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EXPANSION OF PROTECTIVE ORDER

2003 GENERAL SESSION
STATE OF UTAH

Sponsor: LaWanna Lou Shurtliff

This act modifies bail requirements for violations of protective orders by requiring a judicial appearance before bail may be posted by a person who is arrested for violating a protective order.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

77-20-1, as last amended by Chapter 209, Laws of Utah 2001

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **77-20-1** is amended to read:

77-20-1. Right to bail -- Denial of bail -- Hearing.

(1) A person charged with or arrested for a criminal offense shall be admitted to bail as a matter of right, except if the person is charged with a:

(a) capital felony, when the court finds there is substantial evidence to support the charge;

(b) felony committed while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when the court finds there is substantial evidence to support the current felony charge;

(c) felony when there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person or to the community, or is likely to flee the jurisdiction of the court, if released on bail; or

(d) felony ~~h [or protective order violation.] h~~ when the court finds there is substantial evidence to support the charge and it finds by clear and convincing evidence that the person violated a material condition of release while previously on bail.



28 (2) Any person who may be admitted to bail may be released either on his own
29 recognizance or upon posting bail, on condition that he appear in court for future court
30 proceedings in the case, and on any other conditions imposed in the discretion of the magistrate
31 or court that will reasonably:

- 32 (a) ensure the appearance of the accused;
- 33 (b) ensure the integrity of the court process;
- 34 (c) prevent direct or indirect contact with witnesses or victims by the accused, if
35 appropriate; and
- 36 (d) ensure the safety of the public.

37 (3) The initial order denying or fixing the amount of bail shall be issued by the
38 magistrate or court issuing the warrant of arrest or by the magistrate or court presiding over the
39 accused's first judicial appearance. A person arrested for a violation of a criminal protective
40 order issued pursuant to Section 77-36-2.5 may not be released prior to the accused's first
41 judicial appearance.

42 (4) The magistrate or court may rely upon information contained in:

- 43 (a) the indictment or information;
- 44 (b) any sworn probable cause statement;
- 45 (c) information provided by any pretrial services agency; or
- 46 (d) any other reliable record or source.

47 ~~(4)~~ (5) A motion to modify the initial order may be made by a party at any time upon
48 notice to the opposing party sufficient to permit the opposing party to prepare for hearing and
49 to permit any victim to be notified and be present. Hearing on a motion to modify may be held
50 in conjunction with a preliminary hearing or any other pretrial hearing. The magistrate or court
51 may rely on information as provided in Subsections ~~(3)~~ (4)(a) through (d) and may base its
52 ruling on evidence provided at the hearing so long as each party is provided an opportunity to
53 present additional evidence or information relevant to bail.

54 ~~(5)~~ (6) Subsequent motions to modify bail orders may be made only upon a showing
55 that there has been a material change in circumstances.

56 ~~(6)~~ (7) An appeal may be taken from an order of any court denying bail to the
57 Supreme Court, which shall review the determination under Subsection (1).

Legislative Review Note
as of 12-5-02 5:29 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note**Expansion of Protective Order***09-Jan-03***Bill Number HB0057***4:52 PM*

State Impact

It is estimated that provisions of this bill can be implemented with existing resources.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst