

**BAIL BOND AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Eric K. Hutchings**

Senate Sponsor: Lyle W. Hillyard

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**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 2015, Chapter 99
- 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

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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) Except as otherwise provided, the initial order denying or fixing the amount of  
65 bail shall be issued by the magistrate or court issuing the warrant of arrest.

66 (b) A magistrate may set bail upon determining that there was probable cause for a  
67 warrantless arrest.

68 (c) A bail commissioner may set bail in a misdemeanor case in accordance with  
69 Sections 10-3-920 and 17-32-1.

70 (d) A person arrested for a violation of a jail release agreement or jail release order  
71 issued pursuant to Section 77-36-2.5:

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

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

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

75 (a) the indictment or information;

76 (b) any sworn probable cause statement;

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

78 (d) any other reliable record or source.

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

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

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

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

89 (7) An appeal may be taken from an order of any court denying bail to the Supreme

90 Court, which shall review the determination under Subsection (1).

91 (8) For purposes of this section, any arrest or charge for a violation of Section

92 76-5-202, Aggravated murder, is a capital felony unless:

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

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

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

97 **77-20-4. Bail to be posted in cash, by credit or debit card, or by written**  
98 **undertaking.**

99 (1) Bail may be posted:

100 (a) in cash;

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

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

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

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

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

111 (5) Before refunding bail that is posted by the defendant in cash, by credit card, or by  
112 debit card, the court may apply the amount posted toward accounts receivable, as defined in  
113 Section 76-3-201.1, that are owed by the defendant in the priority set forth in Section  
114 77-38a-404.

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

116 **77-20b-101. Entry of nonappearance -- Notice to surety -- Release of surety on**  
117 **failure of timely notice.**

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

121 the nonappearance. The clerk of the court shall:

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

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

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

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

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

132 (f) enter the bench warrant ~~H→~~ [:

133 ~~—(f)] ←H on the statewide warrant system H→ [;~~ ~~and~~

134 ~~—(ii) with the National Crime Information Center, if the offense is a felony] ←H .~~

135 (2) A bond shall be exonerated if the bench warrant is not entered on the statewide

136 warrant system ~~H→~~ ~~[or a felony bench warrant is not entered with the National Crime Information~~

137 ~~Center under Subsection (1)(f)] ←H .~~

138 ~~[(2)]~~ (3) The prosecutor may mail notice of nonappearance by certified mail, return  
139 receipt requested, to the address of the surety as listed on the bond within 37 days after the date  
140 of the defendant's failure to appear.

141 ~~[(3)]~~ (4) If notice of nonappearance is not mailed to a surety as listed on the bond, other  
142 than the defendant, in accordance with Subsection (1) or ~~[(2)]~~ (3), the surety and its agent are  
143 relieved of further obligation under the bond without motion if the surety's current name and  
144 address or the current name and address of the surety's agent are on the bail bond in the court's  
145 file.

146 ~~[(4)]~~ (5) (a) (i) If a defendant appears in court within seven calendar days after a  
147 missed, scheduled court appearance, the court may reinstate the bond without further notice to  
148 the bond company.

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

151 (b) If a defendant fails to appear within seven calendar days after a scheduled court

152 appearance, the court may not reinstate the bond without the consent of the surety.

153 (c) If the defendant is arrested and booked into a county jail booking facility pursuant  
154 to a warrant for failure to appear on the original charges [~~and the court is notified of the arrest~~],  
155 or the court recalls the warrant due to the defendant's having paid the fine and prior to entry of  
156 judgment of forfeiture, the court shall exonerate the bond without motion.

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

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

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

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

166 (iv) the surety has transported or agreed to pay for the transportation of the defendant  
167 from a location outside of the county back to the county where the original charge is pending,  
168 and the payment is in an amount equal to government transportation expenses listed in Section  
169 [76-3-201](#); or

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

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

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

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

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

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

183 pending.

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

185 **77-20b-102. Time for bringing defendant to court.**

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

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

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

193 [~~(b) mails the motion for extension and a notice of hearing on the motion to the~~  
194 ~~prosecutor.]~~

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

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

198 **77-20b-105. Revocation of bond.**

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

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

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

**Legislative Review Note**  
**Office of Legislative Research and General Counsel**