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**BAILABLE OFFENSES ACT**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Paul Ray**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Code of Criminal Procedure regarding terms of release on bail or recognizance for persons charged with certain offenses.

**Highlighted Provisions:**

This bill:

- ▶ requires that persons charged with the following offenses are required to wear a GPS electronic tracking device if released on bail or the person's own recognizance:
  - being present in the United States illegally;
  - a violent felony as defined by statute; or
  - any sexual offense against a person 14 years of age or younger that is not defined as a violent offense;
- ▶ requires that the person required to wear the tracking device pay for the costs of the device; and
- ▶ requires that the sheriff of the county where the person is granted bail or is released on recognizance is required to issue the device and maintain the tracking system.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



28 AMENDS:

29 77-20-1, as last amended by Laws of Utah 2008, Chapter 373

30 77-20-3, as last amended by Laws of Utah 1998, Chapter 293

31 ENACTS:

32 77-20-2.5, Utah Code Annotated 1953



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

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

36 **77-20-1. Right to bail -- Denial of bail -- Hearing.**

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

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

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

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

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

51 (2) (a) Any person who may be admitted to bail may be released either on the person's  
52 own recognizance or upon posting bail, on condition that the person appear in court for future  
53 court proceedings in the case, and on any other conditions imposed in the discretion of the  
54 magistrate or court that will reasonably:

55 [~~(a)~~] (i) ensure the appearance of the accused;

56 [~~(b)~~] (ii) ensure the integrity of the court process;

57 [~~(c)~~] (iii) prevent direct or indirect contact with witnesses or victims by the accused, if  
58 appropriate; and

59            [~~(d)~~] (iv) ensure the safety of the public.

60            (b) A person released on bail or on the person's own recognizance is subject to the  
61 requirements of Section 77-20-2.5.

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

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

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

68            (a) the indictment or information;

69            (b) any sworn probable cause statement;

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

71            (d) any other reliable record or source.

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

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

77            (c) The magistrate or court may rely on information as provided in Subsection (4) and  
78 may base its ruling on evidence provided at the hearing so long as each party is provided an  
79 opportunity to present additional evidence or information relevant to bail.

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

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

84            (8) For purposes of this section, any arrest or charge for a violation of Section  
85 76-5-202, aggravated murder, is a capital felony unless:

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

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

89            Section 2. Section **77-20-2.5** is enacted to read:

90 77-20-2.5. Requirement of GPS tracking device for certain bailable offenses --  
91 **County to operate the tracking system -- Defendant to pay for the device.**

92 (1) A person granted bail or release on recognizance under this chapter after being  
93 charged with an offense under Subsection (2) shall be required to wear an electronic tracking  
94 device that uses the global positioning system to monitor the location of the person.

95 (2) Charged offenses referred to under Subsection (1) are:

96 (a) presence in the United States illegally;

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

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

104 (iii) a felony when the court finds there is substantial evidence to support the charge  
105 and it finds by clear and convincing evidence that the person violated a material condition of  
106 release while previously on bail;

107 (c) any violent felony as defined in Section 76-3-203.5; or

108 (d) any sexual offense against a person 14 years of age or younger that is not defined as  
109 a violent felony.

110 (3) The sheriff of the county where the person under this section is granted bail or is  
111 released on the person's own recognizance shall provide the electronic tracking device,  
112 maintain the tracking system, and record the tracking information.

113 (4) The court shall order the person required to wear the device under this section to  
114 pay the costs of the electronic tracking device and shall require that the payments be made to  
115 the court, which shall reimburse the county.

116 Section 3. Section **77-20-3** is amended to read:

117 **77-20-3. Release on own recognizance -- Changing amount of bail or conditions**  
118 **of release.**

119 (1) Any person who may be admitted to bail may likewise be released on his own  
120 recognizance in the discretion of the magistrate or court.

- 121           (2) After releasing the defendant on his own recognizance or admitting the defendant  
122 to bail, the magistrate or court may:
- 123           (a) impose bail or increase or decrease the amount of the bail; and  
124           (b) impose or change the conditions of release under Subsection 77-20-1(2).
- 125           (3) A person released on bail or on the person's own recognizance is subject to the  
126 requirements of Section 77-20-2.5.

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**Legislative Review Note**  
**as of 2-15-10 3:28 PM**

**Office of Legislative Research and General Counsel**

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**H.B. 375 - Bailable Offenses Act**

**Fiscal Note**

2010 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill will incur jail costs to local governments at approximately \$450 per case with a potential ongoing net cost of \$900,000. Additional replacement costs for electronic tracking devices may be incurred.

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