

Effective 5/10/2016

Renumbered 5/9/2017

77-36-2.5 Conditions for release after arrest for domestic violence -- Jail release agreements

-- Jail release court orders.

- (1)
 - (a) Upon arrest for domestic violence, and before the person is released on bail, recognizance, or otherwise, the person may not personally contact the alleged victim of domestic violence.
 - (b) A person who violates Subsection (1)(a) is guilty of a class B misdemeanor.
- (2)
 - (a) After an arrest for domestic violence, the offender may not be released before:
 - (i) the matter is submitted to a magistrate in accordance with Section 77-7-23; or
 - (ii) the offender signs a jail release agreement in accordance with Subsection (2)(d)(i).
 - (b) The arresting officer shall ensure that the information presented to the magistrate includes whether the victim has made a waiver described in Subsection (5)(a).
 - (c) If the magistrate determines there is probable cause to support the charge or charges of domestic violence, 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 victim; or
 - (iii) any bail that is required to guarantee the defendant's subsequent appearance in court.
- (d)
 - (i) The magistrate may not release a person arrested for domestic violence before the 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 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 (2)(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 (2)(d)(i) by video if the arrested person is not released.
- (3)
 - (a) If a person charged with domestic violence fails to appear at the time scheduled by the magistrate to appear, as described in Subsection (2)(d), the person shall comply with the release conditions described in Subsection (2)(d)(i) until the arrested person makes an initial appearance.
 - (b) If the prosecutor has not filed charges against a person who was arrested for a domestic violence offense and who appears in court at the time scheduled by the magistrate under Subsection (2)(d), or by the court under Subsection (3)(b)(ii), the court:
 - (i) may, upon the motion of the prosecutor and after allowing the arrested person an opportunity to be heard on the motion, extend the release conditions described in Subsection (2)(d)(i) by no more than three court days; and
 - (ii) if the court grants the motion described in Subsection (3)(b)(i), shall order the arrested person to appear at a time scheduled before the end of the granted extension.

(4) Unless extended under Subsection (3), the jail release agreement or the magistrate order described in Subsection (2)(d)(i) expires at midnight on the day on which the person arrested is scheduled to appear, as described in Subsection (2)(d).

(5)

- (a) Subsequent to an arrest for domestic violence, an alleged victim may waive in writing the release conditions described in Subsection (2)(d)(i)(A) or (C). Upon waiver, those release conditions do not apply to the alleged perpetrator.
- (b) A court or magistrate may modify the release conditions described in Subsection (2)(d)(i), in writing or on the record, and only for good cause shown.

(6)

- (a) When a person is released pursuant to Subsection (2), the releasing agency shall notify the arresting law enforcement agency of the release, conditions of release, and any available information concerning the location of the victim. The arresting law enforcement agency shall then make a reasonable effort to notify the victim of that release.
- (b)
 - (i) When a person is released pursuant to Subsection (2) 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 is released pursuant to Subsections (2) through (4) based upon a jail release court order or if a written jail release agreement is modified pursuant to Subsection (5)(b), the court shall transmit that order to the statewide domestic violence network described in Section 78B-7-113.
 - (iii) A copy of the jail release court order or written jail release agreement shall be given to the person by the releasing agency before the person is released.
- (c) This Subsection (6) 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.

(7)

- (a) If a law enforcement officer has probable cause to believe that a person has violated a jail release court order or jail release agreement executed pursuant to Subsection (2) the officer shall, without a warrant, arrest the alleged violator.
- (b) Any person who knowingly violates a jail release court order or jail release agreement executed pursuant to Subsection (2) 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.

(8) An individual who was originally arrested for a felony under this chapter and released pursuant to this section may subsequently be held without bail if there is substantial evidence to support a new felony charge against him.

(9) At the time an arrest is made for domestic violence, the arresting officer shall provide the alleged victim with written notice containing:

- (a) the release conditions described in Subsections (2) through (4), 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 court order or any jail release agreement executed under Subsection (2);
- (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.

(10) At the time an arrest is made for domestic violence, 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 (2) through (4) 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 court order or any written jail release agreement executed under Subsection (2); 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.

(11) In addition to the provisions of Subsections (2) through (10), 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.