - (B) if a court or magistrate orders release.
 - (c) This Subsection (5) does not prohibit a jail facility from holding the individual in accordance with this chapter for a new criminal offense.
- (6) This section does not prohibit a court and a county from entering into an agreement regarding release.

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

- (1) As used in this section, "eligible felony offense" means a third degree felony violation under:
- (a) Section 23A-4-501 or 23A-4-502;
 - (b) Section 23A-5-311;

- (c) Section 23A-5-313;
 - (d) Title 76, Chapter 6, Part 4, Theft;
 - (e) Title 76, Chapter 6, Part 5, Fraud;
 - (f) Title 76, Chapter 6, Part 6, Retail Theft;
 - (g) Title 76, Chapter 6, Part 7, Utah Computer Crimes Act;
 - (h) Title 76, Chapter 6, Part 8, Library Theft;
 - (i) Title 76, Chapter 6, Part 9, Cultural Sites Protection;
 - (j) Title 76, Chapter 6, Part 10, Mail Box Damage and Mail Theft;
 - (k) Title 76, Chapter 6, Part 11, Identity Fraud Act;
 - (l) Title 76, Chapter 6, Part 12, Utah Mortgage Fraud Act;
 - (m) Title 76, Chapter 6, Part 13, Utah Automated Sales Suppression Device Act;
 - (n) Title 76, Chapter 6, Part 14, Regulation of Metal Dealers;
 - (o) Title 76, Chapter 6a, Pyramid Scheme Act;
 - (p) Title 76, Chapter 7, Offenses Against the Family;
 - (q) Title 76, Chapter 7a, Abortion Prohibition;
 - (r) Title 76, Chapter 9, Part 2, Electronic Communication and Telephone Abuse;
 - (s) Title 76, Chapter 9, Part 3, Cruelty to Animals;
 - (t) Title 76, Chapter 9, Part 4, Offenses Against Privacy;
 - (u) Title 76, Chapter 9, Part 5, Libel; or
 - (v) Title 76, Chapter 9, Part 6, Offenses Against the Flag.
- (2) Except as provided in Subsection (7)(a), a county jail official may fix a financial condition for an individual if:
- (a)
 - (i) the individual is ineligible to be released on the individual's own recognizance under Section 77-20-203;
 - (ii) the individual is arrested for, or charged with:
 - (A) a misdemeanor offense under state law; or
 - (B) a violation of a city or county ordinance that is classified as a class B or C misdemeanor offense;
 - (iii) the individual agrees in writing to appear for any future criminal proceedings related to the arrest; and
 - (iv) law enforcement has not submitted a probable cause statement to a magistrate; or
 - (b)
 - (i) the individual is arrested for, or charged with, an eligible felony offense;
 - (ii) the individual is not on pretrial release for a separate criminal offense;
 - (iii) the individual is not on probation or parole;
 - (iv) the primary risk posed by the individual is the risk of failure to appear;
 - (v) the individual agrees in writing to appear for any future criminal proceedings related to the arrest; and
 - (vi) law enforcement has not submitted a probable cause statement to a magistrate.
- (3) A county jail official may not fix a financial condition at a monetary amount that exceeds:
- (a) \$5,000 for an eligible felony offense;
 - (b) \$1,950 for a class A misdemeanor offense;
 - (c) \$680 for a class B misdemeanor offense;
 - (d) \$340 for a class C misdemeanor offense;
 - (e) \$150 for a violation of a city or county ordinance that is classified as a class B misdemeanor; or
 - (f) \$80 for a violation of a city or county ordinance that is classified as a class C misdemeanor.

- (4) If an individual is arrested for more than one offense, and the county jail official fixes a financial condition for release:
 - (a) the county jail official shall fix the financial condition at a single monetary amount; and
 - (b) the single monetary amount may not exceed the monetary amount under Subsection (3) for the highest level of offense for which the individual is arrested.
- (5) Except as provided in Subsection (7)(b), an individual shall be released if the individual posts a financial condition fixed by a county jail official in accordance with this section.
- (6) If a county jail official fixes a financial condition for an individual, law enforcement shall submit a probable cause statement in accordance with Rule 9 of the Utah Rules of Criminal Procedure after the county jail official fixes the financial condition.
- (7) Once a magistrate begins a review of an individual's case under Rule 9 of the Utah Rules of Criminal Procedure:
 - (a) a county jail official may not fix or modify a financial condition for an individual; and
 - (b) if a county jail official fixed a financial condition for the individual before the magistrate's review, the individual may no longer be released on the financial condition.
- (8) A jail facility may not release an individual subject to a 72-hour hold placed on the individual by the Department of Corrections as described in Section 64-13-29.
- (9) This section does not prohibit a court and a county from entering into an agreement regarding release.

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

- (1)
 - (a) At the time that a magistrate issues a warrant of arrest, or finds there is probable cause to support the individual's arrest under Rule 9 of the Utah Rules of Criminal Procedure, the magistrate shall issue a temporary pretrial status order that:
 - (i) releases the individual on the individual's own recognizance during the time the individual awaits trial or other resolution of criminal charges;
 - (ii) designates a condition, or a combination of conditions, to be imposed upon the individual's release during the time the individual awaits trial or other resolution of criminal charges; or
 - (iii) orders the individual be detained during the time the individual awaits trial or other resolution of criminal charges.
 - (b) At the time that a magistrate issues a summons, the magistrate may issue a temporary pretrial status order that:
 - (i) releases the individual on the individual's own recognizance during the time the individual awaits trial or other resolution of criminal charges; or
 - (ii) designates a condition, or a combination of conditions, to be imposed upon the individual's release during the time the individual awaits trial or other resolution of criminal charges.
 - (c) Notwithstanding Subsection (1)(a) or (b), a magistrate shall issue a temporary pretrial status order under Subsection (1) that detains an individual if the individual is arrested for a felony offense and the magistrate finds:
 - (i) there is substantial evidence to support the individual's arrest for the felony offense;
 - (ii) the individual committed the felony offense while:
 - (A) the individual was on parole or probation for a conviction of a felony offense; or
 - (B) the individual was released and awaiting trial on a previous charge for a felony offense;and
 - (iii) based on information reasonably available to the magistrate, the individual has at least nine cases where the individual has been charged or convicted, or entered a plea of guilty, within

five years from the day on which the individual was arrested for the felony offense described in Subsection (1)(c)(i).

(d) Subsection (1)(c) does not limit or prohibit a magistrate's authority to detain an individual who does not meet the requirements described in Subsection (1)(c).

(2)

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

(b) The magistrate or judge may delay the issuance of a pretrial status order at an individual's first appearance before the court:

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

(ii) if a party requests a delay; or

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

(c) If a magistrate or judge delays the issuance of a pretrial status order under Subsection (2)(b), the magistrate or judge shall extend the temporary pretrial status order until the issuance of a pretrial status order.

(3)

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

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

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

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

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

(4) In making a determination about pretrial release, a magistrate or judge shall impose:

(a) only conditions of release that are reasonably available; and

(b) conditions of release that reasonably ensure:

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

(ii) the safety of any witnesses or victims of the offense allegedly committed by the individual;

(iii) the safety and welfare of the public; and

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

(5) Except as provided in Subsection (1)(c) or (6), a magistrate or judge may impose a condition, or combination of conditions, for pretrial release that requires an individual to:

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

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

(c) avoid contact with a witness who:

(i) may testify concerning the alleged offense; and

(ii) is named in the pretrial status order;

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

(e) submit to drug or alcohol testing;

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

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

- (h) participate in inpatient or outpatient medical, behavioral, psychological, or psychiatric treatment;
 - (i) maintain employment or actively seek employment if unemployed;
 - (j) maintain or commence an education program;
 - (k) comply with limitations on where the individual is allowed to be located or the times that the individual shall be, or may not be, at a specified location;
 - (l) comply with specified restrictions on personal associations, place of residence, or travel;
 - (m) report to a law enforcement agency, pretrial services program, or other designated agency at a specified frequency or on specified dates;
 - (n) comply with a specified curfew;
 - (o) forfeit or refrain from possession of a firearm or other dangerous weapon;
 - (p) if the individual is charged with an offense against a child, limit or prohibit access to any location or occupation where children are located, including any residence where children are on the premises, activities where children are involved, locations where children congregate, or where a reasonable person would know that children congregate;
 - (q) comply with requirements for house arrest;
 - (r) return to custody for a specified period of time following release for employment, schooling, or other limited purposes;
 - (s) remain in custody of one or more designated individuals who agree to:
 - (i) supervise and report on the behavior and activities of the individual; and
 - (ii) encourage compliance with all court orders and attendance at all required court proceedings;
 - (t) comply with a financial condition; or
 - (u) comply with any other condition that is reasonably available and necessary to ensure compliance with Subsection (4).
- (6)
- (a) If a county or municipality has established a pretrial services program, the magistrate or judge shall consider the services that the county or municipality has identified as available in determining what conditions of release to impose.
 - (b) The magistrate or judge may not order conditions of release that would require the county or municipality to provide services that are not currently available from the county or municipality.
 - (c) Notwithstanding Subsection (6)(a), the magistrate or judge may impose conditions of release not identified by the county or municipality so long as the condition does not require assistance or resources from the county or municipality.
- (7)
- (a) If the magistrate or judge determines that a financial condition, other than an unsecured bond, is necessary to impose as a condition of release, the magistrate or judge shall consider the individual's ability to pay when determining the amount of the financial condition.
 - (b) If the magistrate or judge determines that a financial condition is necessary to impose as a condition of release, and a county jail official fixed a financial condition for the individual under Section 77-20-204, the magistrate or judge may not give any deference to:
 - (i) the county jail official's action to fix a financial condition; or
 - (ii) the amount of the financial condition that the individual was required to pay for pretrial release.
 - (c) If a magistrate or judge orders a financial condition as a condition of release, the judge or magistrate shall set the financial condition at a single amount per case.
- (8) In making a determination about pretrial release, the magistrate or judge may:

- (a) rely upon information contained in:
 - (i) the indictment or information;
 - (ii) any sworn or probable cause statement or other information provided by law enforcement;
 - (iii) a pretrial risk assessment;
 - (iv) an affidavit of indigency described in Section 78B-22-201.5;
 - (v) witness statements or testimony;
 - (vi) the results of a lethality assessment completed in accordance with Section 77-36-2.1; or
 - (vii) any other reliable record or source, including proffered evidence; and
- (b) consider:
 - (i) the nature and circumstances of the offense, or offenses, that the individual was arrested for, or charged with, including:
 - (A) whether the offense is a violent offense; and
 - (B) the vulnerability of a witness or alleged victim;
 - (ii) the nature and circumstances of the individual, including the individual's:
 - (A) character;
 - (B) physical and mental health;
 - (C) family and community ties;
 - (D) employment status or history;
 - (E) financial resources;
 - (F) past criminal conduct;
 - (G) history of drug or alcohol abuse; and
 - (H) history of timely appearances at required court proceedings;
 - (iii) the potential danger to another individual, or individuals, posed by the release of the individual;
 - (iv) whether the individual was on probation, parole, or release pending an upcoming court proceeding at the time the individual allegedly committed the offense or offenses;
 - (v) the availability of:
 - (A) other individuals who agree to assist the individual in attending court when required; or
 - (B) supervision of the individual in the individual's community;
 - (vi) the eligibility and willingness of the individual to participate in various treatment programs, including drug treatment; or
 - (vii) other evidence relevant to the individual's likelihood of fleeing or violating the law if released.
- (9) The magistrate or judge may not base a determination about pretrial release solely:
 - (a) on the seriousness or type of offense that the individual is arrested for or charged with, unless the individual is arrested for or charged with a capital felony; or
 - (b) on an algorithm or a risk assessment tool score.
- (10) An individual arrested for violation of a jail release agreement, or a jail release court order, issued in accordance with Section 78B-7-802:
 - (a) may not be released before the individual's first appearance before a magistrate or judge; and
 - (b) may be denied pretrial release by the magistrate or judge.

Amended by Chapter 187, 2024 General Session

Amended by Chapter 434, 2024 General Session

77-20-206 Motion for pretrial detention -- Pretrial detention hearing.

(1)

- (a) If the criminal charges filed against an individual include one or more offenses eligible for detention under Subsection 77-20-201(1) or Utah Constitution, Article I, Section 8, the prosecuting attorney may make a motion for pretrial detention.
- (b) Upon receiving a motion for pretrial detention under Subsection (1)(a), the judge shall set a pretrial detention hearing in accordance with Subsection (2).
- (2) If a pretrial status order is not issued at an individual's first appearance and the individual remains detained, a pretrial detention hearing shall be held at the next available court hearing that is:
 - (a) no sooner than seven days from the day on which the defendant was arrested; and
 - (b) no later than fourteen days from the day on which the defendant was arrested.
- (3)
 - (a) An individual, who is the subject of a pretrial detention hearing, has the right to be represented by counsel at the pretrial detention hearing.
 - (b) If a judge finds the individual is indigent under Section 78B-22-202, the judge shall appoint counsel to represent the individual in accordance with Section 78B-22-203.
- (4) At the pretrial detention hearing:
 - (a) the judge shall give both parties the opportunity to make arguments and to present relevant evidence or information;
 - (b) the prosecuting attorney and the defendant have a right to subpoena witnesses to testify; and
 - (c) the judge shall issue a pretrial status order in accordance with Subsection (5) and Section 77-20-205.
- (5) After hearing evidence on a motion for pretrial detention, and based on the totality of the circumstances, a judge may order detention if:
 - (a) the individual is accused of committing an offense that qualifies for detention of the individual under Subsection 77-20-201(1) or Utah Constitution, Article I, Section 8; and
 - (b) the prosecuting attorney demonstrates substantial evidence to support the charge, and meets all additional evidentiary burdens required under Subsection 77-20-201(1) or Utah Constitution, Article I, Section 8.
- (6) An alleged victim has the right to be heard at a pretrial detention hearing on a motion for pretrial detention.
- (7) If a defendant seeks to subpoena an alleged victim who did not willingly testify at the pretrial detention hearing, a defendant may issue a subpoena, at the conclusion of the pretrial detention hearing, compelling the alleged victim to testify at a subsequent hearing only if the judge finds that the testimony sought by the subpoena:
 - (a) is material to the substantial evidence or clear and convincing evidence determinations described in Section 77-20-201 in light of all information presented to the court; and
 - (b) would not unnecessarily intrude on the rights of the victim or place an undue burden on the victim.

Enacted by Chapter 4, 2021 Special Session 2

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

- (1) A party may move to modify a pretrial status order:
 - (a) at any time after a pretrial status order is issued; and
 - (b) only upon a showing that there has been a material change in circumstances.
- (2)
 - (a) Notwithstanding Subsection (1), a defendant may move to modify a pretrial status order if:

- (i) the magistrate or judge imposed a financial condition as a condition of release in the pretrial status order; and
- (ii) the defendant is unable to pay the financial condition within seven days after the day on which the pretrial status order is issued.
- (b) For a motion under Subsection (2)(a), there is a rebuttable presumption that the defendant does not have the ability to pay the financial condition.
- (3)
 - (a) If a party makes a motion to modify the pretrial status order, the party shall provide notice to the opposing party sufficient to permit the opposing party to prepare for a hearing and to permit each alleged victim to be notified and be present.
 - (b) A hearing on a motion to modify a pretrial status order may be held in conjunction with a preliminary hearing or any other pretrial hearing.
- (4) In ruling upon a motion to modify a pretrial status order, the judge may:
 - (a) rely on information as provided in Subsection 77-20-205(8);
 - (b) base the judge's ruling on evidence provided at the hearing so long as each party is provided an opportunity to present additional evidence or information relevant to pretrial release; and
 - (c)
 - (i) for a motion to modify a pretrial status order under Subsection (1), modify the pretrial status order, including the conditions of release, upon a finding that there has been a material change in circumstances; or
 - (ii) for a motion to modify a pretrial status order under Subsection (2), modify the pretrial status order by reducing the amount of the financial condition or imposing nonfinancial conditions of release upon a finding that the defendant is unable to pay the amount of the financial condition in the pretrial status order.
- (5) In modifying a pretrial status order upon a motion by a party or on the court's own motion, the court shall consider whether imposing a bail bond as a condition of release in a modified pretrial status order will increase the likelihood of the defendant's appearance when:
 - (a) the defendant was previously released on the defendant's own recognizance or on nonfinancial conditions;
 - (b) the defendant willfully failed to appear at a required court appearance or has failed to appear at a required court appearance more than once; and
 - (c) a bench warrant was issued.
- (6) Subsections 77-20-205(3) through (10) apply to a determination about pretrial release in a modified pretrial status order.

Amended by Chapter 408, 2023 General Session

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

- (1) If a prosecuting attorney does not file an information, indictment, or a request to extend time under Subsection (2), within 120 days after the day on which a county jail official released the individual on a financial condition under Section 77-20-203 or within 120 days after the day on which a temporary pretrial status order was issued for the individual:
 - (a) the individual shall be relieved from any condition of pretrial release;
 - (b) the court shall refund any monetary bail in accordance with Subsection 77-20-402(5); and
 - (c) if a bail bond was used to post monetary bail, the bail bond shall be exonerated without further order of the court.
- (2) A request to extend time shall:
 - (a) be served on:

- (i) the individual and the individual's attorney; and
 - (ii) if a bail bond was used to post monetary bail, the surety; and
 - (b) except as provided in Subsection (3), be granted for a period of up to 60 days.
- (3) The magistrate may grant a request to extend time for a period of up to 120 days upon a showing of good cause.
- (4) Nothing in this section prohibits the filing of charges against an individual at any time.

Amended by Chapter 408, 2023 General Session

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

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

Enacted by Chapter 408, 2023 General Session