

Representative Stephanie Pitcher proposes the following substitute bill:

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;
- ▶ provides procedural changes related to law enforcement issued citations;
- ▶ 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 reasonably available 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;
- ▶ creates a special revenue fund to fund pretrial services programs with money



26 obtained from bond forfeiture proceedings; and
27 ▶ makes technical and conforming changes.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

- 34 77-7-19, as last amended by Laws of Utah 2009, Chapter 292
- 35 77-7-20, as last amended by Laws of Utah 2018, Chapter 309
- 36 77-7-21, as last amended by Laws of Utah 2009, Chapter 292
- 37 77-17-8, as last amended by Laws of Utah 1988, Second Special Session, Chapter 4
- 38 77-18a-1, as last amended by Laws of Utah 2016, Chapter 234
- 39 77-20-1, as last amended by Laws of Utah 2019, Chapters 184 and 397
- 40 77-20-4, as last amended by Laws of Utah 2019, Chapter 397
- 41 77-20-7, as last amended by Laws of Utah 2016, Chapter 234
- 42 77-20-8, as last amended by Laws of Utah 1988, Chapter 160
- 43 77-20-8.5, as last amended by Laws of Utah 2016, Chapter 234
- 44 77-20-9, as last amended by Laws of Utah 2018, Chapter 281
- 45 77-20-10, as last amended by Laws of Utah 2016, Chapter 234
- 46 77-20b-101, as last amended by Laws of Utah 2016, Chapter 234
- 47 77-20b-102, as last amended by Laws of Utah 2016, Chapter 234
- 48 77-20b-104, as last amended by Laws of Utah 2016, Chapter 234
- 49 78A-2-220, as last amended by Laws of Utah 2013, Chapter 245

50 ENACTS:

51 63M-7-213, Utah Code Annotated 1953

52 REPEALS:

53 77-20-3, as last amended by Laws of Utah 2016, Chapter 234



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

56 Section 1. Section 63M-7-213 is enacted to read:

57 63M-7-213. Pretrial Release Programs Special Revenue Fund -- Funding -- Uses.

58 (1) As used in this section:

59 (a) "Commission" means the Commission on Criminal and Juvenile Justice created in
60 Section [63M-7-201](#).

61 (b) "Fund" means the Pretrial Release Programs Special Revenue Fund created in this
62 section.

63 (2) There is created an expendable special revenue fund known as the "Pretrial Release
64 Programs Special Revenue Fund."

65 (3) The Division of Finance shall administer the fund in accordance with this section.

66 (4) The fund shall consist of:

67 (a) money collected and remitted to the fund under Section [77-20-9](#);

68 (b) appropriations from the Legislature;

69 (c) interest earned on money in the fund; and

70 (d) contributions from other public or private sources.

71 (5) The commission shall award grants from the fund to county agencies and other
72 agencies the commission determines appropriate to assist counties with establishing and
73 expanding pretrial services programs that serve the purpose of:

74 (a) assisting a court in making an informed decision regarding an individual's pretrial
75 release; and

76 (b) providing supervision of an individual released from law enforcement custody on
77 conditions pending a final determination of a criminal charge filed against the individual.

78 (6) The commission may retain up to 3% of the money deposited into the fund to pay
79 for administrative costs incurred by the commission, including salary and benefits, equipment,
80 supplies, or travel costs that are directly related to the administration of this section.

81 (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
82 commission shall establish a grant application and review process for the expenditure of money
83 from the fund.

84 (8) The grant application and review process shall describe:

85 (a) the requirements to complete the grant application;

86 (b) requirements for receiving funding;

87 (c) criteria for the approval of a grant application; and

- 88 (d) support offered by the commission to complete a grant application.
89 (9) Upon receipt of a grant application, the commission shall:
90 (a) review the grant application for completeness;
91 (b) make a determination regarding the grant application;
92 (c) inform the grant applicant of the commission's determination regarding the grant
93 application; and
94 (d) if approved, award grants from the fund to the grant applicant.
95 (10) Before November 30 of each year, the commission shall provide an electronic
96 report to the Law Enforcement and Criminal Justice Interim Committee regarding the status of
97 the fund and expenditures made from the fund.

98 Section 2. Section 77-7-19 is amended to read:

99 **77-7-19. Appearance required by citation -- Arrest for failure to appear --**

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

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

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

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

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

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

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

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

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

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

126 ~~[(6)]~~ (4) (a) Clerks and other administrative personnel serving the courts shall ~~[ensure~~
 127 ~~that all citations for violation of Title 41, Motor Vehicles, are filed in a court with jurisdiction~~
 128 ~~and venue and shall refuse to receive citations that should be filed in another court]~~ identify for
 129 the judge any citations over which the court may lack jurisdiction.

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

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

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

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

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

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

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

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

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

145 Section 3. Section 77-7-20 is amended to read:

146 **77-7-20. Service of citation on defendant -- Filing in court -- Electronic filing --**

147 **Contents of citations.**

148 (1) Except as provided in Subsection (4), a peace officer or ~~[public]~~ other authorized
 149 official who issues a citation pursuant to Section 77-7-18 shall give the citation to the

150 individual cited and shall, within five business days, electronically file the data from
151 Subsections (2)(a) through (2)(~~g~~)(h) with the court specified in the citation. The data
152 transmission shall use the court's electronic filing interface. A nonconforming filing is not
153 effective.

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

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

157 (b) the name and date of birth of the individual cited;

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

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

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

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

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

167 (h) [~~the address of the court in which the individual is to appear~~] whether the defendant
168 was arrested for a reason other than the offense prompting the issuance of the citation;

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

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

171 READ CAREFULLY

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

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

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

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

181 and

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

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

186 (b) The court may accept an electronic filing received after five business days if:

187 (i) the defendant consents to the filing; and

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

189 Section 4. Section 77-7-21 is amended to read:

190 **77-7-21. Proceeding on citation -- Voluntary forfeiture of bail -- Parent signature**
191 **required -- Information, when required.**

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

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

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

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

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

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

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

210 (iv) a violation of a local ordinance similar to the offenses described in Subsections

211 (1)(b)(i) through (iii).

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

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

218 (2) [~~An information shall be filed and~~] If the individual pleads not guilty to the offense
219 charged, further proceedings shall be held in accordance with the Rules of Criminal Procedure
220 and all other applicable provisions of this code [~~if the person cited pleads not guilty to the~~
221 ~~offense charged~~].

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

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

225 Section 5. Section ~~77-17-8~~ is amended to read:

226 **77-17-8. Mistake in charging offense -- Procedure -- Witnesses.**

227 If₂ at any time before verdict or judgment₂ a mistake [~~has been~~] is made in charging the
228 proper offense, and [~~it appears that~~] there is probable cause to believe that the defendant is
229 chargeable with another offense, the court may commit [~~him or require him to give bail under~~
230 ~~Section 77-20-1 for his appearance to answer to the proper charge when filed, and may also~~
231 ~~require witnesses to give bail for their appearance~~] the defendant or require the defendant to
232 comply with one or more pretrial release conditions in accordance with Section 77-20-1 to
233 ensure the defendant's appearance in court.

234 Section 6. Section ~~77-18a-1~~ is amended to read:

235 **77-18a-1. Appeals -- When proper.**

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

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

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

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

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

242 (2) In addition to any appeal permitted by Subsection (1), a defendant may seek

243 discretionary appellate review of any interlocutory order.

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

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

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

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

250 (d) an order arresting judgment or granting a motion for merger;

251 (e) an order terminating the prosecution because of a finding of double jeopardy or
252 denial of a speedy trial;

253 (f) an order granting a new trial;

254 (g) an order holding a statute or any part of it invalid;

255 (h) an order adjudicating the defendant's competency to proceed further in a pending
256 prosecution;

257 (i) an order finding, pursuant to Title 77, Chapter 19, Part 2, Competency for
258 Execution, that an inmate sentenced to death is incompetent to be executed;

259 (j) an order reducing the degree of offense pursuant to Section 76-3-402; or

260 (k) an illegal sentence.

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

263 Section 7. Section 77-20-1 is amended to read:

264 **77-20-1. Right to bail -- Pretrial status order -- Denial of bail -- Detention hearing**
265 **-- Motion to modify.**

266 (1) As used in this chapter:

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

268 (b) "Financial condition" or "monetary bail" means any monetary condition that may be
269 imposed under Section 77-20-4 to secure an individual's pretrial release.

270 (c) "Pretrial release" or "bail" means release of an individual charged with or arrested
271 for a criminal offense from law enforcement or judicial custody during the time the individual
272 awaits trial or other resolution of the criminal charges.

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

274 over an individual charged with a criminal offense that sets the terms and conditions of the
275 individual's pretrial release or denies pretrial release and orders that the individual be detained
276 pending resolution of the criminal charges.

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

278 ~~[(e)]~~ (f) "Surety insurer" means the same as that term is defined in Section 31A-35-102.

279 (2) An individual charged with or arrested for a criminal offense shall be admitted to
280 bail as a matter of right, except if the individual is charged with a:

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

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

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

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

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

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

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

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

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

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

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

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

306 (3) (a) A court exercising jurisdiction over an individual charged with or arrested for a
307 criminal offense shall issue a pretrial status order designating the conditions to be imposed
308 upon the individual's release or ordering that the individual be detained under this section
309 during the time the individual awaits trial or other resolution of the criminal charges.

310 (b) A court granting pretrial release shall impose the least restrictive reasonably
311 available conditions of release on the individual who is the subject of the pretrial status order
312 that the court determines will reasonably ensure:

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

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

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

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

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

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

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

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

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

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

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

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

335 (iii) avoid contact with a witness or witnesses who may testify concerning the alleged

- 336 offense that are named in the pretrial status order;
337 (iv) not use or consume alcohol, or any narcotic drug or other controlled substance
338 except as prescribed by a licensed medical practitioner;
339 (v) submit to drug or alcohol testing;
340 (vi) complete a substance abuse evaluation and comply with any recommended
341 treatment or release program;
342 (vii) submit to electronic monitoring or location device tracking;
343 (viii) participate in inpatient or outpatient medical, behavioral, psychological, or
344 psychiatric treatment;
345 (ix) maintain employment, or if unemployed, actively seek employment;
346 (x) maintain or commence an education program;
347 (xi) comply with limitations on where the individual is allowed to be located or the
348 times the individual shall be or may not be at a specified location;
349 (xii) comply with specified restrictions on personal associations, place of residence, or
350 travel;
351 (xiii) report to a law enforcement agency, pretrial services program, or other designated
352 agency at a specified frequency or on specified dates;
353 (xiv) comply with a specified curfew;
354 (xv) forfeit or refrain from possession of a firearm or other dangerous weapon;
355 (xvi) if the individual is charged with an offense against a child, is limited or denied
356 access to any location or occupation where children are, including any residence where children
357 are on the premises, activities including organized activities in which children are involved,
358 locations where children congregate, or where a reasonable person should know that children
359 congregate;
360 (xvii) comply with requirements for house arrest;
361 (xviii) return to custody for a specified period of time following release for
362 employment, schooling, or other limited purposes;
363 (xix) remain in the custody of one or more designated individuals who agree to
364 supervise and report on the behavior and activities of the individual charged and to encourage
365 compliance with all court orders and attendance at all required court proceedings;
366 (xx) comply with a financial condition; or

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

369 (c) If the court determines a financial condition, other than an unsecured bond, is
370 necessary to impose on an individual as part of the individual's pretrial release, the court shall:

371 (i) consider the individual's ability to pay when determining the amount of the financial
372 condition; and

373 (ii) include the court's written findings of fact and conclusions of law supporting the
374 court's decision in the pretrial status order.

375 (5) In making a determination under Subsection (3), the court may rely on the
376 following:

377 (a) any form of pretrial services assessment;

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

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

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

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

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

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

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

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

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

400 (c) The individual who is the subject of the detention hearing has the right to be
401 represented by counsel at the pretrial detention hearing and, if a court finds the individual is
402 indigent under Section 78B-22-202, the court shall appoint counsel to represent the individual
403 in accordance with Section 78B-22-203.

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

406 (7) After hearing evidence on a motion for pretrial detention, the court may detain the
407 individual if:

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

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

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

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

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

419 (i) criminal homicide as defined in Section 75-5-201; and

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

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

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

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

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

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

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

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

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

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

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

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

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

440 (b) Nothing in this section precludes or nullifies a jail release agreement or jail release
441 order required under Section 77-20-3.5.

442 ~~[(6)]~~ (11) (a) A motion to modify the initial pretrial status order may be made by a
443 party at any time upon notice to the opposing party sufficient to permit the opposing party to
444 prepare for hearing and to permit [~~any victim~~] each alleged victim to be notified and be present.

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

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

450 ~~[(7)]~~ (12) Subsequent motions to modify [~~bail orders~~] a pretrial status order may be
451 made only upon a showing that there has been a material change in circumstances.

452 ~~[(8)]~~ (13) An appeal may be taken from an order of [~~any~~] a court denying bail to the
453 [~~Supreme Court~~] Utah Court of Appeals pursuant to the Utah Rules of Appellate Procedure,
454 which shall review the determination under Subsection ~~[(2)]~~ (7).

455 ~~[(9)]~~ (14) For purposes of this section, any arrest or charge for a violation of Section
456 76-5-202, Aggravated murder, is a capital felony unless:

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

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

460 Section 8. Section 77-20-4 is amended to read:

461 **77-20-4. Bail to be posted in cash, by credit or debit card, or by written**
462 **undertaking -- Specific monetary bail methods.**

463 (1) (a) Except as provided in Subsection (2), the judge or magistrate shall set bail at a
464 single amount per case or charge.

465 (b) Subject to Subsection (2), a defendant may choose to post the amount described in
466 Subsection (1)(a) by any of the following methods:

467 (i) in cash;

468 (ii) by written undertaking with sureties;

469 (iii) by written undertaking without sureties, at the discretion of the judge or
470 magistrate; or

471 (iv) by credit or debit card, at the discretion of the judge or bail commissioner.

472 (2) A judge or magistrate may limit a defendant to a specific method of posting
473 monetary bail described in Subsection (1)(b)(i), (ii), (iii), or (iv):

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

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

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

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

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

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

490 (4) [~~Bail posted~~] Monetary bail paid by debit or credit card, less the fee charged by the

491 financial institution, shall be tendered to the courts.

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

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

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

500 **77-20-7. Duration of liability on undertaking -- Notices to sureties -- Exoneration**
501 **if charges not filed.**

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

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

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

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

521 (e) If a surety issues a bail bond after [~~the~~] sentencing, the surety is liable on the

522 undertaking during all proceedings and for all court appearances required of the defendant up
523 to and including the defendant's appearance to commence serving the sentence imposed under
524 Subsection (1).

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

529 (a) relieve a person from conditions of release [at the person's request, and the bail
530 bond or undertaking is exonerated without further order of the court unless the prosecutor
531 requests an extension of time before the end of the 120-day period by:];

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

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

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

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

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

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

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

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

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

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

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

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

547 Section 10. Section 77-20-8 is amended to read:

548 **77-20-8. Grounds for detaining or releasing defendant on conviction and prior to**
549 **sentence.**

550 (1) Upon conviction, by plea or trial, the court shall order that the convicted defendant
551 who is waiting imposition or execution of sentence be detained, unless the court finds by clear
552 and convincing evidence presented by the defendant that the defendant is not likely to flee the

553 jurisdiction of the court, and will not pose a danger to the physical, psychological, or financial
554 and economic safety or well-being of any other person or the community if released.

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

558 Section 11. Section ~~77-20-8.5~~ is amended to read:

559 **77-20-8.5. Sureties -- Surrender of defendant -- Arrest of defendant.**

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

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

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

575 (a) arrest the defendant:

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

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

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

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

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

583 Section 12. Section ~~77-20-9~~ is amended to read:

584 **77-20-9. Disposition of forfeitures.**

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

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

591 [(2)] (1) the forfeited [~~bail~~] amount in cases in precinct justice courts or in municipal
592 justice courts shall be distributed as provided in Sections 78A-7-120 and 78A-7-121; and

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

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

598 (2) in all other cases:

599 (a) 60% of the forfeited bond shall be paid to the Pretrial Release Programs Special
600 Revenue Fund established in Section 63M-7-213;

601 (b) 25% of the forfeited bond shall be paid to the General Fund; and

602 (c) 15% of the forfeited bond shall be paid to the prosecuting agency that brings an
603 action to collect under Section 77-20b-104.

604 Section 13. Section 77-20-10 is amended to read:

605 **77-20-10. Grounds for detaining defendant while appealing the defendant's**
606 **conviction -- Conditions for release while on appeal.**

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

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

611 (i) reversal;

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

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

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

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

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

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

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

628 [~~(c) (i) execute a written agreement to forfeit, upon failing to appear as required,
629 designated property, including money, as is reasonably necessary to assure the appearance of
630 the defendant; and]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

660 ~~[(i) any residence where children are on the premises;]~~

661 ~~[(ii) activities, including organized activities, in which children are involved; and]~~

662 ~~[(iii) locations where children congregate, or where a reasonable person should know~~
663 ~~that children congregate.]~~

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

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

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

673 (a) continuation of any pre-trial restrictions or orders;

674 (b) sentencing protective orders under Section 77-36-5.1;

675 (c) drug and alcohol use;

676 (d) use of an ignition interlock; and

677 (e) posting appropriate monetary bail.

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

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

682 Section 14. Section **77-20b-101** is amended to read:

683 **77-20b-101. Entry of nonappearance -- Notice to surety -- Release of surety on**
684 **failure of timely notice.**

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

689 (a) [~~mail~~] email notice of nonappearance [~~by certified mail, return receipt requested,~~
690 ~~within 30 days~~] to [~~the address of~~] the surety or surety insurer at the email address provided on
691 the bond;

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

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

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

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

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

703 (3) If notice of nonappearance is not [~~mailed~~] emailed to a surety or surety insurer as
704 listed on the [~~bail~~] bond, other than the defendant, in accordance with Subsection (1) or (2), the
705 surety or surety insurer and its [~~bail~~] bond producer are relieved of further obligation under the
706 [~~bail~~] bond if the [~~surety's current name and address or the current name and address of the bail~~
707 ~~bond agency are on the bail bond~~] surety or surety insurer have listed their current name and

708 email addresses on the bond in the court's file.

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

712 (ii) If the defendant, while in custody, appears on the case for which the [~~bait~~] bond
713 was posted, the court may not reinstate the [~~bait~~] bond without the consent of the bond
714 company.

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

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

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

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

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

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

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

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

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

738 (B) a reasonable person would have concluded, based on the surety's or surety insurer's

739 determination, that the defendant was legally present in the United States; and

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

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

745 (f) If a surety's [~~bail~~] or surety insurer's bond has been exonerated under this section
746 and the surety or surety insurer remains liable for the cost of transportation of the defendant,
747 the surety or surety insurer may take custody of the defendant for the purpose of transporting
748 the defendant to the jurisdiction where the charge is pending.

749 Section 15. Section **77-20b-102** is amended to read:

750 **77-20b-102. Time for bringing defendant to court.**

751 (1) If notice of nonappearance [~~has been mailed~~] is emailed to a surety or surety insurer
752 under Section **77-20b-101**, the surety or surety insurer may bring the defendant before the court
753 or surrender the defendant into the custody of a county sheriff within the state within [~~six~~
754 ~~months of~~] 90 days after the date of nonappearance, during which time a forfeiture action on
755 the [~~bail~~] bond may not be brought.

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

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

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

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

764 Section 16. Section **77-20b-104** is amended to read:

765 **77-20b-104. Forfeiture of bail.**

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

769 (a) filing a motion for [~~bail~~] bond forfeiture with the court, supported by proof of

770 notice to the surety or surety insurer of the defendant's nonappearance; and

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

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

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

775 (b) the surety or surety insurer was given notice of the defendant's nonappearance in
776 accordance with Section [77-20b-101](#);

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

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

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

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

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

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

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

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

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

795 Section 17. Section **78A-2-220** is amended to read:

796 **78A-2-220. Authority of magistrate.**

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

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

800 (b) set or deny bail under Section [77-20-1](#) and release upon the payment of monetary

801 bail and satisfaction of any other conditions of release;

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

804 (d) conduct an initial appearance;

805 (e) conduct arraignments;

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

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

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

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

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

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

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

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

817 Section 18. **Repealer.**

818 This bill repeals:

819 Section [77-20-3](#), **Release on own recognizance -- Changing amount of bail or**
820 **conditions of release.**