

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 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.

(2) Any person who may be admitted to bail may be released either on his own recognizance or upon posting bail, on condition that he appear in court for future court

proceedings in the case, and on any other conditions imposed in the discretion of the magistrate or court that will reasonably:

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

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

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

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

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

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

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

