

BAIL AND PRETRIAL RELEASE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Pitcher

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill makes changes to provisions relating to bail.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a peace officer to issue a citation to an individual charged with certain offenses rather than arresting the individual;
- ▶ creates a presumption of release for individuals arrested for certain criminal offenses while the individual awaits trial;
- ▶ provides that a person who is eligible for pretrial release shall be released under the least restrictive conditions to ensure the appearance of the accused and the safety to the public;
- ▶ provides standards and guidance for imposition of pretrial release conditions and pretrial detention;
- ▶ creates a presumption of pretrial detention for certain criminal offenses;
- ▶ specifies the conditions under which a defendant may be denied pretrial release;
- ▶ specifies pretrial release conditions that may be ordered by the court;
- ▶ reduces the time allowance for bond forfeiture; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 77-7-2, as last amended by Laws of Utah 2011, Chapters 18 and 21

34 77-7-18, as last amended by Laws of Utah 2018, Chapter 379

35 77-7-19, as last amended by Laws of Utah 2009, Chapter 292

36 77-7-20, as last amended by Laws of Utah 2018, Chapter 309

37 77-7-21, as last amended by Laws of Utah 2009, Chapter 292

38 77-17-8, as last amended by Laws of Utah 1988, Second Special Session, Chapter 4

39 77-18a-1, as last amended by Laws of Utah 2016, Chapter 234

40 77-20-1, as last amended by Laws of Utah 2019, Chapters 184 and 397

41 77-20-4, as last amended by Laws of Utah 2019, Chapter 397

42 77-20-7, as last amended by Laws of Utah 2016, Chapter 234

43 77-20-8, as last amended by Laws of Utah 1988, Chapter 160

44 77-20-8.5, as last amended by Laws of Utah 2016, Chapter 234

45 77-20-9, as last amended by Laws of Utah 2018, Chapter 281

46 77-20-10, as last amended by Laws of Utah 2016, Chapter 234

47 77-20b-101, as last amended by Laws of Utah 2016, Chapter 234

48 77-20b-102, as last amended by Laws of Utah 2016, Chapter 234

49 77-20b-104, as last amended by Laws of Utah 2016, Chapter 234

50 78A-2-220, as last amended by Laws of Utah 2013, Chapter 245

51 REPEALS:

52 77-20-3, as last amended by Laws of Utah 2016, Chapter 234



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

55 Section 1. Section 77-7-2 is amended to read:

56 **77-7-2. Arrest by peace officers.**

57 (1) A peace officer may ~~[make an arrest]~~ arrest an individual under authority of a
58 warrant ~~[or may, without warrant, arrest a person:].~~

59 (2) A peace officer may arrest an individual without the authority of a warrant if the
60 peace officer has reasonable cause to believe the individual:

61 (a) has committed a felony offense;

62 (b) has committed a class A misdemeanor offense other than a misdemeanor offense

63 under Subsections 58-37-8(1)(a)(i) and (2)(a)(i);

64 (c) has committed one or more of the following misdemeanor offenses:

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

67 (ii) driving with any measurable controlled substance in the body under Section
68 41-6a-517;

69 (iii) failure to disclose identity under Section 76-8-301.5;

70 (iv) a domestic violence offense as defined in Section 77-36-1; or

71 (v) any offense involving obstruction of justice;

72 (d) (i) the individual has committed any criminal offense; and

73 (ii) the peace officer has reasonable cause to believe:

74 (A) the individual will fail to appear in court when required; or

75 (B) the individual poses an immediate danger to another individual or property; or

76 [(1) (a) for any public offense committed or attempted in the presence of any peace
77 officer; and]

78 [(b) as used in this Subsection (1), "presence" includes all of the physical senses or any
79 device that enhances the acuity, sensitivity, or range of any physical sense, or records the
80 observations of any of the physical senses;]

81 [(2) when the peace officer has reasonable cause to believe a felony or a class A
82 misdemeanor has been committed and has reasonable cause to believe that the person arrested
83 has committed it;]

84 [(3) when the peace officer has reasonable cause to believe the person has committed a
85 public offense, and there is reasonable cause for believing the person may:]

86 [(a) flee or conceal himself to avoid arrest;]

87 [(b) destroy or conceal evidence of the commission of the offense; or]

88 [(c) injure another person or damage property belonging to another person;]

89 [(4) when the peace officer has reasonable cause to believe the person has committed

90 the offense of failure to disclose identity under Section ~~76-8-301.5~~; or]

91 [~~(5)~~] (e) [when the peace officer has reasonable cause to believe that the person] is an
92 alien:

93 [~~(a)~~] (i) subject to a civil removal order issued by an immigration judge;

94 [~~(b)~~] (ii) regarding whom a civil detainer warrant has been issued by the federal
95 Department of Homeland Security; or

96 [~~(c)~~] (iii) who has been charged or convicted in another state with one or more
97 aggravated felonies as defined by 8 U.S.C. Sec. 1101(a)(43).

98 Section 2. Section **77-7-18** is amended to read:

99 **77-7-18. Citation on misdemeanor or infraction charge.**

100 [~~(1)~~ Any person subject to arrest or prosecution on a misdemeanor or infraction charge
101 may be issued and delivered a citation that requires the person to appear at the court of the
102 magistrate with territorial jurisdiction.]

103 (1) A peace officer who has reasonable cause to suspect an individual of unlawful
104 activity, that would amount to an infraction or a misdemeanor offense, may issue a citation to
105 the individual.

106 (2) Notwithstanding Subsection (1), a peace officer may arrest an individual in lieu of
107 or in addition to a citation if the peace officer is authorized to do so under Section ~~77-7-2~~.

108 (3) When issuing a citation, the peace officer shall require the individual to sign a
109 document acknowledging the individual's obligation to contact and appear in the proper court
110 to address each charge.

111 (4) If a peace officer determines it is necessary to arrest an individual for a class B or
112 class C misdemeanor offense, the peace officer shall document each reason supporting the
113 peace officer's determination.

114 [~~(2)~~ The] (5) In addition to a peace officer, the following individuals may issue [the
115 citation] a citation as described in [Subsection (1)] this section:

116 [~~(a)~~ a peace officer, in lieu of or in addition to taking the person into custody;]

117 [~~(b)~~] (a) any public official of any county or municipality charged with the enforcement
118 of the law;

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

120 [~~(d)~~] (c) an animal control officer of a county, municipality, or special service district

121 under Title 17D, Chapter 1, Special Service District Act, who is authorized to provide animal
122 control service; and

123 ~~[(e)]~~ (d) a volunteer authorized to issue a citation under Section 41-6a-217.

124 Section 3. Section 77-7-19 is amended to read:

125 **77-7-19. Appearance required by citation -- Arrest for failure to appear --**

126 **Transfer of cases -- Disposition of fines and costs.**

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

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

133 (b) the individual is permitted to remit the fine and other penalties without a personal
134 appearance in accordance with a uniform fine schedule adopted by the Judicial Council or by
135 court order under Section 77-7-21.

136 (2) A citation may not require ~~[a person]~~ an individual to appear or contact the court
137 sooner than five days or later than 14 days following its issuance.

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

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

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

145 ~~[(5) Any justice court judge may, upon the motion of either the defense attorney or~~
146 ~~prosecuting attorney, based on a lack of territorial jurisdiction or the disqualification of the~~
147 ~~judge, transfer cases to a justice court with territorial jurisdiction or the district court within the~~
148 ~~county.]~~

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

152 ~~[(6)]~~ (4) (a) Clerks and other administrative personnel serving the courts shall ~~[ensure~~
 153 ~~that all citations for violation of Title 41, Motor Vehicles, are filed in a court with jurisdiction~~
 154 ~~and venue and shall refuse to receive citations that should be filed in another court]~~ identify for
 155 the judge any citations over which the court lacks jurisdiction.

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

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

163 (b) Upon determining that the court lacks jurisdiction over a citation, the court shall:

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

165 (ii) if the court cannot readily identify a court with jurisdiction, dismiss the charges
 166 contained in the citation; and

167 (iii) notify the prosecutor of the transfer or dismissal.

168 (c) Any fine, fee, or forfeiture collected by a court that lacks jurisdiction shall be:

169 (i) transferred to the court receiving the case; or

170 (ii) if the case is dismissed, returned to the defendant.

171 Section 4. Section **77-7-20** is amended to read:

172 **77-7-20. Service of citation on defendant -- Filing in court -- Electronic filing --**
 173 **Contents of citations.**

174 (1) Except as provided in Subsection (4), a peace officer or ~~[public]~~ other authorized
 175 official who issues a citation pursuant to Section **77-7-18** shall give the citation to the
 176 individual cited and shall, within five business days, electronically file the data from
 177 Subsections (2)(a) through (2)~~[(g)]~~(h) with the court specified in the citation. The data
 178 transmission shall use the court's electronic filing interface. A nonconforming filing is not
 179 effective.

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

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

- 183 (b) the name and date of birth of the individual cited;
- 184 (c) a brief description of the offense charged;
- 185 (d) the date, time, and place at which the offense is alleged to have occurred;
- 186 (e) the date on which the citation was issued;
- 187 (f) the name of the peace officer or ~~[public]~~ official who issued the citation, and the
- 188 name of the arresting individual if ~~[an arrest was made by a private party]~~ a private party made
- 189 the arrest and the citation was issued in lieu of taking the arrested individual before a
- 190 magistrate;
- 191 (g) the ~~[time and]~~ date on or ~~[before and after]~~ date range during which the individual
- 192 is to appear or a statement that the court will notify the individual of the time to appear;
- 193 (h) ~~[the address of the court in which the individual is to appear]~~ whether the defendant
- 194 was arrested for a reason other than the offense prompting the issuance of the citation;
- 195 (i) whether the offense is a domestic violence offense; and
- 196 (j) a notice containing substantially the following language:

197 READ CAREFULLY

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

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

- 204 (a) the citation or information, including the summons and complaint, was ~~[served~~
- 205 ~~upon]~~ delivered to the defendant ~~[in accordance with the law];~~
- 206 (b) the defendant committed the offense set forth in the ~~[served documents]~~ citation;
- 207 and
- 208 (c) the court to which the defendant was directed to appear ~~[is the proper court~~
- 209 ~~pursuant to Section 77-7-21]~~ has jurisdiction over the offense charged.

- 210 (4) (a) If a citing law enforcement officer is not reasonably able to access the e filing
- 211 system, the citation need not be filed electronically if being filed with a justice court.
- 212 (b) The court may accept an electronic filing received after five business days if:
- 213 (i) the defendant consents to the filing; and

214 (ii) the court finds the interests of justice would be best served by accepting the filing.

215 Section 5. Section **77-7-21** is amended to read:

216 **77-7-21. Proceeding on citation -- Voluntary forfeiture of bail -- Parent signature**
217 **required -- Information, when required.**

218 (1) (a) [~~A copy of the citation issued under Section 77-7-18 that is filed with the~~
219 ~~magistrate~~] A citation filed with the court may [be used], with the consent of the defendant,
220 serve in lieu of an information to which the [person cited] defendant may plead guilty or no
221 contest to the charge or charges listed and be sentenced [or on which bail may be forfeited]
222 accordingly.

223 [~~(b) With the magistrate's approval, a person may voluntarily forfeit bail without~~
224 ~~appearance being required in any case of a class B misdemeanor or less.~~]

225 [~~(c) Voluntary forfeiture of bail shall be entered as a conviction and treated the same as~~
226 ~~if the accused pleaded guilty.~~]

227 (b) If provided by the uniform fine schedule described in Section 76-3-301.5, or with
228 the court's approval, an individual may remit the fine and other penalties without a personal
229 appearance before the court in any case charging a class B misdemeanor or lower offense,
230 unless the charge is:

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

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

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

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

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

240 (d) If the person cited is under 18 years of age, [and if any of the charges allege a
241 violation of Title 41, Motor Vehicles,] the court shall promptly mail a copy or notice of the
242 citation [or a notice of the citation] to the address as shown on the citation, to the attention of
243 the parent or guardian of the defendant.

244 (2) [~~An information shall be filed and~~] If the individual pleads not guilty to the offense

245 charged, further proceedings shall be held in accordance with the Rules of Criminal Procedure
 246 and all other applicable provisions of this code [if the person cited pleads not guilty to the
 247 offense charged].

248 ~~[(3) (a) The information is an original pleading.]~~

249 ~~[(b) If a person cited waives by written agreement the filing of the information, the~~
 250 ~~prosecution may proceed on the citation.]~~

251 Section 6. Section ~~77-17-8~~ is amended to read:

252 **77-17-8. Mistake in charging offense -- Procedure -- Witnesses.**

253 If, at any time before verdict or judgment, a mistake ~~[has been]~~ is made in charging the
 254 proper offense, and ~~[it appears that]~~ there is probable cause to believe that the defendant is
 255 chargeable with another offense, the court may commit ~~[him or require him to give bail under~~
 256 ~~Section 77-20-1 for his appearance to answer to the proper charge when filed, and may also~~
 257 ~~require witnesses to give bail for their appearance]~~ the defendant or require the defendant to
 258 comply with one or more pretrial release conditions in accordance with Section 77-20-1 to
 259 ensure the defendant's appearance in court.

260 Section 7. Section ~~77-18a-1~~ is amended to read:

261 **77-18a-1. Appeals -- When proper.**

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

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

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

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

267 (d) an order denying bail, as provided in ~~[Subsection 77-20-1(8)]~~ Section 77-20-1.

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

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

271 (a) a final judgment of dismissal, including a dismissal of a felony information
 272 following a refusal to bind the defendant over for trial;

273 (b) a pretrial order dismissing a charge on the ground that the court's suppression of
 274 evidence has substantially impaired the prosecution's case;

275 (c) an order granting a motion to withdraw a plea of guilty or no contest;

- 276 (d) an order arresting judgment or granting a motion for merger;
- 277 (e) an order terminating the prosecution because of a finding of double jeopardy or
- 278 denial of a speedy trial;
- 279 (f) an order granting a new trial;
- 280 (g) an order holding a statute or any part of it invalid;
- 281 (h) an order adjudicating the defendant's competency to proceed further in a pending
- 282 prosecution;
- 283 (i) an order finding, pursuant to Title 77, Chapter 19, Part 2, Competency for
- 284 Execution, that an inmate sentenced to death is incompetent to be executed;
- 285 (j) an order reducing the degree of offense pursuant to Section 76-3-402; or
- 286 (k) an illegal sentence.

287 (4) In addition to any appeal permitted by Subsection (3), the prosecution may seek

288 discretionary appellate review of any interlocutory order entered before jeopardy attaches.

289 Section 8. Section 77-20-1 is amended to read:

290 **77-20-1. Right to bail -- Pretrial status order -- Denial of bail -- Detention hearing**

291 **-- Motion to modify.**

292 (1) As used in this chapter:

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

294 (b) "Financial condition" or "monetary bail" means any monetary condition that may be

295 imposed under Section 77-20-4 to secure an individual's pretrial release.

296 (c) "Pretrial release" or "bail" means release of an individual charged with a criminal

297 offense from law enforcement or judicial custody during the time the individual awaits trial or

298 other resolution of the criminal charges.

299 (d) "Pretrial status order" means an order issued by the court exercising jurisdiction

300 over an individual charged with a criminal offense that sets the terms and conditions of the

301 individual's pretrial release or denies pretrial release and orders that the individual be detained

302 pending resolution of the criminal charges.

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

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

305 (2) An individual charged with or arrested for a criminal offense shall be admitted to

306 bail as a matter of right, except if the individual is charged with a:

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

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

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

316 (d) felony when the court finds there is substantial evidence to support the charge and
317 it finds by clear and convincing evidence that the individual violated a material condition of
318 release while previously on bail; or

319 (e) domestic violence offense if the court finds:

320 (i) that there is substantial evidence to support the charge; and

321 (ii) by clear and convincing evidence, that the individual would constitute a substantial
322 danger to an alleged victim of domestic violence if released on bail.

323 ~~[(3) Any individual who may be admitted to bail may be released by posting bail in the
324 form and manner provided in Section 77-20-4, or on the individual's own recognizance, on
325 condition that the individual appear in court for future court proceedings in the case, and on
326 any other conditions imposed in the discretion of the magistrate or court that will reasonably:]~~

327 ~~[(a) ensure the appearance of the accused;]~~

328 ~~[(b) ensure the integrity of the court process;]~~

329 ~~[(c) prevent direct or indirect contact with witnesses or victims by the accused, if
330 appropriate; and]~~

331 ~~[(d) ensure the safety of the public.]~~

332 (3) (a) A court exercising jurisdiction over an individual charged with a criminal
333 offense shall issue a pretrial status order designating the conditions to be imposed upon the
334 individual's release or ordering that the individual be detained under Subsection (7) during the
335 time the individual awaits trial or other resolution of the criminal charges.

336 (b) A court granting pretrial release shall impose the least restrictive conditions of
337 release on the individual who is the subject of the pretrial status order that the court determines

338 will reasonably ensure:

339 (i) the individual's appearance in court when required;

340 (ii) the safety of any witnesses or victims of the offense allegedly committed by the
341 individual;

342 (iii) the safety and welfare of the public; and

343 (iv) that the individual will not obstruct or attempt to obstruct the criminal justice
344 process.

345 (c) (i) The court shall issue the pretrial status order without unnecessary delay.

346 (ii) If a prosecutor files a motion for detention under Subsection (6), the court may
347 delay issuing the pretrial status order until after hearing the motion to detain if the court finds:

348 (A) the prosecutor's motion states a reasonable case for detention; and

349 (B) detaining the defendant until after the motion is heard is in the interests of justice
350 and public safety.

351 (4) (a) Except as otherwise provided in this section or Section [77-20-3.5](#), the court
352 shall order that an individual charged with a criminal offense be released on the individual's
353 own recognizance, on condition that the individual appear at all required court proceedings, if
354 the court finds that additional conditions are not necessary to reasonably ensure compliance
355 with Subsection (3)(b).

356 (b) The court shall impose additional release conditions if the court finds that
357 additional release conditions are necessary to reasonably ensure compliance with Subsection
358 (3)(b). The conditions imposed may include that the individual:

359 (i) not commit a federal, state, or local offense during the period of release;

360 (ii) avoid contact with a victim or victims of the alleged offense;

361 (iii) avoid contact with a witness or witnesses who may testify concerning the alleged
362 offense that are named in the pretrial status order;

363 (iv) not use or consume alcohol, or any narcotic drug or other controlled substance
364 except as prescribed by a licensed medical practitioner;

365 (v) submit to drug or alcohol testing;

366 (vi) complete a substance abuse evaluation and comply with any recommended
367 treatment or release program;

368 (vii) submit to electronic monitoring or location device tracking;

369 (viii) participate in inpatient or outpatient medical, behavioral, psychological, or
370 psychiatric treatment;

371 (ix) maintain employment, or if unemployed, actively seek employment;
372 (x) maintain or commence an education program;

373 (xi) comply with limitations on where the individual is allowed to be located or the
374 times the individual shall be or may not be at a specified location;

375 (xii) comply with specified restrictions on personal associations, place of residence, or
376 travel;

377 (xiii) report to a law enforcement agency, pretrial services program, or other designated
378 agency at a specified frequency or on specified dates;

379 (xiv) comply with a specified curfew;

380 (xv) forfeit or refrain from possession of a firearm or other dangerous weapon;

381 (xvi) if the individual is charged with an offense against a child, is limited or denied
382 access to any location or occupation where children are, including any residence where children
383 are on the premises, activities including organized activities in which children are involved,
384 locations where children congregate, or where a reasonable person should know that children
385 congregate;

386 (xvii) comply with requirements for house arrest;

387 (xviii) return to custody for a specified period of time following release for
388 employment, schooling, or other limited purposes;

389 (xix) remain in the custody of one or more designated individuals who agree to
390 supervise and report on the behavior and activities of the individual charged and to encourage
391 compliance with all court orders and attendance at all required court proceedings;

392 (xx) comply with a financial condition; or

393 (xxi) comply with any other condition that is necessary to reasonably ensure
394 compliance with Subsection (3)(b).

395 (c) If the court determines a financial condition, other than an unsecured bond, is
396 necessary to impose on an individual as part of the individual's pretrial release, the court shall
397 include the court's written findings of fact and conclusions of law supporting the court's
398 decision in the pretrial status order.

399 (5) In making a determination under Subsection (3), the court may rely on the

400 following:

401 (a) any form of pretrial services assessment;

402 (b) the nature and circumstances of the offense or offenses charged, including whether
403 the charges include a violent offense and the vulnerability of witnesses or alleged victims;

404 (c) the nature and circumstances of the individual, including the individual's character,
405 physical and mental health, family and community ties, employment status and history,
406 financial resources, past criminal conduct, history of drug or alcohol abuse, and history of
407 timely appearances at required court proceedings;

408 (d) the potential danger to another individual or individuals posed by the release of the
409 individual;

410 (e) if the individual was on probation, parole, or release pending an upcoming court
411 proceeding at the time the individual allegedly committed the offense;

412 (f) the availability of other individuals who agree to assist the individual in attending
413 court when required or other evidence relevant to the individual's opportunities for supervision
414 in the individual's community;

415 (g) the eligibility and willingness of the individual to participate in various treatment
416 programs, including drug treatment; or

417 (h) other evidence relevant to the individual's likelihood of fleeing or violating the law
418 if released.

419 (6) (a) If the criminal charges filed against the individual include one or more offenses
420 eligible for detention under Subsection (2) or Utah Constitution, Article I, Section 8, the
421 prosecution may file a motion for pretrial detention.

422 (b) Upon receiving a motion under Subsection (6)(a), the court shall set a hearing on
423 the matter as soon as practicable.

424 (c) The individual who is the subject of the detention hearing has the right to be
425 represented by counsel at the pretrial detention hearing and, if a court finds the individual is
426 indigent under Section [78B-22-202](#), the court shall appoint counsel to represent the individual
427 in accordance with Section [78B-22-203](#).

428 (d) The court shall give both parties the opportunity to make arguments and to present
429 relevant evidence at the detention hearing.

430 (7) After hearing evidence on a motion for pretrial detention, the court may detain the

431 individual if:

432 (a) the individual is accused of committing an offense that qualifies the individual for
433 detention under Subsection (2) or Utah Constitution, Article I, Section 8;

434 (b) the prosecution demonstrates substantial evidence to support the charge, and meets
435 all additional evidentiary burdens required under Subsection (2) or Utah Constitution, Article I,
436 Section 8; and

437 (c) the court finds that no conditions that may be imposed upon granting the individual
438 pretrial release will reasonably ensure compliance with Subsection (3)(b).

439 (8) (a) If an individual is charged with a criminal offense described in Subsection
440 (8)(b), there is a rebuttable presumption that the individual be detained.

441 (b) Criminal charges that create a rebuttable presumption of detention under
442 Subsection (8)(a) include:

443 (i) criminal homicide as defined in Section [75-5-201](#); and

444 (ii) any offense for which the term of imprisonment may include life.

445 (c) The individual may rebut the presumption of detention by demonstrating, by a
446 preponderance of the evidence, that specified conditions of release will reasonably ensure
447 compliance with Subsection (3)(b).

448 ~~[(4)(a)]~~ (9) Except as otherwise provided, the court issuing the warrant of arrest shall
449 issue the initial pretrial status order ~~[denying or fixing the amount of bail shall be issued by the~~
450 ~~magistrate or court issuing the warrant of arrest].~~

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

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

455 ~~[(d)]~~ (10) (a) An individual arrested for a violation of a jail release agreement or jail
456 release court order issued in accordance with Section [77-20-3.5](#):

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

458 (ii) may be denied [bail] pretrial release by the court under Subsection (2).

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

460 ~~[(a) the indictment or information;]~~

461 ~~[(b) any sworn probable cause statement;]~~

462 ~~[(c) information provided by any pretrial services agency; or]~~

463 ~~[(d) any other reliable record or source.]~~

464 (b) Nothing in this section precludes or nullifies a jail release agreement or jail release
 465 order required under Section [77-20-3.5](#).

466 ~~[(6)]~~ (11) (a) A motion to modify the initial pretrial status order may be made by a
 467 party at any time upon notice to the opposing party sufficient to permit the opposing party to
 468 prepare for hearing and to permit ~~[any victim]~~ each alleged victim to be notified and be present.

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

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

474 ~~[(7)]~~ (12) Subsequent motions to modify ~~[bail orders]~~ a pretrial status order may be
 475 made only upon a showing that there has been a material change in circumstances.

476 ~~[(8)]~~ (13) An appeal may be taken from an order of ~~[any]~~ a court denying bail to the
 477 ~~[Supreme Court]~~ Utah Court of Appeals pursuant to the Utah Rules of Appellate Procedure,
 478 which shall review the determination under Subsection ~~[(2)]~~ (7).

479 ~~[(9)]~~ (14) For purposes of this section, any arrest or charge for a violation of Section
 480 [76-5-202](#), Aggravated murder, is a capital felony unless:

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

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

484 Section 9. Section **77-20-4** is amended to read:

485 **77-20-4. Bail to be posted in cash, by credit or debit card, or by written**
 486 **undertaking -- Specific monetary bail methods.**

487 ~~[(1) (a) Except as provided in Subsection (2), the judge or magistrate shall set bail at a~~
 488 ~~single amount per case or charge.]~~

489 ~~[(b) Subject to Subsection (2), a defendant may choose to post the amount described in~~
 490 ~~Subsection (1)(a) by any of the following methods:]~~

491 (1) A defendant may post monetary bail by any of the following methods:

492 ~~[(i)]~~ (a) in cash;

493 [(ii)] (b) by written undertaking with sureties;

494 [(iii)] (c) by written undertaking without sureties, at the discretion of the judge or
495 magistrate; or

496 [(iv)] (d) by credit or debit card, at the discretion of the judge or bail commissioner.

497 (2) A judge or magistrate may limit a defendant to a specific method of posting
498 monetary bail described in Subsection [(1)(b)(i), (ii), (iii), or (iv)] (1)(a), (b), (c), or (d):

499 (a) if, after charges are filed, the defendant fails to appear in the case on a [~~bail~~] bond
500 and the case involves a violent offense;

501 (b) in order to allow the defendant to voluntarily forfeit monetary bail in accordance
502 with Section 77-7-21 and the offense with which the defendant is charged is listed in the shared
503 master offense table as one for which an appearance is not mandatory;

504 (c) if the defendant has failed to respond to a citation or summons and the offense with
505 which the defendant is charged is listed in the shared master offense table as one for which an
506 appearance is not mandatory;

507 (d) if a warrant is issued for the defendant solely for failure to pay a criminal judgment
508 account receivable, as defined in Section 77-32a-101, and the defendant's monetary bail is
509 limited to the amount owed; or

510 (e) if a court has entered a judgment of [~~bail~~] bond forfeiture under Section 77-20b-104
511 in any case involving the defendant.

512 (3) [~~Bail~~] Monetary bail may not be accepted without receiving in writing at the time
513 the monetary bail is posted the current mailing address, telephone number, and email address
514 of the surety.

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

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

520 (6) Before refunding monetary bail that is posted by the defendant in cash, by credit
521 card, or by debit card, the court may apply the amount posted toward accounts receivable, as
522 defined in Section 77-32a-101, that are owed by the defendant in the priority set forth in
523 Section 77-38a-404.

524 Section 10. Section 77-20-7 is amended to read:

525 **77-20-7. Duration of liability on undertaking -- Notices to sureties -- Exoneration**
526 **if charges not filed.**

527 (1) (a) Except as provided in Subsection (1)(b), the principal and the sureties on ~~[the]~~ a
528 bond or other written undertaking are liable on the bond or other written undertaking during all
529 proceedings and for all court appearances required of the defendant up to and including the
530 surrender of the defendant for sentencing, irrespective of any contrary provision in the bond or
531 other written undertaking. Any failure of the defendant to appear when required is a breach of
532 the conditions of the bond or other written undertaking ~~[or bail]~~ and subjects ~~[it]~~ the bond to
533 forfeiture, regardless of whether or not notice of appearance was given to the sureties. Upon
534 sentencing the ~~[bail]~~ bond or other written undertaking shall be exonerated without motion.

535 (b) If the sentence includes a commitment to a jail or prison, the ~~[bail]~~ bond or other
536 written undertaking shall be exonerated when the defendant appears at the appropriate jail or
537 prison, unless the judge does not require the defendant to begin the commitment within seven
538 days, in which case the ~~[bail]~~ bond or other written undertaking is exonerated upon sentencing.

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

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

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

550 (2) If ~~[no]~~ the prosecutor does not file an information [or], indictment [charging a
551 person with an offense is filed in court within], or request to extend time 120 days after the
552 date [of the bail undertaking or cash receipt] on which the bond or other written undertaking is
553 received, the court ~~[may]~~ shall:

554 (a) relieve a person from conditions of release [at the person's request, and the bail

555 ~~bond or undertaking is exonerated without further order of the court unless the prosecutor~~
 556 ~~requests an extension of time before the end of the 120-day period by:];~~

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

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

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

560 (b) refund any monetary bail, as provided in Subsection 77-20-4(5); and

561 (c) exonerate any bond or other written undertaking without further order of the court.

562 (3) (a) A request to extend time shall:

563 (i) be served on any surety and the defendant or the defendant's attorney; and

564 (ii) be granted for a period of up to 60 days.

565 (b) A court may grant a request to extend time for a period of up to 120 days upon a
 566 showing of good cause.

567 ~~[(4) Subsection (2)]~~

568 (c) An extension of time does not prohibit the proper filing of charges against a person
 569 at any time.

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

572 Section 11. Section 77-20-8 is amended to read:

573 **77-20-8. Grounds for detaining or releasing defendant on conviction and prior to**
 574 **sentence.**

575 (1) Upon conviction, by plea or trial, the court shall order that the convicted defendant
 576 who is waiting imposition or execution of sentence be detained, unless the court finds by clear
 577 and convincing evidence presented by the defendant that the defendant is not likely to flee the
 578 jurisdiction of the court, and will not pose a danger to the physical, psychological, or financial
 579 and economic safety or well-being of any other person or the community if released.

580 (2) If the court finds the defendant does not need to be detained, the court shall order
 581 the release of the defendant on suitable conditions, which may include the conditions under
 582 Subsection [~~77-20-10(2)~~] 77-20-1(4).

583 Section 12. Section 77-20-8.5 is amended to read:

584 **77-20-8.5. Sureties -- Surrender of defendant -- Arrest of defendant.**

585 (1) (a) Sureties may at any time prior to a defendant's failure to appear surrender the

586 defendant and obtain exoneration of monetary bail, by notifying the clerk of the court in which
587 the monetary bail was posted of the defendant's surrender and requesting exoneration.
588 Notification shall be made immediately following the surrender by surface mail, electronic
589 mail, or fax.

590 (b) To effect surrender, a certified copy of the surety's undertaking from the court in
591 which it was posted or a copy of the monetary bail agreement with the defendant shall be
592 delivered to the on-duty jailer, who shall detain the defendant in the on-duty jailer's custody as
593 upon a commitment, and shall in writing acknowledge the surrender upon the copy of the
594 undertaking or monetary bail agreement. The certified copy of the undertaking or copy of the
595 monetary bail agreement upon which the acknowledgment of surrender is endorsed shall be
596 filed with the court. The court may then, upon proper application, order the undertaking
597 exonerated and [may] shall order a refund of any paid premium, or part of a premium, as it
598 finds just.

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

600 (a) arrest the defendant:

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

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

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

604 (3) An arrest under this section is not a basis for exoneration of the [bail] bond under
605 Section [77-20b-101](#).

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

608 Section 13. Section **77-20-9** is amended to read:

609 **77-20-9. Disposition of forfeitures.**

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

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

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

617 courts shall be distributed as provided in Sections [78A-7-120](#) and [78A-7-121](#);

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

620 (4) the forfeited [~~bail~~] amount in cases not provided for in this section shall be paid
621 50% to the state treasurer and the remaining 50% to the county treasurer in the county in which
622 the violation occurred or the forfeited [~~bail~~] amount is collected.

623 Section 14. Section **77-20-10** is amended to read:

624 **77-20-10. Grounds for detaining defendant while appealing the defendant's**
625 **conviction -- Conditions for release while on appeal.**

626 (1) The court shall order that a defendant who has been found guilty of an offense in a
627 court of record and sentenced to a term of imprisonment in jail or prison, and who has filed an
628 appeal or a petition for a writ of certiorari, be detained, unless the court finds:

629 (a) the appeal raises a substantial question of law or fact likely to result in:

630 (i) reversal;

631 (ii) an order for a new trial; or

632 (iii) a sentence that does not include a term of imprisonment in jail or prison;

633 (b) the appeal is not for the purpose of delay; and

634 (c) by clear and convincing evidence presented by the defendant that the defendant is
635 not likely to flee the jurisdiction of the court, and will not pose a danger to the physical,
636 psychological, or financial and economic safety or well-being of any other person or the
637 community if released.

638 (2) If the court makes a finding under Subsection (1) that justifies not detaining the
639 defendant, the court shall order the release of the defendant, subject to conditions that result in
640 the least restrictive condition or combination of conditions that the court determines will
641 reasonably [~~assure~~] ensure the appearance of the [~~person~~] defendant as required and the safety
642 of any other [~~person~~] individual, property, and the community. The conditions may include
643 [~~that the defendant:~~] the conditions described in Subsection [77-20-1\(4\)\(b\)](#).

644 [~~(a) post appropriate bail;~~]

645 [~~(b) execute a bail bond with a surety under Title 31A, Chapter 35, Bail Bond Act, in~~
646 ~~an amount necessary to assure the appearance of the defendant as required;~~]

647 [~~(c) (i) execute a written agreement to forfeit, upon failing to appear as required;~~]

648 ~~designated property, including money, as is reasonably necessary to assure the appearance of~~
649 ~~the defendant; and]~~

650 ~~[(ii) post with the court indicia of ownership of the property or a percentage of the~~
651 ~~money as the court may specify;]~~

652 ~~[(d) not commit a federal, state, or local crime during the period of release;]~~

653 ~~[(e) remain in the custody of a designated person who agrees to assume supervision of~~
654 ~~the defendant and who agrees to report any violation of a release condition to the court, if the~~
655 ~~designated person is reasonably able to assure the court that the defendant will appear as~~
656 ~~required and will not pose a danger to the safety of any other person or the community;]~~

657 ~~[(f) maintain employment, or if unemployed, actively seek employment;]~~

658 ~~[(g) maintain or commence an educational program;]~~

659 ~~[(h) abide by specified restrictions on personal associations, place of abode, or travel;]~~

660 ~~[(i) avoid all contact with the victims of the offense and with any witnesses who~~
661 ~~testified against the defendant or potential witnesses who may testify concerning the offense if~~
662 ~~the appeal results in a reversal or an order for a new trial;]~~

663 ~~[(j) report on a regular basis to a designated law enforcement agency, pretrial services~~
664 ~~agency, or other designated agency;]~~

665 ~~[(k) comply with a specified curfew;]~~

666 ~~[(l) not possess a firearm, destructive device, or other dangerous weapon;]~~

667 ~~[(m) not use alcohol, or any narcotic drug or other controlled substances except as~~
668 ~~prescribed by a licensed medical practitioner;]~~

669 ~~[(n) undergo available medical, psychological, or psychiatric treatment, including~~
670 ~~treatment for drug or alcohol dependency, and remain under the supervision of or in a specified~~
671 ~~institution if required for that purpose;]~~

672 ~~[(o) return to custody for specified hours following release for employment, schooling,~~
673 ~~or other limited purposes;]~~

674 ~~[(p) satisfy any other condition that is reasonably necessary to assure the appearance of~~
675 ~~the defendant as required and to assure the safety of any other person and the community; and]~~

676 ~~[(q) if convicted of committing a sexual offense or an assault or other offense~~
677 ~~involving violence against a child 17 years of age or younger, is limited or denied access to any~~
678 ~~location or occupation where children are, including but not limited to:]~~

679 ~~[(i) any residence where children are on the premises;]~~
680 ~~[(ii) activities, including organized activities, in which children are involved; and]~~
681 ~~[(iii) locations where children congregate, or where a reasonable person should know~~
682 ~~that children congregate.]~~

683 (3) The court may, in its discretion, amend an order granting release to impose
684 additional or different conditions of release.

685 (4) If the defendant ~~[has been]~~ is found guilty of an offense in a court not of record and
686 files a timely notice of appeal pursuant to Subsection 78A-7-118(1) for a trial de novo, the
687 court shall stay all terms of a sentence, unless at the time of sentencing the judge finds by a
688 preponderance of the evidence that the defendant poses a danger to another person or the
689 community.

690 (5) If a stay is ordered, the court may order post-conviction restrictions on the
691 defendant's conduct as appropriate, including:

- 692 (a) continuation of any pre-trial restrictions or orders;
- 693 (b) sentencing protective orders under Section 77-36-5.1;
- 694 (c) drug and alcohol use;
- 695 (d) use of an ignition interlock; and
- 696 (e) posting appropriate monetary bail.

697 (6) The provisions of Subsections (4) and (5) do not apply to convictions for an offense
698 under Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.

699 (7) Any stay authorized by Subsection (4) is lifted upon the dismissal of the appeal by
700 the district court.

701 Section 15. Section **77-20b-101** is amended to read:

702 **77-20b-101. Entry of nonappearance -- Notice to surety -- Release of surety on**
703 **failure of timely notice.**

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

- 708 (a) ~~[mail]~~ email notice of nonappearance ~~[by certified mail, return receipt requested,~~
709 ~~within 30 days]~~ to ~~[the address of]~~ the surety or surety insurer at the email address provided on

710 the bond;

711 ~~[(b) notify the surety as listed on the bail bond of the name, address, and telephone~~
712 ~~number of the prosecutor;]~~

713 ~~[(c) deliver]~~ (b) email a copy of the notice sent under Subsection (1)(a) to the
714 prosecutor's office ~~[at the same time notice is sent under Subsection (1)(a)]; and~~

715 ~~[(d)]~~ (c) ensure that the name, address, business email address, and telephone number
716 of the surety ~~[or]~~, its agent, or surety insurer as listed on the ~~[bail]~~ bond is stated on the bench
717 warrant~~[- and]~~.

718 ~~[(e) mail notice of the failure to appear to the bail bond agency and the surety insurer.]~~

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

722 (3) If notice of nonappearance is not ~~[mailed]~~ emailed to a surety or surety insurer as
723 listed on the ~~[bail]~~ bond, other than the defendant, in accordance with Subsection (1) or (2), the
724 surety or surety insurer and its ~~[bail]~~ bond producer are relieved of further obligation under the
725 ~~[bail]~~ bond if the ~~[surety's current name and address or the current name and address of the bail~~
726 ~~bond agency are on the bail bond]~~ surety or surety insurer have listed their current name and
727 email addresses on the bond in the court's file.

728 (4) (a) (i) If a defendant appears in court within ~~[seven]~~ 30 days after a missed,
729 scheduled court appearance, the court may reinstate the ~~[bail]~~ bond without further notice to the
730 surety or surety insurer.

731 (ii) If the defendant, while in custody, appears on the case for which the ~~[bail]~~ bond
732 was posted, the court may not reinstate the ~~[bail]~~ bond without the consent of the bond
733 company.

734 (b) If a defendant fails to appear within ~~[seven]~~ 30 days after a scheduled court
735 appearance, the court may not reinstate the ~~[bail]~~ bond without the consent of the surety or
736 surety insurer.

737 (c) If the defendant is arrested and booked into a county jail booking facility pursuant
738 to a warrant for failure to appear on the original charges and the court is notified of the arrest,
739 or the court recalls the warrant due to the defendant's having paid the fine and prior to entry of
740 judgment of forfeiture, the court shall exonerate the ~~[bail]~~ bond.

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

743 (i) the surety or surety insurer has delivered the defendant to the county jail booking
744 facility in the county where the original charge or charges are pending;

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

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

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

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

755 (A) at the time the surety or surety insurer issued the [bait] bond, it had made
756 reasonable efforts to determine that the defendant was legally present in the United States;

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

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

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

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

768 Section 16. Section 77-20b-102 is amended to read:

769 **77-20b-102. Time for bringing defendant to court.**

770 (1) If notice of nonappearance [~~has been mailed~~] is emailed to a surety or surety insurer
771 under Section 77-20b-101, the surety or surety insurer may bring the defendant before the court

772 or surrender the defendant into the custody of a county sheriff within the state within [~~six~~
773 ~~months of~~] 90 days after the date of nonappearance, during which time a forfeiture action on
774 the [~~bail~~] bond may not be brought.

775 (2) A surety or surety insurer may request an extension of the [~~six-month~~] 90-day time
776 period in Subsection (1), if the surety or surety insurer within that time:

777 (a) files a motion for extension with the court; and

778 (b) mails the motion for extension and a notice of hearing on the motion to the
779 prosecutor.

780 (3) The court may extend the [~~six-month~~] 90-day time in Subsection (1) for not more
781 than 60 days, if the surety or surety insurer has complied with Subsection (2) and the court
782 finds good cause.

783 Section 17. Section **77-20b-104** is amended to read:

784 **77-20b-104. Forfeiture of bail.**

785 (1) If a surety or surety insurer fails to bring the defendant before the court within the
786 time provided in Section 77-20b-102, the prosecuting attorney may request the forfeiture of the
787 [~~bail~~] bond by:

788 (a) filing a motion for [~~bail~~] bond forfeiture with the court, supported by proof of
789 notice to the surety or surety insurer of the defendant's nonappearance; and

790 (b) [~~mailing~~] emailing a copy of the motion to the surety or surety insurer.

791 (2) A court shall enter judgment of [~~bail~~] bond forfeiture without further notice if [~~it~~]
792 the court finds by a preponderance of the evidence:

793 (a) the defendant failed to appear as required;

794 (b) the surety or surety insurer was given notice of the defendant's nonappearance in
795 accordance with Section 77-20b-101;

796 (c) the surety or surety insurer failed to bring the defendant to the court within the
797 [~~six-month~~] 90-day period under Section 77-20b-102; and

798 (d) the prosecutor has complied with the notice requirements under Subsection (1).

799 (3) If the surety or surety insurer shows by a preponderance of the evidence that it has
800 failed to bring the defendant before the court because the defendant is deceased through no act
801 of the surety or surety insurer, the court may not enter judgment of [~~bail~~] bond forfeiture and
802 the [~~bail~~] bond is exonerated.

803 (4) The amount of [bail] the bond forfeited is the face amount of the [bail] bond, but if
804 the defendant is in the custody of another jurisdiction and the state extradites or intends to
805 extradite the defendant, the court may reduce the amount forfeited to the actual or estimated
806 costs of returning the defendant to the court's jurisdiction. A judgment under Subsection (5)
807 shall:

808 (a) identify the surety or surety insurer against whom judgment is granted;

809 (b) specify the amount of [bail] the bond forfeited;

810 (c) grant the forfeiture of the [bail] bond; and

811 (d) be docketed by the clerk of the court in the civil judgment docket.

812 (5) A prosecutor may immediately commence collection proceedings to execute a
813 judgment of [bail] bond forfeiture against the assets of the surety.

814 Section 18. Section **78A-2-220** is amended to read:

815 **78A-2-220. Authority of magistrate.**

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

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

819 (b) set or deny bail under Section [77-20-1](#) and release upon the payment of monetary
820 bail and satisfaction of any other conditions of release;

821 (c) issue to any place in the state summonses and warrants of search and arrest and
822 authorize administrative traffic checkpoints under Section [77-23-104](#);

823 (d) conduct an initial appearance;

824 (e) conduct arraignments;

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

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

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

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

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

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

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

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

836 Section 19. **Repealer.**

837 This bill repeals:

838 Section **77-20-3, Release on own recognizance -- Changing amount of bail or**
839 **conditions of release.**