

Effective 11/16/2021

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

- (1) Upon arrest or issuance of a citation for a qualifying offense and before the individual is released under Section 77-20-204 or 77-20-205, the individual may not telephone, contact, or otherwise communicate with the alleged victim, directly or indirectly.
- (2)
 - (a) After an individual is arrested or issued a citation 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) If an arrested individual is booked into jail, the arresting officer shall ensure that the information presented to the magistrate includes whether the alleged 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 one or more qualifying offenses, the magistrate shall issue a temporary pretrial status order, as defined in Section 77-20-102, in accordance with Section 77-20-205.
 - (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.
- (3)
 - (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 (2), or by the court under Subsection (3)(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 (3)(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 (3)(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 (3)(c) is considered a motion to dismiss a jail release court order and a notice of expiration of a jail release agreement.
- (4) Except as provided in Subsections (3) and (11) 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 or cited individual's initial scheduled court appearance described in Subsection (3)(a);
 - (b) the day on which the prosecutor transmits the notice of the declination under Subsection (3)(c); or

(c) 30 days after the day on which the individual is arrested or issued a citation.

(5)

(a)

- (i) After an individual is arrested or issued a citation for a qualifying offense, an alleged victim who is not a minor may waive in writing any condition of a jail release agreement by:
 - (A) appearing in person to the law enforcement agency that arrested the individual or issued the citation to the individual for the qualifying offense;
 - (B) appearing in person to the jail or correctional facility that released the arrested individual from custody; or
 - (C) appearing in person to the clerk at the court of the jurisdiction where the charges are filed.
- (ii) An alleged victim who is not a minor may waive in writing the release conditions prohibiting:
 - (A) telephoning, contacting, or otherwise communicating with the alleged victim, directly or indirectly; or
 - (B) knowingly entering on the premises of the alleged victim's residence or on premises temporarily occupied by the alleged victim.
- (iii) Except as provided in Subsection (5)(a)(iv), a parent or guardian may waive any condition of a jail release agreement on behalf of an alleged victim who is a minor in the manner described in Subsections (5)(a)(i) and (ii).
- (iv) A parent or guardian may not, without the approval of the court, waive the release conditions described in Subsection (5)(a)(ii) on behalf of an alleged victim who is a minor, if the alleged victim who is a minor:
 - (A) allegedly suffers bodily injury as a result of the qualifying offense;
 - (B) summons or attempts to summon emergency aid for the qualifying offense; or
 - (C) after the time at which the qualifying offense is allegedly committed and before the time at which the arrested or cited individual signs the jail release agreement, discloses to a law enforcement officer that the arrested or cited individual threatened the alleged victim who is a minor with bodily injury.
- (v) Upon waiver, the release conditions described in Subsection (5)(a)(ii) do not apply to the arrested or cited 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.

(6)

(a) When an individual is arrested or issued a citation and subsequently released in accordance with Subsection (2), 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 individual who is arrested or issued a citation, give the arrested or cited individual a copy of the jail release agreement or the jail release court order.

(b)

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

- (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) 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.
- (8) At the time an arrest is made or a citation is issued 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.
- (9) At the time an arrest is made or a citation is issued 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, including telephoning, contacting, or otherwise communicating with the alleged victim, directly or indirectly;
 - (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.
- (10)
 - (a) A pretrial or sentencing protective order issued under this part supersedes 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.
- (11)
 - (a) This section does not apply if the individual arrested for the qualifying offense is a minor who is under 18 years old, unless the qualifying offense is domestic violence.
 - (b) A jail release agreement signed by, or a jail release court order issued against, a minor expires on the earlier of:
 - (i) the day of the minor's initial court appearance described in Subsection (3)(a);
 - (ii) the day on which the prosecutor transmits the notice of declination under Subsection (3)(c);

- (iii) 30 days after the day on which the minor is arrested or issued a citation; or
- (iv) the day on which the juvenile court terminates jurisdiction.

Amended by Chapter 4, 2021 Special Session 2