

BAIL AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill modifies the Code of Criminal Procedure regarding bail.

Highlighted Provisions:

This bill:

- ▶ modifies the provisions regarding the release on bail to allow release by written undertaking or an equal amount of cash bail.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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 **77-20-1** is amended 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 admitted to bail as

30 a matter of right, except if the person is charged with a:

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

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

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

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

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

48 (a) ensure the appearance of the accused;

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

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

52 (d) ensure the safety of the public.

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

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

57 (c) A bail commissioner may set bail in a misdemeanor case in accordance with

58 Sections 10-3-920 and 17-32-1.

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

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

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

63 (5) The magistrate or court may rely upon information contained in:

64 (a) the indictment or information;

65 (b) any sworn probable cause statement;

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

67 (d) any other reliable record or source.

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

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

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

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

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

80 (9) For purposes of this section, any arrest or charge for a violation of Section
81 76-5-202, Aggravated murder, is a capital felony unless:

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

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