

## HB0297S02 compared with HB0297S01

~~text~~ shows text that was in HB0297S01 but was deleted in HB0297S02.

text shows text that was not in HB0297S01 but was inserted into HB0297S02.

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Senator Lyle W. Hillyard proposes the following substitute bill:

### **BAIL BOND AND CRIMINAL PROCEDURE AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Eric K. Hutchings**

Senate Sponsor: ~~Lyle W. Hillyard~~ Curtis S. Bramble

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#### **LONG TITLE**

##### **General Description:**

This bill modifies the Utah Code of Criminal Procedure relating to arrests and bail.

##### **Highlighted Provisions:**

This bill:

- ▶ requires a peace officer to issue citations rather than arresting individuals for certain offenses;
- ▶ sets forth requirements for individuals to appear in court when issued a citation;
- ▶ amends parental notification requirements if the person cited is under 18 years of age;
- ▶ provides for pre-trial release requirements when the defendant is arrested without a warrant;
- ▶ provides conditions by which a custodial authority may hold a defendant for an

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- extended period of time after a defendant's appearance or presentment in court;
- ▶ directs judges to order the release of a person who may be admitted to bail under the least restrictive means necessary to ensure the appearance of the accused in court and the safety of the public;
- ▶ provides that a court may order a defendant detained until the time of sentencing under certain circumstances;
- ▶ makes the failure to appear in court pursuant to a citation a contemptible offense under certain circumstances;
- ▶ 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:**

This bill provides a coordination clause.

### **Utah Code Sections Affected:**

AMENDS:

**41-22-16**, as last amended by Laws of Utah 2005, Chapter 2

**73-18-20**, as last amended by Laws of Utah 2005, Chapter 2

**73-18a-15**, as last amended by Laws of Utah 2005, Chapter 2

**77-7-18**, as last amended by Laws of Utah 2012, Chapter 322

**77-7-19**, as last amended by Laws of Utah 2009, Chapter 292

**77-7-20**, as last amended by Laws of Utah 2014, Chapters 126 and 263

**77-18a-1**, as last amended by Laws of Utah 2009, Chapter 175

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77-20-4, as last amended by Laws of Utah 2014, Chapter 170

77-20-7, as last amended by Laws of Utah 2011, Chapter 179

77-20-8, as last amended by Laws of Utah 1988, Chapter 160

77-20-9, as last amended by Laws of Utah 2008, Chapter 3

77-20b-101, as last amended by Laws of Utah 2011, Chapter 179

77-20b-102, as last amended by Laws of Utah 2000, Chapter 259

77-20b-105, as enacted by Laws of Utah 2006, Chapter 332

78A-2-220, as last amended by Laws of Utah 2013, Chapter 245

78B-6-301, as renumbered and amended by Laws of Utah 2008, Chapter 3

### REPEALS AND REENACTS:

76-8-312, as last amended by Laws of Utah 1974, Chapter 32

77-2-1.1, as enacted by Laws of Utah 1992, Chapter 33

77-7-21, as last amended by Laws of Utah 2009, Chapter 292

77-7-22, as enacted by Laws of Utah 1980, Chapter 15

77-7-23, as last amended by Laws of Utah 1997, Chapters 10 and 215

77-20-1, as last amended by Laws of Utah 2015, Chapter 99

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

77-20-5, as last amended by Laws of Utah 1998, Chapter 293

### REPEALS:

77-7-24, as renumbered and amended by Laws of Utah 2005, Chapter 2

77-7-25, as renumbered and amended by Laws of Utah 2005, Chapter 2

77-7-26, as renumbered and amended by Laws of Utah 2005, Chapter 2

### **Utah Code Sections Affected by Coordination Clause:**

77-20-4, as last amended by Laws of Utah 2014, Chapter 170

77-20-5, as last amended by Laws of Utah 1998, Chapter 293

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

Section 1. Section **41-22-16** is amended to read:

**41-22-16. Authorized peace officers -- Arrest provisions.**

(1) Any peace officer authorized under Title 53, Chapter 13, Peace Officer

Classifications, may enforce the provisions of this chapter and the rules promulgated under this

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chapter.

(2) Whenever any person is arrested for any violation of the provisions of this chapter or of the rules promulgated under this chapter, the procedure for the arrest is the same as outlined in Sections 77-7-22[;] and 77-7-23[~~and 77-7-24~~].

Section 2. Section **73-18-20** is amended to read:

**73-18-20. Enforcement of chapter -- Authority to stop and board vessels --  
Disregarding law enforcement signal to stop as misdemeanor -- Procedure for arrest.**

(1) Any law enforcement officer authorized under Title 53, Chapter 13, Peace Officer Classifications, may enforce the provisions of this chapter and the rules promulgated under this chapter.

(2) Any law enforcement officer authorized under Title 53, Chapter 13, Peace Officer Classifications, has the authority to stop and board any vessel subject to this chapter, whether the vessel is on water or land. If that officer determines the vessel is overloaded, unseaworthy, or the safety equipment required by this chapter or rules of the board is not on the vessel, that officer may prohibit the launching of the vessel or stop the vessel from operating.

(3) An operator who, having received a visual or audible signal from a law enforcement officer authorized under Title 53, Chapter 13, Peace Officer Classifications, to bring his vessel to a stop, operates his vessel in willful or wanton disregard of the signal so as to interfere with or endanger the operation of any vessel or endanger any person, or who attempts to flee or elude the officer whether by vessel or otherwise is guilty of a class A misdemeanor.

(4) Whenever any person is arrested for any violation of the provisions of this chapter or of the rules promulgated under this chapter, the procedure for arrest is the same as outlined in Sections 77-7-22 [~~through 77-7-24~~] and 77-7-23.

Section 3. Section **73-18a-15** is amended to read:

**73-18a-15. Arrest for violation -- Procedure.**

Whenever any person is arrested for any violation of the provisions of this chapter or rule promulgated under this chapter, the procedure for arrest is the same as specified in Sections 77-7-22 [~~through 77-7-24~~] and 77-7-23.

Section 4. Section **76-8-312** is repealed and reenacted to read:

**76-8-312. Bail jumping.**

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A person arrested and charged with a felony offense who willfully fails to appear at court at the time and place designated for appearance is guilty of a third degree felony.

Section 5. Section 77-2-1.1 is repealed and reenacted to read:

### **77-2-1.1. Signing and filing of information.**

The prosecuting attorney shall:

(1) sign all informations; and

(2) cause all informations to be filed in court as provided for by the Utah Rules of

Criminal Procedure.

Section 6. Section 77-7-18 is amended to read:

### **77-7-18. Citation on misdemeanor or infraction charge.**

~~[Any person subject to arrest or prosecution on a misdemeanor or infraction charge may be issued and delivered]~~

(1) Except as provided in ~~Subsection~~ Subsections (3) or (4), a peace officer, who has detained a person and intends to charge the person with a class B or C misdemeanor or an infraction, may not deliver that person to a custodial facility unless the person is also charged with a felony as a part of the same criminal episode. Instead, the officer shall refer the matter to a prosecutor who shall screen the charges as provided in Title 77, Chapter 2, Prosecution, Screening, and Diversion, or issue a citation that requires the person to appear at the court [of the magistrate] with [territorial] jurisdiction. ~~[The citation may be issued by: (1) a peace officer, in lieu of or in addition to taking the person into custody; (2)]~~

(2) In addition to peace officers, the following individuals may issue citations for class B or C misdemeanors or infractions:

(a) any public official of any county or municipality charged with the enforcement of the law;

~~[(3)]~~ (b) a port-of-entry agent as defined in Section 72-1-102;

~~[(4)]~~ (c) an animal control officer of a special service district under Title 17D, Chapter 1, Special Service District Act, who is authorized to provide animal control service; and

~~[(5)]~~ (d) a volunteer authorized to issue a citation under Section 41-6a-213.

(3) A peace officer may arrest and book a person in a custodial facility in lieu of issuing a citation for:

(a) any class B misdemeanor violation of Title 41, Chapter 6a, Part 5, Driving Under

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the Influence and Reckless Driving;

(b) a domestic violence offense as defined in Section 77-36-1;

(c) any offense involving an obstruction of justice; or

(d) any other class B or C misdemeanor or infraction if necessary to prevent a breach of the peace.

(4) Nothing in this section prevents a peace officer from delivering a person to a custodial facility for any other warrants or for any other legal reasons that may exist to detain the person.

Section 7. Section 77-7-19 is amended to read:

**77-7-19. Appearance required by citation -- Arrest for failure to appear -- Transfer or dismissal of improperly filed cases.**

(1) A person receiving a citation issued pursuant to Section 77-7-18 shall appear [~~before the magistrate~~] in the court designated in the citation on or before the time and date specified in the citation unless [~~the uniform bail schedule adopted by the Judicial Council or Subsection 77-7-21(1) permits forfeiture of bail for the offense charged.~~];

(a) the citation states that the court will, within five to 14 days, notify the person of when to appear; or

(b) the person is permitted to remit the fine and other penalties without a personal appearance pursuant to the uniform fine schedule adopted by the Judicial Council, or by court order under Section 77-7-21.

(2) A citation may not require a person to appear or contact the court sooner than five days or later than 14 days following its issuance.

~~[(3)(a) A person who receives a citation and who fails to comply with Section 77-7-21 on or before the time and date and at the court specified is subject to arrest.]~~

~~[(b) The magistrate may issue a warrant of arrest based upon a citation that was served and filed in accordance with Section 77-7-20.]~~

~~[(4) Except where otherwise provided by law, a citation or information issued for violations of Title 41, Motor Vehicles, shall state that the person receiving the citation or information shall appear before the magistrate who has jurisdiction over the offense charged.]~~

~~[(5) Any justice court judge may, upon the motion of either the defense attorney or prosecuting attorney, based on a lack of territorial jurisdiction or the disqualification of the~~

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judge, transfer cases to a justice court with territorial jurisdiction or the district court within the county.]

(3) If the person cited does not appear before the court as directed by the citation or the court, or pay the fines if allowed by Section 77-7-21, the court may issue a bench warrant for the person's arrest.

(4) A person's willful failure to appear on a citation constitutes contempt pursuant to Subsection 78B-6-301(12).

~~[(6)]~~ (5) (a) Clerks and other administrative personnel serving the courts shall [ensure that all citations for violation of Title 41, Motor Vehicles, are filed in a court with jurisdiction and venue and shall refuse to receive] identify for the judge any citations that should [be] have been filed in another court.

~~[(b) Fines, fees, costs, and forfeitures imposed or collected for violations of Title 41, Motor Vehicles, which are filed contrary to this section shall be paid to the entitled municipality or county by the state, county, or municipal treasurer who has received the fines, fees, costs, or forfeitures from the court which collected them.]~~

~~[(c) The accounting and remitting of sums due shall be at the close of the fiscal year of the municipality or county which has received fines, fees, costs, or forfeitures as a result of any improperly filed citations:]~~

(b) Upon determining that the court lacks jurisdiction, the judge shall:

(i) transfer the case to a court with jurisdiction; or

(ii) dismiss the charges contained in the citation if no other court is readily identifiable and notify the prosecutor of the dismissal.

(c) Fines, fees, costs, and forfeitures collected for cases transferred under this section shall be transferred to the court receiving the case. If the case is dismissed, any fines, fees, costs, and forfeitures collected shall be returned to the defendant.

Section 8. Section 77-7-20 is amended to read:

**77-7-20. Delivery of citation to defendant -- Filing in court -- Electronic filing -- Contents of citations.**

(1) A peace officer or ~~[public]~~ other authorized official who issues a citation pursuant to Section 77-7-18 shall give the citation to the person cited and shall within five business days electronically file the data from Subsections (2)(a) through (2)~~(g)~~(h) with the court specified

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in the citation. The data transmission shall use the court's electronic filing interface. A nonconforming filing is not effective.

(2) The citation issued under authority of this chapter shall contain the following data:

(a) the name, address, and phone number of the court before which the person is to appear;

(b) the name and date of birth of the person cited;

(c) a brief description of the offense charged;

(d) the date, time, and place at which the offense is alleged to have occurred;

(e) the date on which the citation was issued;

(f) the name of the peace officer or ~~[public]~~ official who issued the citation, and the name of the arresting person if an arrest was made by a private party and the citation was issued in lieu of taking the arrested person before a magistrate;

(g) the ~~[time and]~~ date on or before and after which the person is to appear or a statement that the court will notify the person of the time to appear;

~~[(h) the address of the court in which the person is to appear;]~~

(h) whether the defendant was arrested and delivered to a custodial facility for other reasons at the time the citation was issued;

(i) whether the offense is a domestic violence offense; and

(j) a notice containing substantially the following language:

### READ CAREFULLY

This citation is not an information and will not be used as an information without your consent. If an information is filed you will be provided a copy by the court. You MUST appear in court on or before the time set in this citation or as directed by the court. IF YOU FAIL TO APPEAR, THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST. A WILLFUL FAILURE TO APPEAR CONSTITUTES CONTEMPT OF COURT.

(3) By electronically filing the data with the court, the peace officer or ~~[public]~~ official ~~[certifies]~~ affirms to the court that:

(a) the citation or information, including the summons and complaint, was ~~[served upon]~~ delivered to the defendant ~~[in accordance with the law];~~

(b) the defendant committed the offense set forth in the ~~[served documents]~~ citation;  
and

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(c) the court to which the defendant was directed to appear [~~is the proper court pursuant to Section 77-7-21~~] has jurisdiction over the offense charged.

(4) Notwithstanding Subsection (1), if a citing law enforcement officer is not reasonably able to access the e filing system, the citation need not be filed electronically if being filed with a justice court.

(5) After a citation is issued, it is a class B misdemeanor for any peace officer or other person to knowingly or intentionally dispose of that citation, other than by filing it with the appropriate court.

Section 9. Section 77-7-21 is repealed and reenacted to read:

**77-7-21. Proceeding on citation -- Remittance of fine -- Parental notification required.**

(1) (a) A citation filed with the court may, with the consent of the defendant, serve in lieu of an information before trial. The person cited may plead guilty or no contest to the charge listed and be sentenced.

(b) If provided by the uniform fine schedule adopted by the Judicial Council, or with the court's approval, a person may remit the fine and other penalties without a personal appearance before the court in any case charging a class B misdemeanor or lower offense, unless the charge is:

(i) a domestic violence offense as defined in Section 77-36-1;

(ii) a violation of Section 41-6a-502, driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration;

(iii) a violation of Section 41-6a-517, driving with any measurable controlled substance in the body; or

(iv) a violation of a local ordinance similar to the offenses described in Subsections (1)(b)(i) through (iii).

(c) The remittal of fines and other penalties shall be entered as a conviction and treated the same as if the accused pleaded no contest.

(d) If the person cited is under 18 years of age, the court shall promptly mail a copy of the citation or a notice of the citation to the address given on the citation, to the attention of the parent or guardian of the defendant.

(2) If the person pleads not guilty to the offense or offenses charged, further

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proceedings shall be held in accordance with the Utah Rules of Criminal Procedure.

Section 10. Section 77-7-22 is repealed and reenacted to read:

### **77-7-22. Persons arrested pursuant to warrant -- Presentment to court --**

#### **Notification to court.**

(1) A person arrested pursuant to a warrant:

(a) may, during court hours and if a judge is available, be delivered to the court issuing the warrant;

(b) may be delivered to a custodial facility and, after booking, shall be released with instructions to appear or contact the court if the person has met all conditions of release, including posting any monetary bail set by the court;

(c) shall, if arrested on an out of state warrant pursuant to Section 77-7-18, be subject to the conditions in Title 77, Chapter 30, Extradition;

(d) shall, if arrested and booked in the county in which the warrant was issued and is not released pursuant to Subsection (1)(b), appear before the issuing court within three business days of being booked; and

(e) shall, if arrested and booked in a county in which the warrant was not issued and is not released pursuant to Subsection (1)(b), be delivered to the issuing county no later than the second business day after the defendant's holds in the arresting county are resolved.

(2) If a person is released under this section, the arresting officer or custodial authority shall:

(a) notify the issuing court of the defendant's arrest and release; and

(b) forward any monetary amounts, surety information, and proof of compliance with release conditions to the court.

(3) Nothing in Subsection (1)(e) prevents a court from arranging for temporary transport, or video hearings, before the defendant is released in the arresting county.

Section 11. Section 77-7-23 is repealed and reenacted to read:

**77-7-23. Delivery of person arrested without warrant to magistrate -- Release unless probable cause to justify arrest -- Release if no formal charges filed -- Extensions of time.**

(1) When an arrest is made without a warrant by a peace officer, the peace officer shall immediately:

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(a) deliver the person to the court with jurisdiction over the offense; or

(b) deliver the person to a custodial facility and submit to a magistrate a sworn statement of probable cause in accordance with the Utah Rules of Criminal Procedure.

(2) The magistrate shall determine if probable cause exists to justify the continued detention of the defendant. The magistrate will determine pre-trial release in accordance with Title 77, Chapter 20, Bail.

(3) When an arrest is made by a private person, that person shall immediately contact a peace officer, who shall, if appropriate, take custody of the arrestee and comply with Subsection (1).

(4) The custodial authority shall release any arrested person not later than 24 hours after delivery to the facility unless a magistrate has found probable cause under Subsection (1)(b) or has ordered an extension of the time to do so.

(5) The custodial authority shall release any arrested person who remains in custody at 5:00 p.m. on the third business day after the probable cause determination, unless the custodial authority receives from a prosecuting attorney or a court:

(a) notice of filing of an information or indictment, and a warrant or order of the court setting monetary bail and any other conditions of release; or

(b) a judicial order extending the time to file an information or indictment.

(6) The custodial authority shall release the arrestee if a notice pursuant to Subsection (4) or (5)(b) is not received by the expiration of the time set by the order.

Section 12. Section **77-18a-1** is amended to read:

### **77-18a-1. Appeals -- When proper.**

(1) A defendant may, as a matter of right, appeal from:

(a) a final judgment of conviction, whether by verdict or plea;

(b) an order made after judgment that affects the substantial rights of the defendant;

(c) an order adjudicating the defendant's competency to proceed further in a pending prosecution; or

(d) an order denying bail, as provided in Subsection [~~77-20-1(7)~~] 77-20-3(4).

(2) In addition to any appeal permitted by Subsection (1), a defendant may seek discretionary appellate review of any interlocutory order.

(3) The prosecution may, as a matter of right, appeal from:

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- (a) a final judgment of dismissal, including a dismissal of a felony information following a refusal to bind the defendant over for trial;
- (b) a pretrial order dismissing a charge on the ground that the court's suppression of evidence has substantially impaired the prosecution's case;
- (c) an order granting a motion to withdraw a plea of guilty or no contest;
- (d) an order arresting judgment or granting a motion for merger;
- (e) an order terminating the prosecution because of a finding of double jeopardy or denial of a speedy trial;
- (f) an order granting a new trial;
- (g) an order holding a statute or any part of it invalid;
- (h) an order adjudicating the defendant's competency to proceed further in a pending prosecution;
- (i) an order finding, pursuant to Title 77, Chapter 19, Part 2, Competency for Execution, that an inmate sentenced to death is incompetent to be executed;
- (j) an order reducing the degree of offense pursuant to Section 76-3-402; or
- (k) an illegal sentence.

(4) In addition to any appeal permitted by Subsection (3), the prosecution may seek discretionary appellate review of any interlocutory order entered before jeopardy attaches.

Section 13. Section **77-20-1** is repealed and reenacted to read:

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

(1) As used in this chapter:

(a) "Bail bond agency" means the same as that term is defined in Section 31A-35-102.

(b) "Surety" and "sureties" mean a surety insurer or a bail bond agency.

(c) "Surety insurer" means the same as that term is defined in Section 31A-35-102.

(2) A person charged with or arrested for a criminal offense shall be eligible for pre-trial release on conditions set by a magistrate or judge. However, a magistrate or judge may deny pre-trial release if a person is arrested for, or charged with a:

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

(b) felony supported by substantial evidence and the offense is alleged to have occurred while the person was on probation, parole, or pre-trial release on a previous felony charge;

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(c) felony supported by substantial evidence and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person, the community, or is likely to flee the jurisdiction of the court if released and any available conditions of release would not satisfactorily mitigate that risk; or

(d) felony supported by substantial evidence and the court finds that the person violated a material condition of pre-trial release in the present case.

(3) For purposes of this chapter, 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 not to 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.

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

(a) may not be released before the expiration of the time to file an information pursuant to Section 77-7-23, or any allowed extension of that time; and

(b) may not be released before the defendant's initial appearance in court pursuant to Section 77-36-2.6 if an information or indictment are filed alleging a violation of that section and the person is in custody.

(5) If during the time described in Subsection (4)(a) the custodial authority is notified by the appropriate prosecutorial authority that it declines to file charges, the person shall be released on those charges.

(6) Any person eligible for pre-trial release may be released either on the person's own recognizance or upon posting monetary bail. The magistrate or judge shall impose the least restrictive conditions that will reasonably:

(a) ensure the appearance of the accused; and

(b) ensure the safety of an individual or individuals.

Section 14. Section 77-20-3 is repealed and reenacted to read:

**77-20-3. Pre-trial release -- Modifying conditions of release.**

(1) The initial order establishing conditions of release or denying bail shall be issued:

(a) by a magistrate at the time probable cause is determined; or

(b) by the court upon the filing of an information or indictment, if a defendant has not

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previously been arrested.

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

(3) Subsequent review and modifications shall be conducted in accordance with the Utah Rules of Criminal Procedure.

(4) Notwithstanding Section 78A-7-118, an appeal may be taken from an order of any court denying pre-trial release in accordance with the Utah Rules of Appellate Procedure and Utah Rules of Criminal Procedure. The appellate court shall review if the determination is made in accordance with Section 77-20-1.

Section 15. Section ~~77-20-4~~ is amended to read:

**77-20-4. Monetary bail to be posted in cash, by credit or debit card, or by written undertaking.**

~~[(1) Bail may be posted:]~~

(1) For purposes of this chapter, "monetary bail" means any amount of financial security that a court orders posted to ensure a person's continued appearance at court hearings.

(2) Except as provided in Subsection (3), the judge or magistrate shall set monetary bail at a single amount per ~~charge~~ case. The defendant may post that amount by any of the following methods:

(a) in cash;

(b) by ~~[written undertaking with or without sureties at the discretion of the magistrate; or]~~ execution of a bail bond guaranteed by a surety licensed under Title 31A, Chapter 35, Bail Bond Act;

(c) by credit or debit card, at the discretion of the ~~[judge or bail commissioner.]~~ custodial authority; or

(d) by written undertaking guaranteed by sureties with a net worth of at least twice the amount of the undertaking, exclusive of property exempt from execution.

~~[(2) Bail may not be accepted without receiving in writing at the time the bail is posted the current mailing address and telephone number of the surety:]~~

(3) If a person has ~~previously~~ failed to appear ~~on a warrant~~ at least one other time in the case or has a history of failing to appear in other cases, a court may limit a defendant to posting a certain type of monetary bail if the court determines that the restriction is necessary to

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reasonably guarantee the defendant's appearance or ensure the ~~integrity~~safety of ~~the court process~~an individual or individuals.

~~[(3) Bail posted]~~ (4) Amounts paid by debit or credit card, less the fee charged by the financial institution, shall be tendered to the courts.

~~[(4) Bail]~~ (5) Amounts refunded by the court may be refunded by credit to the debit or credit card, or cash. The amount refunded shall be the full amount received by the court under Subsection ~~[(3)]~~ (4), which may be less than the full amount of the bail set by the court.

~~[(5)]~~ (6) Before refunding ~~[bail that is]~~ amounts posted ~~[by the defendant]~~ in cash, by credit card, or by debit card, the court may apply the amount posted toward criminal judgement accounts receivable, as defined in Section ~~[76-3-201.1]~~ 76-3-201, that are owed by the defendant in the priority set forth in Section 77-38a-404.

(7) If a defendant fails to appear after posting monetary bail in the form of cash or credit card payment in a case for which a personal appearance is not required by the uniform fine schedule or court order, the court may enter a conviction and apply the monetary bail to fines and other penalties. The court shall then close the case.

Section 16. Section 77-20-5 is repealed and reenacted to read:

### **77-20-5. Qualifications of sureties -- Justification -- Requirements of undertaking.**

(1) Each surety described in Subsection 77-20-4(1)(d) shall justify by affidavit upon the undertaking and each may be further examined upon oath by the magistrate or by the prosecuting attorney in the presence of a magistrate, in respect to the surety's property and net worth.

(2) The undertaking shall, in addition to other requirements, provide that each surety submit to the jurisdiction of the court and irrevocably appoint the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the undertaking may be served, and that the surety's liability may be enforced on motion and upon any notice the court may require without the necessity of an independent action.

(3) The sureties shall also comply with Utah Rules of Civil Procedure, Rule 72.

Section 17. Section 77-20-7 is amended to read:

**77-20-7. Duration of liability on undertaking -- Notices to sureties -- Exoneration if charges not filed.**

(1) (a) Except as provided in Subsection (1)(b), the principal and the sureties on ~~[the]~~ a

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bail bond or other written undertaking are liable on the bail bond or undertaking during all proceedings and for all court appearances required of the defendant up to and including the surrender of the defendant for sentencing, irrespective of any contrary provision in the bond or undertaking. Any failure of the defendant to appear when required is a breach of the conditions of the bond or undertaking [~~or bail~~] and subjects [it] the bond or undertaking to forfeiture, regardless of whether or not notice of appearance was given to the sureties. Upon sentencing, the bond or undertaking shall be exonerated without motion.

(b) If the sentence includes a commitment to a jail or prison, the bond or undertaking shall be exonerated when the defendant appears at the appropriate jail or prison, unless the judge doesn't require the defendant to begin the commitment within seven days, in which case the bond or undertaking is exonerated upon sentencing.

(c) For purposes of this section, an order of the court accepting a plea in abeyance agreement and holding that plea in abeyance pursuant to Title 77, Chapter 2a, Pleas in Abeyance, is considered to be the same as a sentencing upon a guilty plea.

(d) Any suspended or deferred sentencing is not the responsibility of the surety and the bond is exonerated without any motion, upon acceptance of the court and the defendant of a plea in abeyance, probation, fine payments, post sentencing reviews, or any other deferred sentencing reviews or any other deferred sentencing agreement.

(e) If a surety issues a bond after [~~the~~] sentencing, the surety is liable on the undertaking during all proceedings and for all court appearances required of the defendant up to and including the defendant's appearance to commence serving the sentence imposed under Subsection (1).

~~[(2) If no information or indictment charging a person with an offense is filed in court within 120 days after the date of the bail undertaking or cash receipt, the court may relieve a person from conditions of release at the person's request, and the bond or undertaking is exonerated without further order of the court unless the prosecutor requests an extension of time before the end of the 120-day period by:]~~

~~[(a) filing a notice for extension with the court; and]~~

~~[(b) serving the notice for extension upon the sureties and the person or his attorney.]~~

~~[(3) A court may extend bail and conditions of release for good cause.]~~

(2) If no information, indictment, or request to extend time to file by the prosecutor is

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filed in court within 120 days after the ordered release on conditions, the court shall:

- (a) relieve a person from the conditions of release;
- (b) refund as provided in Subsection 77-20-4(5) any monetary bail to the person; and
- (c) exonerate any bail bond or undertaking without further order of the court.

(3) A request to extend time:

(a) shall be served on any surety and the arrested person or the arrested person's attorney;

(b) shall be granted by the court for a period of up to 60 days; or

(c) may be granted for a period of up to 120 days upon a showing of good cause.

(4) [~~Subsection (2)~~] An extension of time sought or granted under this section does not prohibit the otherwise proper filing of charges against a person at any time.

(5) If the court does not set on a calendar any hearings on a case within 18 months of the last court docket activity on a case, the undertaking of bail is exonerated without motion.

Section 18. Section **77-20-8** is amended to read:

**77-20-8. Grounds for detaining or releasing defendant on conviction and prior to sentence.**

(1) Upon conviction[;] for a felony, whether by plea or trial, the court shall order [~~that~~] the [~~convicted~~] defendant [~~who is waiting imposition or execution of sentence~~] be detained until the time for sentencing, unless the court finds by clear and convincing evidence presented by the defendant that the defendant is not likely to flee the jurisdiction of the court, and will not pose a danger to the physical, psychological, or financial and economic safety or well-being of any other person or the community if released.

(2) Upon conviction for a misdemeanor, whether by plea or trial, the court may order the defendant be detained until the time for sentencing if the court finds by a preponderance of the evidence that the defendant is likely to flee the jurisdiction of the court, or poses a danger to the physical, psychological, or financial and economic safety or well-being of any other person or the community if released.

[~~(2)~~] (3) If the court finds the defendant does not need to be detained, the court shall order the release of the defendant on suitable conditions, which may include the conditions under Subsection 77-20-10(2).

Section 19. Section **77-20-9** is amended to read:

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### 77-20-9. Disposition of forfeitures.

If by reason of the neglect of the defendant to appear, money deposited [~~instead of bail~~] as a financial condition or money paid by sureties on surety bond is forfeited and the forfeiture is not discharged or remitted, the clerk with whom it is deposited or paid shall, immediately after final adjournment of the court, pay over the money forfeited as follows:

- (1) the forfeited [~~bail~~] amount in cases in or appealed from district courts shall be distributed as provided in Section 78A-5-110;
- (2) the forfeited [~~bail~~] amount in cases in precinct justice courts or in municipal justice courts shall be distributed as provided in Sections 78A-7-120 and 78A-7-121;
- (3) the forfeited [~~bail~~] amount in cases in justice courts where the offense is not triable in that court shall be paid into the General Fund; and
- (4) the forfeited [~~bail~~] amount in cases not provided for in this section shall be paid 50% to the state treasurer and the remaining 50% to the county treasurer in the county in which the violation occurred or the forfeited [~~bail~~] amount is collected.

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

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

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

- (a) mail notice of nonappearance by certified mail, return receipt requested, within 30 days to the address of the surety;
- (b) notify the surety as listed on the bond of the name, address, and telephone number of the prosecutor;
- (c) deliver a copy of the notice sent under Subsection (1)(a) to the prosecutor's office at the same time notice is sent under Subsection (1)(a); [~~and~~]
- (d) ensure that the name, address, and telephone number of the surety or its agent as listed on the bond is stated on the bench warrant[-];
- (e) mail notice of the failure to appear to the bail agent if the surety is different than the producer's agent[-]; and

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(f) send the bench warrant to the statewide warrant system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 21. Section **77-20b-102** is amended to read:

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

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

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

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

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

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

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Section 22. Section **77-20b-105** is amended to read:

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

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

- (1) the defendant has been booked for failure to appear regarding the charge for which the bond was issued; or
- (2) the defendant is in custody and the surety has served the defendant's bond revocation on the custodial authority.

Section 23. Section **78A-2-220** is amended to read:

### **78A-2-220. Authority of magistrate.**

(1) Except as otherwise provided by law, a magistrate as defined in Section 77-1-3 shall have the authority to:

- (a) commit a person to incarceration prior to trial;
- (b) set or deny bail under Section 77-20-1 and release upon the payment of bail and satisfaction of any other conditions of release;
- (c) issue to any place in the state summonses and warrants of search and arrest and authorize administrative traffic checkpoints under Section 77-23-104;
- (d) conduct an initial appearance;
- (e) conduct arraignments;
- (f) conduct a preliminary examination to determine probable cause;
- (g) appoint attorneys and order recoupment of attorney fees;
- (h) order the preparation of presentence investigations and reports;
- (i) issue temporary orders as provided by rule of the Judicial Council; and
- (j) perform any other act or function authorized by statute.

(2) A judge of the justice court may exercise the authority of a magistrate specified in Subsection (1) with the following limitations:

- (a) a judge of the justice court may conduct an initial appearance, preliminary examination, or arraignment as provided by rule of the Judicial Council; and
- (b) a judge of the justice court may not [~~set bail~~] perform any act or function in a capital felony [~~nor deny bail in any~~] case.

Section 24. Section **78B-6-301** is amended to read:

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### 78B-6-301. Acts and omissions constituting contempt.

The following acts or omissions in respect to a court or its proceedings are contempts of the authority of the court:

(1) disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to interrupt the course of a trial or other judicial proceeding;

(2) breach of the peace, boisterous conduct or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding;

(3) misbehavior in office, or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, or other person appointed or elected to perform a judicial or ministerial service;

(4) deceit, or abuse of the process or proceedings of the court, by a party to an action or special proceeding;

(5) disobedience of any lawful judgment, order or process of the court;

(6) acting as an officer, attorney or counselor, of a court without authority;

(7) rescuing any person or property that is in the custody of an officer by virtue of an order or process of the court;

(8) unlawfully detaining a witness or party to an action while going to, remaining at, or returning from, the court where the action is on the calendar for trial;

(9) any other unlawful interference with the process or proceedings of a court;

(10) disobedience of a subpoena duly served, or refusing to be sworn or to answer as a witness;

(11) when summoned as a juror in a court, neglecting to attend or serve, or improperly conversing with a party to an action to be tried at the court, or with any other person, concerning the merits of an action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the communication to the court; ~~[and]~~

(12) willfully failing to appear before a court pursuant to a citation issued under the provisions of Section 77-7-18; and

~~[(12)]~~ (13) disobedience by an inferior tribunal, magistrate or officer of the lawful judgment, order or process of a superior court, or proceeding in an action or special proceeding contrary to law, after the action or special proceeding is removed from the jurisdiction of the inferior tribunal, magistrate or officer. Disobedience of the lawful orders or process of a

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judicial officer is also a contempt of the authority of the officer.

Section 25. **Repealer.**

This bill repeals:

Section **77-7-24, Notice to appear in court -- Contents -- Promise to comply -- Signing -- Release from custody -- Official misconduct.**

Section **77-7-25, Keeping of records -- Making and forwarding of abstract upon conviction or forfeiture of bail -- Form and contents -- Official misconduct.**

Section **77-7-26, Improper disposition or cancellation of notice to appear or traffic citation -- Official misconduct -- Misdemeanor.**

Section 26. **Coordinating H.B. 297 with S.B. 105 -- Superseding amendments.**

If this H.B. 297 and S.B. 105, Bail Amendments, both pass and become law, it is the intent of the Legislature that:

(1) Section 77-20-4 in H.B. 297 supersede Section 77-20-4 in S.B. 105, when the Office of Legislative Research and General Counsel prepares the Utah Code database for publication; and

(2) Section 77-20-5 in H.B. 297 supersede Section 77-20-5 in S.B. 105, when the Office of Legislative Research and General Counsel prepares the Utah Code database for publication.