

PRE-TRIAL RELEASE AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Eric K. Hutchings

LONG TITLE

General Description:

This bill modifies provisions of 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 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 for pre-trial release conditions that may be ordered by the court;
- ▶ provides that a court may order a defendant detained until the time of sentencing under certain circumstances;



28 ▶ makes the failure to appear in court pursuant to a citation a contemptible offense
29 under certain circumstances; and

30 ▶ makes technical changes.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 **AMENDS:**

- 37 **41-22-16**, as last amended by Laws of Utah 2005, Chapter 2
- 38 **73-18-20**, as last amended by Laws of Utah 2005, Chapter 2
- 39 **73-18a-15**, as last amended by Laws of Utah 2005, Chapter 2
- 40 **76-3-301.5**, as enacted by Laws of Utah 1988, Chapter 152
- 41 **77-7-18**, as last amended by Laws of Utah 2012, Chapter 322
- 42 **77-7-19**, as last amended by Laws of Utah 2009, Chapter 292
- 43 **77-7-20**, as last amended by Laws of Utah 2014, Chapters 126 and 263
- 44 **77-18a-1**, as last amended by Laws of Utah 2009, Chapter 175
- 45 **77-20-4**, as last amended by Laws of Utah 2014, Chapter 170
- 46 **77-20-7**, as last amended by Laws of Utah 2011, Chapter 179
- 47 **77-20-8**, as last amended by Laws of Utah 1988, Chapter 160
- 48 **77-20-8.5**, as last amended by Laws of Utah 2001, Chapter 245
- 49 **77-20-9**, as last amended by Laws of Utah 2008, Chapter 3
- 50 **78A-2-220**, as last amended by Laws of Utah 2013, Chapter 245
- 51 **78B-6-301**, as renumbered and amended by Laws of Utah 2008, Chapter 3

52 **ENACTS:**

- 53 **77-20-1.5**, Utah Code Annotated 1953
- 54 **77-20-1.6**, Utah Code Annotated 1953

55 **REPEALS AND REENACTS:**

- 56 **76-8-312**, as last amended by Laws of Utah 1974, Chapter 32
- 57 **77-2-1.1**, as enacted by Laws of Utah 1992, Chapter 33
- 58 **77-7-21**, as last amended by Laws of Utah 2009, Chapter 292

- 59 [77-7-22](#), as enacted by Laws of Utah 1980, Chapter 15
- 60 [77-7-23](#), as last amended by Laws of Utah 1997, Chapters 10 and 215
- 61 [77-20-1](#), as last amended by Laws of Utah 2015, Chapter 99
- 62 [77-20-3](#), as last amended by Laws of Utah 1998, Chapter 293
- 63 [77-20-5](#), as last amended by Laws of Utah 1998, Chapter 293

64 REPEALS:

- 65 [10-3-920](#), as last amended by Laws of Utah 2015, Chapter 99
- 66 [10-3-921](#), as last amended by Laws of Utah 1990, Chapter 283
- 67 [10-3-922](#), as last amended by Laws of Utah 1990, Chapter 283
- 68 [17-32-1](#), as last amended by Laws of Utah 2015, Chapter 99
- 69 [17-32-2](#), as last amended by Laws of Utah 1990, Chapter 283
- 70 [17-32-3](#), as last amended by Laws of Utah 1990, Chapter 283
- 71 [17-32-4](#), as last amended by Laws of Utah 1990, Chapter 283
- 72 [77-7-24](#), as renumbered and amended by Laws of Utah 2005, Chapter 2
- 73 [77-7-25](#), as renumbered and amended by Laws of Utah 2005, Chapter 2
- 74 [77-7-26](#), as renumbered and amended by Laws of Utah 2005, Chapter 2

75

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

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

78 **41-22-16. Authorized peace officers -- Arrest provisions.**

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

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

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

86 **73-18-20. Enforcement of chapter -- Authority to stop and board vessels --**
87 **Disregarding law enforcement signal to stop as misdemeanor -- Procedure for arrest.**

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

90 chapter.

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

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

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

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

106 **73-18a-15. Arrest for violation -- Procedure.**

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

110 Section 4. Section **76-3-301.5** is amended to read:

111 **76-3-301.5. Uniform fine schedule -- Judicial Council.**

112 (1) The Judicial Council shall establish a uniform recommended fine schedule for each
113 offense under Subsection [76-3-301\(1\)](#).

114 (a) The fine for each offense shall proportionally reflect the seriousness of the offense
115 and other factors as determined in writing by the Judicial Council.

116 (b) The schedule shall [~~be reviewed annually by the Judicial Council~~] identify the class
117 B and C misdemeanors and infractions for which a personal appearance is not required.

118 (c) The fines shall be collected under Section [77-18-1](#).

119 (2) The schedule shall incorporate:

120 (a) criteria for determining aggravating and mitigating circumstances; and

121 (b) guidelines for enhancement or reduction of the fine, based on aggravating or
122 mitigating circumstances.

123 (3) Presentence investigation reports shall include documentation of aggravating and
124 mitigating circumstances as determined under the criteria, and a recommended fine under the
125 schedule.

126 (4) The Judicial Council shall also establish a separate uniform recommended fine
127 schedule for the juvenile court and by rule provide for its implementation.

128 (5) This section does not prohibit the court from in its discretion imposing no fine, or a
129 fine in any amount up to and including the maximum fine, for the offense.

130 Section 5. Section **76-8-312** is repealed and reenacted to read:

131 **76-8-312. Bail jumping.**

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

134 Section 6. Section **77-2-1.1** is repealed and reenacted to read:

135 **77-2-1.1. Signing and filing of information.**

136 The prosecuting attorney shall:

137 (1) sign all informations; and

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

139 Criminal Procedure.

140 Section 7. Section **77-7-18** is amended to read:

141 **77-7-18. Citation on misdemeanor or infraction charge.**

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

144 (1) Except as provided in Subsection (3) a peace officer, who has detained a person and
145 intends to charge the person with a class B or C misdemeanor or an infraction, may not deliver
146 that person to a custodial facility. Instead, the officer shall screen the charges as provided in

147 Title 77, Chapter 2, Prosecution, Screening, and Diversion, or issue a citation that requires the
148 person to appear at the court [of the magistrate] with [territorial] jurisdiction. [The citation may
149 be issued by: (1) a peace officer, in lieu of or in addition to taking the person into custody;

150 ~~(2)]~~

151 (2) In addition to peace officers, the following individuals may issue citations for class

152 B or C misdemeanors or infractions:

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

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

156 ~~[(4)]~~ (c) an animal control officer of a special service district under Title 17D, Chapter
157 1, Special Service District Act, who is authorized to provide animal control service; and

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

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

161 (a) any class B misdemeanor violation of Title 41, Chapter 6a, Part 5, Driving Under
162 the Influence and Reckless Driving;

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

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

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

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

169 Section 8. Section 77-7-19 is amended to read:

170 **77-7-19. Appearance required by citation -- Arrest for failure to appear --**
171 **Transfer or dismissal of improperly filed cases.**

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

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

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

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

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

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

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

190 ~~[(5) Any justice court judge may, upon the motion of either the defense attorney or~~
191 ~~prosecuting attorney, based on a lack of territorial jurisdiction or the disqualification of the~~
192 ~~judge, transfer cases to a justice court with territorial jurisdiction or the district court within the~~
193 ~~county:]~~

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

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

199 ~~[(6)]~~ (5) (a) Clerks and other administrative personnel serving the courts shall ~~[ensure~~
200 ~~that all citations for violation of Title 41, Motor Vehicles, are filed in a court with jurisdiction~~
201 ~~and venue and shall refuse to receive]~~ identify for the judge any citations that should ~~[be]~~ have
202 been filed in another court.

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

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

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

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

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

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

217 Section 9. Section 77-7-20 is amended to read:

218 **77-7-20. Delivery of citation to defendant -- Filing in court -- Electronic filing --**
219 **Contents of citations.**

220 (1) A peace officer or ~~[public]~~ other authorized official who issues a citation pursuant
221 to Section 77-7-18 shall give the citation to the person cited and shall within five business days
222 electronically file the data from Subsections (2)(a) through (2)~~(g)~~(h) with the court specified
223 in the citation. The data transmission shall use the court's electronic filing interface. A
224 nonconforming filing is not effective.

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

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

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

229 (c) a brief description of the offense charged;

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

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

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

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

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

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

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

241 (j) a notice containing substantially the following language:

242 READ CAREFULLY

243 This citation is not an information and will not be used as an information without your
244 consent. If an information is filed you will be provided a copy by the court. You MUST

245 appear in court on or before the time set in this citation or as directed by the court. IF YOU
 246 FAIL TO APPEAR, THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST. A
 247 WILLFUL FAILURE TO APPEAR CONSTITUTES CONTEMPT OF COURT.

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

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

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

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

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

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

262 Section 10. Section 77-7-21 is repealed and reenacted to read:

263 **77-7-21. Proceeding on citation -- Remittance of fine -- Parental notification**
 264 **required.**

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

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

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

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

275 (iii) a violation of Section 41-6a-517, driving with any measurable controlled substance

276 in the body; or

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

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

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

284 (2) If the person pleads not guilty to the offense or offenses charged, further
285 proceedings shall be held in accordance with the Utah Rules of Criminal Procedure.

286 Section 11. Section [77-7-22](#) is repealed and reenacted to read:

287 **77-7-22. Persons arrested pursuant to warrant -- Presentment to court --**

288 **Notification to court.**

289 (1) A person arrested pursuant to a warrant:

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

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

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

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

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

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

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

306 (b) forward any monetary amounts, surety information, and proof of compliance with

307 release conditions to the court.

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

310 Section 12. Section **77-7-23** is repealed and reenacted to read:

311 **77-7-23. Delivery of person arrested without warrant to magistrate -- Release**
312 **unless probable cause to justify arrest -- Release if no formal charges filed -- Extensions**
313 **of time.**

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

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

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

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

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

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

328 (5) The custodial authority shall release any arrested person who remains in custody at
329 5:00 p.m. on the third business day after the person is delivered to the facility, unless the
330 custodial authority receives from a prosecuting attorney or a court:

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

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

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

336 Section 13. Section **77-18a-1** is amended to read:

337 **77-18a-1. Appeals -- When proper.**

- 338 (1) A defendant may, as a matter of right, appeal from:
- 339 (a) a final judgment of conviction, whether by verdict or plea;
- 340 (b) an order made after judgment that affects the substantial rights of the defendant;
- 341 (c) an order adjudicating the defendant's competency to proceed further in a pending
- 342 prosecution; or
- 343 (d) an order denying bail, as provided in Subsection [~~77-20-1(7)~~] 77-20-3(3).
- 344 (2) In addition to any appeal permitted by Subsection (1), a defendant may seek
- 345 discretionary appellate review of any interlocutory order.
- 346 (3) The prosecution may, as a matter of right, appeal from:
- 347 (a) a final judgment of dismissal, including a dismissal of a felony information
- 348 following a refusal to bind the defendant over for trial;
- 349 (b) a pretrial order dismissing a charge on the ground that the court's suppression of
- 350 evidence has substantially impaired the prosecution's case;
- 351 (c) an order granting a motion to withdraw a plea of guilty or no contest;
- 352 (d) an order arresting judgment or granting a motion for merger;
- 353 (e) an order terminating the prosecution because of a finding of double jeopardy or
- 354 denial of a speedy trial;
- 355 (f) an order granting a new trial;
- 356 (g) an order holding a statute or any part of it invalid;
- 357 (h) an order adjudicating the defendant's competency to proceed further in a pending
- 358 prosecution;
- 359 (i) an order finding, pursuant to Title 77, Chapter 19, Part 2, Competency for
- 360 Execution, that an inmate sentenced to death is incompetent to be executed;
- 361 (j) an order reducing the degree of offense pursuant to Section 76-3-402; or
- 362 (k) an illegal sentence.
- 363 (4) In addition to any appeal permitted by Subsection (3), the prosecution may seek
- 364 discretionary appellate review of any interlocutory order entered before jeopardy attaches.
- 365 Section 14. Section 77-20-1 is repealed and reenacted to read:
- 366 **77-20-1. Right to bail -- Denial of bail -- Hearing.**
- 367 **(1) A person charged with or arrested for a criminal offense shall be eligible for**
- 368 **pre-trial release on conditions set by a magistrate or judge in accordance with this title, the**

369 Utah Rules of Criminal Procedure, and the policies of the Judicial Council. However, a
370 magistrate or judge may deny pre-trial release if a person is arrested for, or charged with a:

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

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

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

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

381 (e) domestic violence offense alleged to have been committed against an intimate
382 partner, as defined in 18 U.S.C. Sec. 921, if:

383 (i) the court finds by clear and convincing evidence that the person would constitute a
384 substantial danger to the victim if released on bail; or

385 (ii) the person was on pre-trial release for a domestic violence offense alleged against
386 the same intimate partner.

387 (2) For purposes of this chapter, any arrest or charge for a violation of Section
388 76-5-202, aggravated murder, is a capital felony unless:

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

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

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

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

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

399 (4) If during the time described in Subsection (3)(a) the custodial authority is notified

400 by the appropriate prosecutorial authority that it declines to file charges, the person shall be
401 released on those charges.

402 (5) During the hearing described in Subsection (3)(b) the court may deny bail pursuant
403 to Subsection (1)(e), if appropriate.

404 (6) Any person eligible for pre-trial release may be released either on the person's own
405 recognizance or upon the least restrictive conditions that the judge or magistrate finds will
406 reasonably:

407 (a) ensure the appearance of the accused;

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

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

411 (d) ensure the safety of the public.

412 Section 15. Section **77-20-1.5** is enacted to read:

413 **77-20-1.5. Pre-trial policies -- Judicial Council.**

414 (1) The Judicial Council shall create uniform policies and procedures to assist
415 magistrates and judges in making pre-trial release decisions that comply with the goals of
416 Subsection [77-20-1\(6\)](#).

417 (2) The Judicial Council shall ensure that the policies reflect best practices concerning
418 risk assessment and the appropriate use of and reliance on different tools for ensuring that the
419 public safety is protected and the efficient administration of justice is promoted.

420 Section 16. Section **77-20-1.6** is enacted to read:

421 **77-20-1.6. Pre-trial release conditions.**

422 As used in this title, pre-trial release conditions may include:

423 (1) the posting of monetary bail as defined in Section [77-20-4](#) in the least amount
424 calculated to guarantee the appearance of an arrestee or defendant as required;

425 (2) an order to not commit a federal, state, or local crime during the period of release;

426 (3) abiding by specified restrictions on personal associations, place of abode, or travel;

427 (4) reporting on a regular basis to pre-trial services or other designated agency;

428 (5) complying with a specified curfew;

429 (6) not using alcohol, or any narcotic drug or other controlled substances except as
430 prescribed by a licensed medical practitioner; and

431 (7) other conditions that are reasonably necessary to ensure the appearance of the
432 defendant as required and to assure the safety of any other person and the community.

433 Section 17. Section **77-20-3** is repealed and reenacted to read:

434 **77-20-3. Pre-trial Release -- Modifying conditions of release.**

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

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

437 (b) by the court upon the filing of an information or indictment, if a defendant has not
438 previously been arrested.

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

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

445 Section 18. Section **77-20-4** is amended to read:

446 **77-20-4. Monetary bail to be posted in cash, by credit or debit card, or by written**
447 **undertaking.**

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

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

451 (2) Monetary bail may be posted:

452 (a) in cash;

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

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

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

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

461 (3) A court may limit a defendant to posting a certain type of monetary bail if the court

462 determines that the restriction is necessary to reasonably guarantee the defendant's appearance
463 or the integrity of the court process.

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

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

469 ~~[(5)]~~ (6) Before refunding ~~[bail that is]~~ amounts posted ~~[by the defendant]~~ in cash, by
470 credit card, or by debit card, the court may apply the amount posted toward criminal judgement
471 accounts receivable, as defined in Section ~~[76-3-201.1]~~ 76-3-201, that are owed by the
472 defendant in the priority set forth in Section 77-38a-404.

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

477 Section 19. Section 77-20-5 is repealed and reenacted to read:

478 **77-20-5. Qualifications of sureties -- Justification -- Requirements of undertaking.**

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

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

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

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

490 **77-20-7. Duration of liability on undertaking -- Notices to sureties -- Exoneration**
491 **if charges not filed.**

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

493 bail bond or other written undertaking are liable on the bond or undertaking during all
 494 proceedings and for all court appearances required of the defendant up to and including the
 495 surrender of the defendant for sentencing, irrespective of any contrary provision in the bond or
 496 undertaking. Any failure of the defendant to appear when required is a breach of the conditions
 497 of the bond or undertaking [~~or bail~~] and subjects it to forfeiture as provided in Title 77, Chapter
 498 20b, Bail Surety, regardless of whether or not notice of appearance was given to the sureties.
 499 Upon sentencing, the bond or undertaking shall be exonerated without motion.

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

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

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

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

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

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

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

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

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

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

525 (a) relieve a person from the conditions of release;

526 (b) refund as provided in Subsection 77-20-4(5) any monetary bail to the person; and

527 (c) exonerate any bond or undertaking without further order of the court.

528 (3) A request to extend time:

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

530 attorney;

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

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

533 (4) [Subsection (2)] An extension of time sought or granted under this section does not

534 prohibit the otherwise proper filing of charges against a person at any time.

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

537 Section 21. Section 77-20-8 is amended to read:

538 **77-20-8. Grounds for detaining or releasing defendant on conviction and prior to**
539 **sentence.**

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

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

551 ~~[(2)]~~ (3) If the court finds the defendant does not need to be detained, the court shall
552 order the release of the defendant on suitable conditions, which may include the conditions
553 under Subsection 77-20-10(2).

554 Section 22. Section 77-20-8.5 is amended to read:

555 **77-20-8.5. Sureties -- Surrender of defendant -- Arrest of defendant.**

556 (1) (a) Sureties may at any time prior to a defendant's failure to appear surrender the
557 defendant and obtain exoneration of bail, by notifying the clerk of the court in which the bail
558 was posted of the defendant's surrender and requesting exoneration. Notification shall be made
559 immediately following the surrender by surface mail, electronic mail, or fax.

560 (b) To effect surrender, a certified copy of the surety's undertaking from the court in
561 which it was posted or a copy of the bail agreement with the defendant shall be delivered to the
562 on-duty jailer, who shall detain the defendant in the on-duty jailer's custody as upon a
563 commitment, and shall in writing acknowledge the surrender upon the copy of the undertaking
564 or bail agreement. The certified copy of the undertaking or copy of the bail agreement upon
565 which the acknowledgment of surrender is endorsed shall be filed with the court. The court
566 may then, upon proper application, order the undertaking exonerated and [may] shall order a
567 refund of any paid premium, or part of a premium, as it finds just.

568 (2) For the purpose of surrendering the defendant, the sureties may:

569 (a) arrest the defendant:

570 (i) at any time before the defendant is finally exonerated; and

571 (ii) at any place within the state; and

572 (b) surrender the defendant to any county jail booking facility in Utah.

573 (3) An arrest under this section is not a basis for exoneration of the bond under Section
574 **77-20b-101**.

575 (4) A surety acting under this section is subject to Title 53, Chapter 11, Bail Bond
576 Recovery Act.

577 Section 23. Section **77-20-9** is amended to read:

578 **77-20-9. Disposition of forfeitures.**

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

583 (1) the forfeited [~~bail~~] amount in cases in or appealed from district courts shall be
584 distributed as provided in Section **78A-5-110**;

585 (2) the forfeited [~~bail~~] amount in cases in precinct justice courts or in municipal justice

586 courts shall be distributed as provided in Sections 78A-7-120 and 78A-7-121;

587 (3) the forfeited [~~bail~~] amount in cases in justice courts where the offense is not triable
588 in that court shall be paid into the General Fund; and

589 (4) the forfeited [~~bail~~] amount in cases not provided for in this section shall be paid
590 50% to the state treasurer and the remaining 50% to the county treasurer in the county in which
591 the violation occurred or the forfeited [~~bail~~] amount is collected.

592 Section 24. Section 78A-2-220 is amended to read:

593 **78A-2-220. Authority of magistrate.**

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

596 (a) commit a person to incarceration prior to trial;

597 (b) set or deny bail under Section 77-20-1 and release upon the payment of bail and
598 satisfaction of any other conditions of release;

599 (c) issue to any place in the state summonses and warrants of search and arrest and
600 authorize administrative traffic checkpoints under Section 77-23-104;

601 (d) conduct an initial appearance;

602 (e) conduct arraignments;

603 (f) conduct a preliminary examination to determine probable cause;

604 (g) appoint attorneys and order recoupment of attorney fees;

605 (h) order the preparation of presentence investigations and reports;

606 (i) issue temporary orders as provided by rule of the Judicial Council; and

607 (j) perform any other act or function authorized by statute.

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

610 (a) a judge of the justice court may conduct an initial appearance, preliminary
611 examination, or arraignment as provided by rule of the Judicial Council; and

612 (b) a judge of the justice court may not [~~set bail~~] perform any act or function in a
613 capital felony [~~nor deny bail in any~~] case.

614 Section 25. Section 78B-6-301 is amended to read:

615 **78B-6-301. Acts and omissions constituting contempt.**

616 The following acts or omissions in respect to a court or its proceedings are contempts of

617 the authority of the court:

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

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

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

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

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

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

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

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

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

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

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

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

642 ~~[(12)]~~ (13) disobedience by an inferior tribunal, magistrate or officer of the lawful
643 judgment, order or process of a superior court, or proceeding in an action or special proceeding
644 contrary to law, after the action or special proceeding is removed from the jurisdiction of the
645 inferior tribunal, magistrate or officer. Disobedience of the lawful orders or process of a
646 judicial officer is also a contempt of the authority of the officer.

647 Section 26. **Repealer.**

648 This bill repeals:
649 Section **10-3-920, Bail commissioner -- Powers and duties.**
650 Section **10-3-921, Fines -- Collection by bail commissioner -- Disposition.**
651 Section **10-3-922, Term of bail commissioners -- Salary -- Bond and oath.**
652 Section **17-32-1, Powers and duties of bail commissioners.**
653 Section **17-32-2, Collection of fines by bail commissioners -- Disposition.**
654 Section **17-32-3, Term of bail commissioners -- No additional compensation --**
655 **Bond and oath.**
656 Section **17-32-4, Oaths and bonds to be filed.**
657 Section **77-7-24, Notice to appear in court -- Contents -- Promise to comply --**
658 **Signing -- Release from custody -- Official misconduct.**
659 Section **77-7-25, Keeping of records -- Making and forwarding of abstract upon**
660 **conviction or forfeiture of bail -- Form and contents -- Official misconduct.**
661 Section **77-7-26, Improper disposition or cancellation of notice to appear or traffic**
662 **citation -- Official misconduct -- Misdemeanor.**

Legislative Review Note
Office of Legislative Research and General Counsel