

BAIL BOND SURETY AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Utah Code of Criminal Procedure regarding bail bonds.

Highlighted Provisions:

This bill:

▶ provides that a person may post bail by written undertaking or an equal amount of cash bail;

▶ provides that the clerk of the court shall enter a bench warrant for a person who posts bail and fails to appear as required and that the bench warrant shall be entered:

- on the statewide warrant system; and
- with the National Crime Information Center if the original offense was a felony;

▶ eliminates the provision that a surety may request an extension of the six-month period to bring a defendant before the court or a county sheriff if the defendant failed to appear as required by the court; and

▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 28 77-20-1, as last amended by Laws of Utah 2013, Chapter 240
- 29 77-20-4, as last amended by Laws of Utah 2014, Chapter 170
- 30 77-20b-101, as last amended by Laws of Utah 2011, Chapter 179
- 31 77-20b-102, as last amended by Laws of Utah 2000, Chapter 259
- 32 77-20b-105, as enacted by Laws of Utah 2006, Chapter 332

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) Any person who may be admitted to bail may be released [~~either~~] by written
 52 undertaking or an equal amount of cash bail, or on the person's own recognizance [~~or upon~~
 53 ~~posting bail~~], on condition that the person appear in court for future court proceedings in the
 54 case, and on any other conditions imposed in the discretion of the magistrate or court that will
 55 reasonably:

- 56 (a) ensure the appearance of the accused;
- 57 (b) ensure the integrity of the court process;
- 58 (c) prevent direct or indirect contact with witnesses or victims by the accused, if

59 appropriate; ~~and~~

60 (d) ensure the safety of the public~~[-];~~ and

61 (e) ensure appearances with cash-only bail based on any of the exceptions in

62 Subsection (1) or ensure payment with cash-only bail when a warrant is issued for the

63 nonpayment of a fine.

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

67 (b) A person arrested for a violation of a jail release agreement or jail release order
68 issued pursuant to Section 77-36-2.5:

69 (i) may not be released before the accused's first judicial appearance; and

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

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

72 (a) the indictment or information;

73 (b) any sworn probable cause statement;

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

75 (d) any other reliable record or source.

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

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

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

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

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

88 (8) For purposes of this section, any arrest or charge for a violation of Section
89 76-5-202, Aggravated murder, is a capital felony unless:

- 90 (a) the prosecutor files a notice of intent to not seek the death penalty; or
- 91 (b) the time for filing a notice to seek the death penalty has expired and the prosecutor
- 92 has not filed a notice to seek the death penalty.

93 Section 2. Section 77-20-4 is amended to read:

94 **77-20-4. Bail to be posted in cash, by credit or debit card, or by written**
95 **undertaking.**

96 (1) Bail may be posted:

97 (a) in cash;

98 (b) by written undertaking with [~~or without~~] sureties [~~at the discretion of the~~
99 ~~magistrate~~]; or

100 (c) by credit or debit card, at the discretion of the judge or bail commissioner.

101 (2) Bail may not be accepted without receiving in writing at the time the bail is posted
102 the current mailing address and telephone number of the surety.

103 (3) Bail posted by debit or credit card, less the fee charged by the financial institution,
104 shall be tendered to the courts.

105 (4) Bail refunded by the court may be refunded by credit to the debit or credit card, or
106 cash. The amount refunded shall be the full amount received by the court under Subsection
107 (3), which may be less than the full amount of the bail set by the court.

108 (5) Before refunding bail that is posted by the defendant in cash, by credit card, or by
109 debit card, the court may apply the amount posted toward accounts receivable, as defined in
110 Section 76-3-201.1, that are owed by the defendant in the priority set forth in Section
111 77-38a-404.

112 Section 3. Section 77-20b-101 is amended to read:

113 **77-20b-101. Entry of nonappearance -- Notice to surety -- Release of surety on**
114 **failure of timely notice.**

115 (1) If a defendant who has posted bail fails to appear before the appropriate court as
116 required, the court shall within 30 days of the failure to appear issue a bench warrant that
117 includes the original case number. The court shall also direct that the surety be given notice of
118 the nonappearance. The clerk of the court shall:

119 (a) mail notice of nonappearance by certified mail, return receipt requested, within 30
120 days to the address of the surety;

121 (b) notify the surety as listed on the bond of the name, address, and telephone number
122 of the prosecutor;

123 (c) deliver a copy of the notice sent under Subsection (1)(a) to the prosecutor's office at
124 the same time notice is sent under Subsection (1)(a); ~~[and]~~

125 (d) ensure that the name, address, and telephone number of the surety or its agent as
126 listed on the bond is stated on the bench warrant[-];

127 (e) mail notice of the failure to appear to the bail agent if the surety is different than the
128 producer's agent[-]; and

129 (f) enter the bench warrant on ~~H~~→ [-];

130 ~~—— (i) ←H the statewide warrant system H→ . [-; and~~

131 ~~—— (ii) the National Crime Information Center, if the offense is a felony.~~

132 ~~—— (2) A bond shall be exonerated if the bench warrant is not entered on the statewide~~
133 ~~warrant system or a felony bench warrant is not entered with the National Crime Information~~
134 ~~Center under Subsection (1)(f).]~~

135 [H] (2) [H] [~~(3)~~] ←H The prosecutor may mail notice of nonappearance by
135a certified mail, return

136 receipt requested, to the address of the surety as listed on the bond within 37 days after the date
137 of the defendant's failure to appear.

138 H→ [H] (3) [H] [~~(4)~~] ←H If notice of nonappearance is not mailed to a surety as listed on
138a the bond, other

139 than the defendant, in accordance with Subsection (1) or [~~(2)~~] (3), the surety and its agent are
140 relieved of further obligation under the bond without motion if the surety's current name and
141 address or the current name and address of the surety's agent are on the bail bond in the court's
142 file.

143 H→ [H] (4) [H] [~~(5)~~] ←H (a) (i) If a defendant appears in court within seven calendar days
143a after a
144 missed, scheduled court appearance, the court may reinstate the bond without further notice to
145 the bond company.

146 (ii) If the defendant, while in custody, appears on the case for which the bond was
147 posted, the court may not reinstate the bond without the consent of the bond company.

148 (b) If a defendant fails to appear within seven calendar days after a scheduled court
149 appearance, the court may not reinstate the bond without the consent of the surety.

150 (c) If the defendant is arrested and booked into a county jail booking facility pursuant
151 to a warrant for failure to appear on the original charges [~~and the court is notified of the arrest~~],

152 or the court recalls the warrant due to the defendant's having paid the fine and prior to entry of
153 judgment of forfeiture, the court shall exonerate the bond without motion.

154 (d) Unless the court makes a finding of good cause why the bond should not be
155 exonerated, it shall exonerate the bond if:

156 (i) the surety has delivered the defendant to the county jail booking facility in the
157 county where the original charge is pending;

158 (ii) the defendant has been released on a bond secured from a subsequent surety for the
159 original charge and the failure to appear;

160 (iii) after an arrest, the defendant has escaped from jail or has been released on the
161 defendant's own recognizance, pursuant to a pretrial release, under a court order regulating jail
162 capacity, or by a sheriff's release under Section 17-22-5.5;

163 (iv) the surety has transported or agreed to pay for the transportation of the defendant
164 from a location outside of the county back to the county where the original charge is pending,
165 and the payment is in an amount equal to government transportation expenses listed in Section
166 76-3-201; or

167 (v) the surety demonstrates by a preponderance of the evidence that:

168 (A) at the time the surety issued the bond, it had made reasonable efforts to determine
169 that the defendant was legally present in the United States;

170 (B) a reasonable person would have concluded, based on the surety's determination,
171 that the defendant was legally present in the United States; and

172 (C) the surety has failed to bring the defendant before the court because the defendant
173 is in federal custody or has been deported.

174 (e) Under circumstances not otherwise provided for in this section, the court may
175 exonerate the bond if it finds that the prosecutor has been given reasonable notice of a surety's
176 motion and there is good cause for the bond to be exonerated.

177 (f) If a surety's bond has been exonerated under this section and the surety remains
178 liable for the cost of transportation of the defendant, the surety may take custody of the
179 defendant for the purpose of transporting the defendant to the jurisdiction where the charge is
180 pending.

181 Section 4. Section 77-20b-102 is amended to read:

182 **77-20b-102. Time for bringing defendant to court.**

183 [(1)] If notice of nonappearance has been mailed to a surety under Section 77-20b-101,
 184 the surety may bring the defendant before the court or surrender the defendant into the custody
 185 of a county sheriff within the state within six months of the date of nonappearance, during
 186 which time a forfeiture action on the bond may not be brought.

187 [~~(2) A surety may request an extension of the six-month time period in Subsection (1),~~
 188 ~~if the surety within that time:]~~

189 [~~(a) files a motion for extension with the court; and]~~

190 [~~(b) mails the motion for extension and a notice of hearing on the motion to the~~
 191 ~~prosecutor:]~~

192 [~~(3) The court may extend the six-month time in Subsection (1) for not more than 60~~
 193 ~~days, if the surety has complied with Subsection (2) and the court finds good cause.]~~

194 Section 5. Section 77-20b-105 is amended to read:

195 **77-20b-105. Revocation of bond.**

196 The surety is entitled to obtain the exoneration of its bond without motion ~~H~~→ [prior to
 197 **judgment]** ←~~H~~ by providing written proof to the court and the prosecutor that:

198 (1) the defendant has been booked for failure to appear regarding the charge for which
 199 the bond was issued; or

200 (2) the defendant is in custody and the surety has served the defendant's bond
 201 revocation on the custodial authority.

Legislative Review Note
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Office of Legislative Research and General Counsel