

**Effective 5/14/2019**

**Renumbered 7/1/2020**

**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 that is entered into by an arrested individual:
  - (i) under which the arrested individual agrees to not engage in any of the following:
    - (A) have personal contact with the alleged victim;
    - (B) threaten or harass the alleged victim; or
    - (C) knowingly enter on the premises of the alleged victim's residence or on premises temporarily occupied by the alleged victim; and
  - (ii) that specifies other conditions of release from jail.
- (c) "Jail release court order" means a written court order that:
  - (i) orders an arrested individual not to engage in any of the following:
    - (A) have personal contact with the alleged victim;
    - (B) threaten or harass the alleged victim; or
    - (C) knowingly enter on the premises of the alleged victim's residence or on premises temporarily occupied by the 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 individual is released on bail, recognizance, or otherwise, the individual may not personally contact the alleged victim.
- (b) An individual who violates Subsection (2)(a) is guilty of a class B misdemeanor.

(3)

- (a) After an individual is arrested for a qualifying offense, the individual may not be released before:
  - (i) the matter is submitted to a magistrate in accordance with Section 77-7-23; or
  - (ii) the individual signs a jail release agreement.
- (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)
  - (i) If the magistrate determines there is probable cause to support the charge or charges of one or more qualifying offenses, the magistrate shall determine whether the arrested individual may be held without bail, in accordance with Section 77-20-1.
  - (ii) If the magistrate determines that the arrested individual has the right to be admitted to bail, the magistrate shall determine:
    - (A) whether any release conditions, including electronic monitoring, are necessary to protect the alleged victim; and

- (B) any bail that is required to guarantee the arrested person's subsequent appearance in court.
- (d) The magistrate may not release an individual arrested for a qualifying offense unless the magistrate issues a jail release court order or the arrested individual signs a jail release agreement.
- (4)
  - (a) If an individual charged with a qualifying offense fails to either schedule an initial appearance or to appear at the time scheduled by the magistrate within 96 hours after the time of arrest, the individual shall comply with the release conditions of a jail release agreement or jail release court order until the individual makes an initial appearance.
  - (b) If the prosecutor has not filed charges against an individual who was arrested for a qualifying offense and who appears in court at the time scheduled by the magistrate under Subsection (3), or by the court under Subsection (4)(b)(ii), the court:
    - (i) may, upon the motion of the prosecutor and after allowing the individual an opportunity to be heard on the motion, extend the release conditions described in the jail release court order or the jail release agreement 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 individual to appear at a time scheduled before the end of the granted extension.
  - (c)
    - (i) If the prosecutor determines that there is insufficient evidence to file charges before an initial appearance scheduled under Subsection (4)(a), the prosecutor shall transmit a notice of declination to either the magistrate who signed the jail release court order or, if the releasing agency obtains a jail release agreement from the released arrestee, to the statewide domestic violence network described in Section 78B-7-113.
    - (ii) A prosecutor's notice of declination transmitted under this Subsection (4)(c) is considered a motion to dismiss a jail release court order and a notice of expiration of a jail release agreement.
- (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 earlier of:
  - (a) the arrested individual's initial scheduled court appearance described in Subsection (4)(a);
  - (b) the day on which the prosecutor transmits the notice of the declination under Subsection (4)(c); or
  - (c) 30 days after the day on which the arrested individual is arrested.
- (6)
  - (a)
    - (i) After an arrest for a qualifying offense, an alleged victim who is not a minor may waive in writing the release conditions prohibiting:
      - (A) personal contact with the alleged victim; or
      - (B) knowingly entering on the premises of the alleged victim's residence or on premises temporarily occupied by the alleged victim.
    - (ii) Upon waiver, the release conditions described in Subsection (6)(a)(i) do not apply to the arrested individual.
  - (b) A court or magistrate may modify a jail release agreement or a jail release court order in writing or on the record, and only for good cause shown.
- (7)
  - (a) When an arrested individual 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 individual, give the arrested individual a copy of the jail release agreement or the jail release court order.
- (b)
- (i) When an individual arrested for domestic violence is released pursuant to this section based on a jail release agreement, the releasing agency shall transmit that information to the statewide domestic violence network described in Section 78B-7-113.
  - (ii) When an individual arrested for domestic violence is released pursuant to this section based upon a jail release court order or if a 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 an individual has violated a jail release agreement or jail release court order, the officer shall, without a warrant, arrest the individual.
  - (b) An individual 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) A city attorney may prosecute class A misdemeanor violations under this section.
- (9) An individual 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 individual.
- (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 this section, 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 jail release agreement to comply with the release conditions; or
    - (ii) the magistrate issues a jail release order that specifies the release conditions;
  - (b) notification of the penalties for violation of any jail release agreement or jail release court order;
  - (c) the address of the appropriate court in the district or county in which the alleged victim resides;
  - (d) the availability and effect of any waiver of the release conditions; and
  - (e) 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 this section 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 jail release agreement to comply with the release conditions; or
    - (ii) the magistrate issues a jail release court order;
  - (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) This section does not apply if the individual arrested for the qualifying offense is a minor, unless the qualifying offense is domestic violence.