

BAIL IN CAPITAL OFFENSE CASES

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jon J. Greiner

House Sponsor: Richard A. Greenwood

LONG TITLE

General Description:

This bill modifies the Code of Criminal Procedure regarding bail in aggravated murder cases.

Highlighted Provisions:

This bill:

- ▶ provides that a charge of aggravated murder is considered a capital felony and not subject to bail unless the prosecutor files a notice that the death penalty will not be sought, or the time for filing the notice has passed.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

77-20-1, as last amended by Laws of Utah 2003, Chapter 106

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

30 charge;

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

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

38 (d) felony when the court finds there is substantial evidence to support the charge and it
39 finds by clear and convincing evidence that the person violated a material condition of release
40 while previously on bail.

41 (2) Any person who may be admitted to bail may be released either on ~~[his]~~ the person's
42 own recognizance or upon posting bail, on condition that ~~[he]~~ the person appear in court for
43 future court proceedings in the case, and on any other conditions imposed in the discretion of
44 the magistrate or court that will reasonably:

45 (a) ensure the appearance of the accused;

46 (b) ensure the integrity of the court process;

47 (c) prevent direct or indirect contact with witnesses or victims by the accused, if
48 appropriate; and

49 (d) ensure the safety of the public.

50 (3) (a) The initial order denying or fixing the amount of bail shall be issued by the
51 magistrate or court issuing the warrant of arrest or by the magistrate or court presiding over the
52 accused's first judicial appearance.

53 (b) A person arrested for a violation of a criminal protective order issued pursuant to
54 Section 77-36-2.5 may not be released prior to the accused's first judicial appearance.

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

56 (a) the indictment or information;

57 (b) any sworn probable cause statement;

58 (c) information provided by any pretrial services agency; or

59 (d) any other reliable record or source.

60 (5) (a) A motion to modify the initial order may be made by a party at any time upon
61 notice to the opposing party sufficient to permit the opposing party to prepare for hearing and
62 to permit any victim to be notified and be present.

63 (b) Hearing on a motion to modify may be held in conjunction with a preliminary
64 hearing or any other pretrial hearing.

65 (c) The magistrate or court may rely on information as provided in [~~Subsections (4)(a)~~
66 ~~through (d)~~] Subsection (4) and may base its ruling on evidence provided at the hearing so long
67 as each party is provided an opportunity to present additional evidence or information relevant
68 to bail.

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

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

73 (8) For purposes of this section, any arrest or charge for a violation of Section
74 76-5-202, aggravated murder, is a capital felony unless:

75 (a) the prosecutor files a notice of intent to not seek the death penalty; or

76 (b) the time for filing a notice to seek the death penalty has expired and the prosecutor
77 has not filed a notice to seek the death penalty.

78 **Section 2. Effective date.**

79 If approved by two-thirds of all the members elected to each house, this bill takes effect
80 upon approval by the governor, or the day following the constitutional time limit of Utah
81 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
82 the date of veto override.