

## SB0156S01 compared with SB0156

~~text~~ shows text that was in SB0156 but was deleted in SB0156S01.

text shows text that was not in SB0156 but was inserted into SB0156S01.

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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

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#### 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 ~~accused's~~ 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;

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and

- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

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

[77-36-2.5, as last amended by Laws of Utah 2011, Chapter 113](#)

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*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 the person's own recognizance or upon posting bail, on condition that the person appear in court for future court proceedings in the case, and on any other conditions imposed in the discretion of the magistrate

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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) (a) 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.

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

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

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

(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.

(5) (a) 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.

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

(c) The magistrate or court may rely on information as provided in Subsection (4) 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.

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

(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).

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

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

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

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### Legislative Review Note

~~as of 1-29-13 2:36 PM~~

~~Office of Legislative Research and General Counsel~~ Section 2. Section 77-36-2.5 is amended to read:

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

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

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

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

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

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

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

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

(i) the day on which the person arrested appears in person or by video for arraignment

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or an initial appearance[-]; or

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

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

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

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

(c) If criminal charges have been filed against the arrested person the court may, upon the request of the prosecutor or the victim or upon the court's own motion, issue a pretrial protective order.

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

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

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

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

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

(ii) When a person is released pursuant to Subsection (2) or (3) based upon a jail

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release court order or if a jail release agreement is modified pursuant to Subsection (5)(b), the court shall transmit that order to the statewide domestic violence network described in Section 78B-7-113.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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