

Senator J. Stuart Adams proposes the following substitute bill:

JAIL RELEASE AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: Stephen G. Handy

LONG TITLE

General Description:

This bill modifies Title 77, Chapter 20, Bail.

Highlighted Provisions:

This bill:

▶ clarifies that a person arrested for violation of a jail release agreement or jail release order:

- may not be released before the person's first judicial appearance; and
- may be denied bail under Section 77-20-2.5;

▶ states that a jail release agreement or jail release court order expires at midnight on the earlier of:

- the day on which the person appears for arraignment or initial appearance; or
- 60 days after the jail release agreement or jail release court order was issued;

and

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **77-20-1**, as last amended by Laws of Utah 2008, Chapter 373

29 **77-36-2.5**, as last amended by Laws of Utah 2011, Chapter 113

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

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

33 **77-20-1. Right to bail -- Denial of bail -- Hearing.**

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

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

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

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

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

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

52 (a) ensure the appearance of the accused;

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

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

56 (d) ensure the safety of the public.

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

60 (b) A person arrested for a violation of a [~~criminal protective~~] jail release agreement or
61 jail release order issued pursuant to Section 77-36-2.5:

62 (i) may not be released [~~prior to the accused's~~] before the person's first judicial
63 appearance[~~;~~]; and

64 (ii) may be denied bail by the court under Subsection 77-36-2.5(8) or (12).

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

66 (a) the indictment or information;

67 (b) any sworn probable cause statement;

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

69 (d) any other reliable record or source.

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

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

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

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

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

82 (8) For purposes of this section, any arrest or charge for a violation of Section
83 76-5-202, Aggravated murder, is a capital felony unless:

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

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

87 Section 2. Section **77-36-2.5** is amended to read:

88 **77-36-2.5. Conditions for release after arrest for domestic violence -- Jail release**
89 **agreements -- Jail release court orders.**

90 (1) (a) Upon arrest for domestic violence, and before the person is released on bail,
91 recognizance, or otherwise, the person may not personally contact the alleged victim of
92 domestic violence.

93 (b) A person who violates Subsection (1)(a) is guilty of a class B misdemeanor.

94 (2) Upon arrest for domestic violence, a person may not be released on bail,
95 recognizance, or otherwise prior to the close of the next court day following the arrest, unless
96 as a condition of that release the person is ordered by the court or agrees in writing that until
97 further order of the court, the person will:

98 (a) have no personal contact with the alleged victim;

99 (b) not threaten or harass the alleged victim; and

100 (c) not knowingly enter onto the premises of the alleged victim's residence or any
101 premises temporarily occupied by the alleged victim.

102 (3) (a) The jail release agreement or jail release court order expires at midnight on the
103 earlier of:

104 (i) the day on which the person arrested appears in person or by video for arraignment
105 or an initial appearance[-]; or

106 (ii) 60 days after the day on which the jail release agreement or jail release court order
107 was issued.

108 (b) (i) If criminal charges have not been filed against the arrested person, the court
109 may, for good cause and in writing, extend the jail release agreement or jail release court order
110 beyond the time period under Subsection (3)(a) as provided in Subsection (3)(b)(ii).

111 (ii) (A) The court may extend a jail release agreement or jail release court order under
112 Subsection (3)(b)(i) to no longer than midnight of the third business day after the arrested
113 person's first court appearance.

114 (B) If criminal charges are filed against the arrested person within the three business
115 days under Subsection (3)(b)(ii)(A), the jail release agreement or the jail release court order
116 continues in effect until the arrested person appears in person or by video at the arrested
117 person's next scheduled court appearance.

118 (c) If criminal charges have been filed against the arrested person the court may, upon

119 the request of the prosecutor or the victim or upon the court's own motion, issue a pretrial
120 protective order.

121 (4) As a condition of release, the court may order the defendant to participate in an
122 electronic or other monitoring program and to pay the costs associated with the program.

123 (5) (a) Subsequent to an arrest for domestic violence, an alleged victim may waive in
124 writing any or all of the release conditions described in Subsection (2)(a) or (c). Upon waiver,
125 those release conditions do not apply to the alleged perpetrator.

126 (b) A court or magistrate may modify the release conditions described in Subsections
127 (1)(a) or (c), in writing or on the record, and only for good cause shown.

128 (6) (a) When a person is released pursuant to Subsection (2), the releasing agency shall
129 notify the arresting law enforcement agency of the release, conditions of release, and any
130 available information concerning the location of the victim. The arresting law enforcement
131 agency shall then make a reasonable effort to notify the victim of that release.

132 (b) (i) When a person is released pursuant to Subsection (2) based on a written jail
133 release agreement, the releasing agency shall transmit that information to the statewide
134 domestic violence network described in Section 78B-7-113.

135 (ii) When a person is released pursuant to Subsection (2) or (3) based upon a jail
136 release court order or if a jail release agreement is modified pursuant to Subsection (5)(b), the
137 court shall transmit that order to the statewide domestic violence network described in Section
138 78B-7-113.

139 (iii) A copy of the jail release court order or written jail release agreement shall be
140 given to the person by the releasing agency before the person is released.

141 (c) This Subsection (6) does not create or increase liability of a law enforcement officer
142 or agency, and the good faith immunity provided by Section 77-36-8 is applicable.

143 (7) (a) If a law enforcement officer has probable cause to believe that a person has
144 violated a jail release court order or jail release agreement executed pursuant to Subsection (2)
145 the officer shall, without a warrant, arrest the alleged violator.

146 (b) Any person who knowingly violates a jail release court order or jail release
147 agreement executed pursuant to Subsection (2) is guilty as follows:

148 (i) if the original arrest was for a felony, an offense under this section is a third degree
149 felony; or

150 (ii) if the original arrest was for a misdemeanor, an offense under this section is a class
151 A misdemeanor.

152 (c) City attorneys may prosecute class A misdemeanor violations under this section.

153 (8) An individual who was originally arrested for a felony under this chapter and
154 released pursuant to this section may subsequently be held without bail if there is substantial
155 evidence to support a new felony charge against him.

156 (9) At the time an arrest for domestic violence is made, the arresting officer shall
157 provide the alleged victim with written notice containing:

158 (a) the release conditions described in Subsection (2), and notice that those release
159 conditions shall be ordered by a court or must be agreed to by the alleged perpetrator prior to
160 release;

161 (b) notification of the penalties for violation of any jail release court order or any jail
162 release agreement executed under Subsection (2);

163 (c) notification that the alleged perpetrator is to personally appear in court on the next
164 day the court is open for business after the day of the arrest;

165 (d) the address of the appropriate court in the district or county in which the alleged
166 victim resides;

167 (e) the availability and effect of any waiver of the release conditions; and

168 (f) information regarding the availability of and procedures for obtaining civil and
169 criminal protective orders with or without the assistance of an attorney.

170 (10) At the time an arrest for domestic violence is made, the arresting officer shall
171 provide the alleged perpetrator with written notice containing:

172 (a) notification that the alleged perpetrator may not contact the alleged victim before
173 being released;

174 (b) the release conditions described in Subsection (2) and notice that those release
175 conditions shall be ordered by a court or shall be agreed to by the alleged perpetrator prior to
176 release;

177 (c) notification of the penalties for violation of any jail release court order or any
178 written jail release agreement executed under Subsection (2); and

179 (d) notification that the alleged perpetrator is to personally appear in court on the next
180 day the court is open for business after the day of the arrest.

181 (11) (a) If the alleged perpetrator fails to personally appear in court as scheduled, the
182 jail release court order or jail release agreement does not expire and continues in effect until the
183 alleged perpetrator makes the personal appearance in court as required by Section 77-36-2.6.

184 (b) If, when the alleged perpetrator personally appears in court as required by Section
185 77-36-2.6, criminal charges have not been filed against the arrested person, the court may allow
186 the jail release court order or jail release agreement to expire at midnight on the day of the
187 court appearance or may extend it for good cause.

188 (12) In addition to the provisions of Subsections (2) through (8), because of the unique
189 and highly emotional nature of domestic violence crimes, the high recidivism rate of violent
190 offenders, and the demonstrated increased risk of continued acts of violence subsequent to the
191 release of an offender who has been arrested for domestic violence, it is the finding of the
192 Legislature that domestic violence crimes, as defined in Section 77-36-1, are crimes for which
193 bail may be denied if there is substantial evidence to support the charge, and if the court finds
194 by clear and convincing evidence that the alleged perpetrator would constitute a substantial
195 danger to an alleged victim of domestic violence if released on bail.