

HB0260S01 compared with HB0260

~~text~~ shows text that was in HB0260 but was deleted in HB0260S01.

Inserted text shows text that was not in HB0260 but was inserted into HB0260S01.

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Representative Edward H. Redd proposes the following substitute bill:

DRUG AND ALCOHOL TREATMENT RELATED

TO BAIL~~text~~

~~text~~ AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Edward H. Redd

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to court actions and drug and alcohol treatment.

Highlighted Provisions:

This bill:

- ▶ provides drug or alcohol detoxification procedures as an alternative to bail requirements; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

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Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-18a-1, as last amended by Laws of Utah 2016, Chapter 234

77-20-1, as last amended by Laws of Utah 2016, Chapter 234

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

Section 1. 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~~(8)~~(9).

(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:

- (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;

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(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 2. Section 77-20-1 is amended to read:

77-20-1. Right to bail -- Denial of bail -- Hearing -- Alternative to bail.

(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 admitted to bail as a matter of right, except if the person is charged with a:

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

(b) felony committed while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when the court finds there is substantial evidence to support the current felony charge;

(c) felony when there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person or to the community, or is likely to flee the jurisdiction of the court, if released on bail; or

(d) felony when the court finds there is substantial evidence to support the charge and it finds by clear and convincing evidence that the person violated a material condition of release while previously on bail.

(3) Any person who may be admitted to bail may be released either on the person's own recognizance or upon posting bail, on condition that the person appear in court for future court proceedings in the case, and on any other conditions imposed in the discretion of the magistrate or court that will reasonably:

(a) ensure the appearance of the accused;

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(b) ensure the integrity of the court process;

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

(d) ensure the safety of the public.

(4) (a) As used in this Subsection (4), "predetermined drug or alcohol detoxification procedure" means a specified procedure to be used in a jail, community treatment facility, or outpatient community setting to provide drug or alcohol detoxification.

(b) ~~{ff}~~ With concurrence of the { conditions of Subsection (4)(c) are met, a} prosecutor, a court may ~~{offer}~~ order a person charged with or arrested for a criminal offense to enter a predetermined drug or alcohol detoxification procedure as an alternative to posting bail, or as modification of bail or condition of release ~~{~~

~~—— (c) For a prosecutor to offer a predetermined drug or alcohol detoxification procedure:~~

~~—— (i) a licensed health care provider shall opine orally or in writing to the prosecutor that, if the court finds that:~~

(i) a predetermined drug or alcohol detoxification procedure is appropriate and recommended for the individual circumstances of the person who is charged or arrested;

(ii) the {prosecutor shall have written documentation that the } jail, community treatment facility, or outpatient community setting has the resources and personnel necessary to safely implement, monitor, treat, and complete a predetermined drug or alcohol detoxification procedure;

(iii) the jail, community treatment facility, or outpatient treatment setting {shall agree} agrees to accept and treat the person using a predetermined drug or alcohol detoxification procedure; and

(iv) the person charged with or arrested for a criminal offense {shall give} gives written informed consent or consent on the record for treatment using a predetermined drug or alcohol detoxification procedure.

(~~{d}~~ c) After a person charged with or arrested for a criminal offense starts or completes the recommended predetermined drug or alcohol detoxification procedure, the court or magistrate may release the person on the person's own recognizance or with other terms and conditions, including additional recommended treatments and interventions.

~~{ —— (c) A prosecutor may not require or coerce a person charged or arrested for a criminal~~

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~~offense to participate in a predetermined drug or alcohol detoxification procedure under this Subsection (4):~~

† [(4)] (5) (a) Except as otherwise provided, the initial order denying or fixing the amount of bail shall be issued by the magistrate or court issuing the warrant of arrest.

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

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

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

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

(ii) may be denied bail by the court under Subsection 77-36-2.5(8) ~~††~~ or ~~[(12)]~~ (11).

~~[(5)]~~ (6) The magistrate or court may rely upon information contained in:

(a) the indictment or information;

(b) any sworn probable cause statement;

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

(d) any other reliable record or source.

~~[(6)]~~ (7) (a) A motion to modify the initial order may be made by a party at any time upon notice to the opposing party sufficient to permit the opposing party to prepare for hearing and to permit any victim to be notified and be present.

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

(c) The magistrate or court may rely on information as provided in Subsection ~~[(5)]~~ (6) and may base its ruling on evidence provided at the hearing so long as each party is provided an opportunity to present additional evidence or information relevant to bail.

~~[(7)]~~ (8) Subsequent motions to modify bail orders may be made only upon a showing that there has been a material change in circumstances.

~~[(8)]~~ (9) An appeal may be taken from an order of any court denying bail to the Supreme Court, which shall review the determination under Subsection (2).

~~[(9)]~~ (10) For purposes of this section, any arrest or charge for a violation of Section 76-5-202, Aggravated murder, is a capital felony unless:

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

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Legislative Review Note

Office of Legislative Research and General Counsel†