

## HB0206S02 compared with HB0206S01

~~deleted text~~ shows text that was in HB0206S01 but was deleted in HB0206S02.

inserted text shows text that was not in HB0206S01 but was inserted into HB0206S02.

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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

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#### 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

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

### Money Appropriated in this Bill:

None

### Other Special Clauses:

~~{ None }~~ This bill provides a special effective date.

### Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ENACTS:

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63M-7-213, Utah Code Annotated 1953

REPEALS:

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

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

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

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

(1) As used in this section:

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

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

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

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

(4) The fund shall consist of:

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

(b) appropriations from the Legislature;

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

(d) contributions from other public or private sources.

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

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

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

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

(7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

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commission shall establish a grant application and review process for the expenditure of money from the fund.

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

(a) the requirements to complete the grant application;

(b) requirements for receiving funding;

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

(d) support offered by the commission to complete a grant application.

(9) Upon receipt of a grant application, the commission shall:

(a) review the grant application for completeness;

(b) make a determination regarding the grant application;

(c) inform the grant applicant of the commission's determination regarding the grant application; and

(d) if approved, award grants from the fund to the grant applicant.

(10) Before November 30 of each year, the commission shall provide an electronic report to the Law Enforcement and Criminal Justice Interim Committee regarding the status of the fund and expenditures made from the fund.

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

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

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

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

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

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

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

~~[(3)(a) A person who receives a citation and who fails to comply with Section 77-7-21~~

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~~on or before the time and date and at the court specified is subject to arrest.]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Contents of citations.**

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

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

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

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

(c) a brief description of the offense charged;

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

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

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

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

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

~~— [(i) {}]~~

~~[(f)] (h)~~ whether the offense is a domestic violence offense; and

~~[(f)] (i)~~ a notice containing substantially the following language:

READ CAREFULLY

This citation is not an information and will not be used as an information without your

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consent. If an information is filed you will be provided a copy by the court. You MUST appear in court on or before the time set in this citation or as directed by the court. IF YOU FAIL TO APPEAR, THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST.

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

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

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

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

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

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

(i) the defendant consents to the filing; and

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

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

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

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

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

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

(b) If provided by the uniform fine schedule described in Section 76-3-301.5 ~~for~~ for or with the court's approval,] an individual may remit the fine and other penalties without a personal appearance before the court in any case charging a class B misdemeanor or lower

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offense, unless the charge is:

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

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

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

(iv) a violation of a local ordinance similar to the offenses described in Subsections (1)(b)(i) through (iii) ~~or~~; or

(v) a violation that appears to:

(a) affect a victim, as defined in Section 77-38a-102; or

(b) require restitution, as defined in Section 77-38a-102.

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

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

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

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

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

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

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

If, at any time before verdict or judgment, a mistake [~~has been~~] is made in charging the proper offense, and [~~it appears that~~] there is probable cause to believe that the defendant is chargeable with another offense, the court may commit [~~him or require him to give bail under Section 77-20-1 for his appearance to answer to the proper charge when filed, and may also require witnesses to give bail for their appearance~~] the defendant or require the defendant to

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comply with one or more pretrial release conditions in accordance with Section 77-20-1 to ensure the defendant's appearance in court.

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

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

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

- (a) a final judgment of conviction, whether by verdict or plea;
- (b) an order made after judgment that affects the substantial rights of the defendant;
- (c) an order adjudicating the defendant's competency to proceed further in a pending

prosecution; or

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

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

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

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

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

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

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

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

(f) an order granting a new trial;

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

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

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

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

(k) an illegal sentence.

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

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

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

(1) As used in this chapter:

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

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

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

(d) "Pretrial status order" means an order issued by the court exercising jurisdiction over an individual charged with a criminal offense that sets the terms and conditions of the individual's pretrial release or denies pretrial release and orders that the individual be detained pending resolution of the criminal charges.

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

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

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

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

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

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

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

(e) domestic violence offense if the court finds:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) submit to drug or alcohol testing;

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

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

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

(ix) maintain employment, or if unemployed, actively seek employment;

(x) maintain or commence an education program;

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

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

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

(xiv) comply with a specified curfew;

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

(xvi) if the individual is charged with an offense against a child, is limited or denied

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access to any location or occupation where children are, including any residence where children are on the premises, activities including organized activities in which children are involved, locations where children congregate, or where a reasonable person should know that children congregate;

(xvii) comply with requirements for house arrest;

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

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

(xx) comply with a financial condition; or

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

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

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

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

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

(a) any form of pretrial services assessment;

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

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

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

(e) if the individual was on probation, parole, or release pending an upcoming court

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proceeding at the time the individual allegedly committed the offense;

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

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

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

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

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

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

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

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

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

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

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

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

(b) Criminal charges that create a rebuttable presumption of detention under

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Subsection (8)(a) include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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opportunity to present additional evidence or information relevant to bail.

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

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

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

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

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

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

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

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

- (i) in cash;
- (ii) by written undertaking with sureties;
- (iii) by written undertaking without sureties, at the discretion of the judge or magistrate; or
- (iv) by credit or debit card, at the discretion of the judge or bail commissioner.

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

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

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

(c) if the defendant has failed to respond to a citation or summons and the offense with

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which the defendant is charged is listed in the shared master offense table as one for which an appearance is not mandatory;

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

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

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

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

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

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

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

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

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

(b) If the sentence includes a commitment to a jail or prison, the [~~bail~~] bond or other

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written undertaking shall be exonerated when the defendant appears at the appropriate jail or prison, unless the judge does not require the defendant to begin the commitment within seven days, in which case the ~~[bail]~~ bond or other written undertaking is exonerated upon sentencing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) (a) Sureties may at any time prior to a defendant's failure to appear surrender the defendant and obtain exoneration of monetary bail, by notifying the clerk of the court in which the monetary bail was posted of the defendant's surrender and requesting exoneration.

Notification shall be made immediately following the surrender by surface mail, electronic mail, or fax.

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

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finds just.

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

(a) arrest the defendant:

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

(ii) at any place within the state; and

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

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

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

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

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

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

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

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

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

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

(2) in all other cases:

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

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

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

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

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

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

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

(i) reversal;

(ii) an order for a new trial; or

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

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

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

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

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

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

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

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

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

~~[(e) remain in the custody of a designated person who agrees to assume supervision of~~

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~~the defendant and who agrees to report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any other person or the community;]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(d)]~~ (c) ensure that the name, address, business email address, and telephone number

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of the surety ~~[or]~~, its agent, or surety insurer as listed on the [bail] bond is stated on the bench warrant~~[-and]~~.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) the defendant failed to appear as required;

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

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

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

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

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

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

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- (b) specify the amount of [~~bail~~] the bond forfeited;
  - (c) grant the forfeiture of the [~~bail~~] bond; and
  - (d) be docketed by the clerk of the court in the civil judgment docket.
- (5) A prosecutor may immediately commence collection proceedings to execute a judgment of [~~bail~~] bond forfeiture against the assets of the surety.

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

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

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

- (a) commit a person to incarceration prior to trial;
- (b) set or deny bail under Section 77-20-1 and release upon the payment of monetary bail and satisfaction of any other conditions of release;
- (c) issue to any place in the state summonses and warrants of search and arrest and authorize administrative traffic checkpoints under Section 77-23-104;
- (d) conduct an initial appearance;
- (e) conduct arraignments;
- (f) conduct a preliminary examination to determine probable cause;
- (g) appoint attorneys and order recoupment of attorney fees;
- (h) order the preparation of presentence investigations and reports;
- (i) issue temporary orders as provided by rule of the Judicial Council; and
- (j) perform any other act or function authorized by statute.

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

- (a) a judge of the justice court may conduct an initial appearance, preliminary examination, or arraignment as provided by rule of the Judicial Council; and
- (b) a judge of the justice court may not [~~set bail~~] perform any act or function in a capital felony [~~nor deny bail in any~~] case.

### Section 18. **Repealer.**

This bill repeals:

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

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**Section 19. Effective date.**

**This bill takes effect on October 1, 2020.**