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77-20-3.5 Conditions for release after arrest for domestic violence and other offenses -- Jail release agreements -- Jail release court orders.

(1) As used in this section:

- (a) "Domestic violence" means the same as that term is defined in Section 77-36-1.
- (b) "Jail release agreement" means a written agreement described in Subsection 77-20-3.5(3) that:
 - (i) limits the contact an individual arrested for a qualifying offense may have with an alleged victim; and
 - (ii) specifies other conditions of release from jail.
- (c) "Jail release court order" means a written court order issued in accordance with Subsection 77-20-3.5(3) that:
 - (i) limits the contact an individual arrested for a qualifying offense may have with an alleged victim; and
 - (ii) specifies other conditions of release from jail.
- (d) "Minor" means an unemancipated individual who is younger than 18 years of age.
- (e) "Offense against a child or vulnerable adult" means the commission or attempted commission of an offense described in Section 76-5-109, 76-5-109.1, 76-5-110, or 76-5-111.
- (f) "Qualifying offense" means:
 - (i) domestic violence;
 - (ii) an offense against a child or vulnerable adult; or
 - (iii) the commission or attempted commission of an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses.

(2)

- (a) Upon arrest for a qualifying offense and before the person is released on bail, recognizance, or otherwise, the person may not personally contact the alleged victim.
- (b) A person who violates Subsection (2)(a) is guilty of a class B misdemeanor.

(3)

- (a) After a person is arrested for a qualifying offense, the person may not be released before:
 - (i) the matter is submitted to a magistrate in accordance with Section 77-7-23; or
 - (ii) the person signs a jail release agreement in accordance with Subsection (3)(d)(i).
- (b) The arresting officer shall ensure that the information presented to the magistrate includes whether the alleged victim has made a waiver described in Subsection (6)(a).
- (c) If the magistrate determines there is probable cause to support the charge or charges of one or more qualifying offenses, the magistrate shall determine:
 - (i) whether grounds exist to hold the arrested person without bail, in accordance with Section 77-20-1;
 - (ii) if no grounds exist to hold the arrested person without bail, whether any release conditions, including electronic monitoring, are necessary to protect the alleged victim; or
 - (iii) any bail that is required to guarantee the arrested person's subsequent appearance in court.

(d)

- (i) The magistrate may not release a person arrested for a qualifying offense before the person's initial court appearance before the court with jurisdiction over the offense for which the person was arrested, unless the arrested person agrees in writing or the magistrate orders, as a release condition, that, until the arrested person appears at the initial court appearance, the arrested person will not:

- (A) have personal contact with the alleged victim;
 - (B) threaten or harass the alleged victim; or
 - (C) knowingly enter onto the premises of the alleged victim's residence or any premises temporarily occupied by the alleged victim.
- (ii) The magistrate shall schedule the appearance described in Subsection (3)(d)(i) to take place no more than 96 hours after the time of the arrest.
 - (iii) The arrested person may make the appearance described in Subsection (3)(d)(i) by video if the arrested person is not released.
- (4)
- (a) If a person charged with a qualifying offense fails to appear at the time scheduled by the magistrate under Subsection (3)(d), the person shall comply with the release conditions described in Subsection (3)(d)(i) until the person makes an initial appearance.
 - (b) If the prosecutor has not filed charges against a person who was arrested for a qualifying offense and who appears in court at the time scheduled by the magistrate under Subsection (3)(d), or by the court under Subsection (4)(b)(ii), the court:
 - (i) may, upon the motion of the prosecutor and after allowing the person an opportunity to be heard on the motion, extend the release conditions described in Subsection (3)(d)(i) by no more than three court days; and
 - (ii) if the court grants the motion described in Subsection (4)(b)(i), shall order the arrested person to appear at a time scheduled before the end of the granted extension.
- (5) Except as provided in Subsection (4) or otherwise ordered by a court, a jail release agreement or jail release court order expires at midnight after the arrested person's initial scheduled court appearance described in Subsection (3)(d)(i).
- (6)
- (a) After an arrest for a qualifying offense, an alleged victim who is not a minor may waive in writing the release conditions described in Subsection (3)(d)(i)(A) or (C). Upon waiver, those release conditions do not apply to the arrested person.
 - (b) A court or magistrate may modify the release conditions described in Subsection (3)(d)(i), in writing or on the record, and only for good cause shown.
- (7)
- (a) When an arrested person is released in accordance with Subsection (3), the releasing agency shall:
 - (i) notify the arresting law enforcement agency of the release, conditions of release, and any available information concerning the location of the alleged victim;
 - (ii) make a reasonable effort to notify the alleged victim of the release; and
 - (iii) before releasing the arrested person, give the arrested person a copy of the jail release agreement or the jail release court order.
 - (b)
 - (i) When a person arrested for domestic violence is released pursuant to Subsection (3) based on a written jail release agreement, the releasing agency shall transmit that information to the statewide domestic violence network described in Section 78B-7-113.
 - (ii) When a person arrested for domestic violence is released pursuant to Subsections (3) through (5) based upon a jail release court order or if a written jail release agreement is modified pursuant to Subsection (6)(b), the court shall transmit that order to the statewide domestic violence network described in Section 78B-7-113.
 - (c) This Subsection (7) does not create or increase liability of a law enforcement officer or agency, and the good faith immunity provided by Section 77-36-8 is applicable.
- (8)

- (a) If a law enforcement officer has probable cause to believe that a person has violated a jail release agreement or jail release court order, the officer shall, without a warrant, arrest the person.
- (b) Any person who knowingly violates a jail release court order or jail release agreement executed pursuant to Subsection (3) is guilty as follows:
 - (i) if the original arrest was for a felony, an offense under this section is a third degree felony; or
 - (ii) if the original arrest was for a misdemeanor, an offense under this section is a class A misdemeanor.
- (c) City attorneys may prosecute class A misdemeanor violations under this section.
- (9) A person who is arrested for a qualifying offense that is a felony and released in accordance with this section may subsequently be held without bail if there is substantial evidence to support a new felony charge against the person.
- (10) At the time an arrest is made for a qualifying offense , the arresting officer shall provide the alleged victim with written notice containing:
 - (a) the release conditions described in Subsections (3) through (5), and notice that the alleged perpetrator will not be released, before appearing before the court with jurisdiction over the offense for which the alleged perpetrator was arrested, unless:
 - (i) the alleged perpetrator enters into a written agreement to comply with the release conditions; or
 - (ii) the magistrate orders the release conditions;
 - (b) notification of the penalties for violation of any jail release agreement or jail release court order;
 - (c) notification that the alleged perpetrator is to personally appear in court on the next day the court is open for business after the day of the arrest;
 - (d) the address of the appropriate court in the district or county in which the alleged victim resides;
 - (e) the availability and effect of any waiver of the release conditions; and
 - (f) information regarding the availability of and procedures for obtaining civil and criminal protective orders with or without the assistance of an attorney.
- (11) At the time an arrest is made for a qualifying offense , the arresting officer shall provide the alleged perpetrator with written notice containing:
 - (a) notification that the alleged perpetrator may not contact the alleged victim before being released;
 - (b) the release conditions described in Subsections (3) through (5) and notice that the alleged perpetrator will not be released, before appearing before the court with jurisdiction over the offense for which the alleged perpetrator was arrested, unless:
 - (i) the alleged perpetrator enters into a written agreement to comply with the release conditions; or
 - (ii) the magistrate orders the release conditions;
 - (c) notification of the penalties for violation of any jail release agreement or jail release court order; and
 - (d) notification that the alleged perpetrator is to personally appear in court on the next day the court is open for business after the day of the arrest.
- (12)
 - (a) A pretrial or sentencing protective order supercedes a jail release agreement or jail release court order.

- (b) If a court dismisses the charges for the qualifying offense that gave rise to a jail release agreement or jail release court order, the court shall dismiss the jail release agreement or jail release court order.
- (13) In addition to the provisions of Subsections (3) through (12), because of the unique and highly emotional nature of domestic violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of violence subsequent to the release of an offender who has been arrested for domestic violence, it is the finding of the Legislature that domestic violence crimes, as defined in Section 77-36-1, are crimes for which bail may be denied if there is substantial evidence to support the charge, and if the court finds by clear and convincing evidence that the alleged perpetrator would constitute a substantial danger to an alleged victim of domestic violence if released on bail.
- (14) The provisions of this section do not apply if the person arrested for the qualifying offense is a minor, unless the qualifying offense is domestic violence.