

Senator Jerry W. Stevenson proposes the following substitute bill:

DUI REVISIONS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: Jerry W. Stevenson

Cosponsors:	Karianne Lisonbee	Christine F. Watkins
Melissa G. Ballard	Paul Ray	Brad R. Wilson
Matthew H. Gwynn	Jeffrey D. Stenquist	Mike Winder
Marsha Judkins	Andrew Stoddard	

LONG TITLE

General Description:

This bill makes changes to bail provisions for DUI offenses.

Highlighted Provisions:

This bill:

- creates a presumption of pretrial detention for individuals charged with certain DUI offenses.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-20-1, as last amended by Laws of Utah 2020, Chapters 142 and 185



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

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

77-20-1. Right to bail -- 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.

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

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

(b) a 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) a 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) a felony when the court finds there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the individual violated a material

56 condition of release while previously on bail; [or]
57 (e) a domestic violence offense if the court finds:
58 (i) that there is substantial evidence to support the charge; and
59 (ii) by clear and convincing evidence, that the individual would constitute a substantial
60 danger to an alleged victim of domestic violence if released on bail[-]; or
61 (f) the offense of driving under the influence or driving with a measurable controlled
62 substance in the body if:
63 (i) the offense results in death or serious bodily injury to an individual; and
64 (ii) the courts finds:
65 (A) that there is substantial evidence to support the charge; and
66 (B) by clear and convincing evidence that the person would constitute a substantial
67 danger to the community if released on bail.
68 (3) (a) A court exercising jurisdiction over an individual charged with or arrested for a
69 criminal offense shall issue a pretrial status order designating the conditions to be imposed
70 upon the individual's release or ordering that the individual be detained under this section
71 during the time the individual awaits trial or other resolution of the criminal charges.
72 (b) A court granting pretrial release shall impose the least restrictive reasonably
73 available conditions of release on the individual who is the subject of the pretrial status order
74 that the court determines will reasonably ensure:
75 (i) the individual's appearance in court when required;
76 (ii) the safety of any witnesses or victims of the offense allegedly committed by the
77 individual;
78 (iii) the safety and welfare of the public; and
79 (iv) that the individual will not obstruct or attempt to obstruct the criminal justice
80 process.
81 (c) (i) The court shall issue the pretrial status order without unnecessary delay.
82 (ii) If a prosecutor files a motion for detention under Subsection (6), the court may
83 delay issuing the pretrial status order until after hearing the motion to detain if the court finds:
84 (A) the prosecutor's motion states a reasonable case for detention; and
85 (B) detaining the defendant until after the motion is heard is in the interests of justice
86 and public safety.

87 (d) Witness or victim testimony is not required at ~~the~~ a ~~hearing on~~ a
 87a ~~motion to detain~~ if:

87b (i) the defendant is charged with driving under the influence or driving with a
 87c measurable controlled substance in the body; and

87d (ii) an appearance by the victim would present an undue burden upon the victim ~~.~~

88 (e) Notwithstanding any other provisions of this section, there is a rebuttable
 89 presumption that an individual ~~is a substantial danger to the community as long as the individual has a blood or~~
 90 breath alcohol concentration of .05 grams or greater, ~~is a substantial danger to the community:~~
 91 is a substantial danger to the community:

91a (i) as long as the individual has a blood or breath alcohol concentration of .05 grams or
 91b greater if the individual is arrested for or charged with the offense of driving under the
 91c influence and the offense resulted in death or serious bodily injury to an individual; or

91d (ii) if the individual has a measurable amount of controlled substance in the individual's
 91e body, the individual is arrested for or charged with the offense of driving with a measurable
 91f controlled substance in the body, and the offense resulted in death or serious bodily injury to
 91g an individual. ~~.~~

92 (4) (a) Except as otherwise provided in this section or Section [78B-7-802](#), the court
 93 shall order that an individual charged with a criminal offense be released on the individual's
 94 own recognizance, on condition that the individual appear at all required court proceedings, if
 95 the court finds that additional conditions are not necessary to reasonably ensure compliance
 96 with Subsection (3)(b).

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

- 100 (i) not commit a federal, state, or local offense during the period of release;
- 101 (ii) avoid contact with a victim or victims of the alleged offense;
- 102 (iii) avoid contact with a witness or witnesses who may testify concerning the alleged
 103 offense that are named in the pretrial status order;
- 104 (iv) not use or consume alcohol, or any narcotic drug or other controlled substance
 105 except as prescribed by a licensed medical practitioner;
- 106 (v) submit to drug or alcohol testing;
- 107 (vi) complete a substance abuse evaluation and comply with any recommended
 108 treatment or release program;
- 109 (vii) submit to electronic monitoring or location device tracking;

- 110 (viii) participate in inpatient or outpatient medical, behavioral, psychological, or
- 111 psychiatric treatment;
- 112 (ix) maintain employment, or if unemployed, actively seek employment;
- 113 (x) maintain or commence an education program;
- 114 (xi) comply with limitations on where the individual is allowed to be located or the
- 115 times the individual shall be or may not be at a specified location;
- 116 (xii) comply with specified restrictions on personal associations, place of residence, or
- 117 travel;

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

120 (xiv) comply with a specified curfew;

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

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

127 (xvii) comply with requirements for house arrest;

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

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

133 (xx) comply with a financial condition; or

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

136 (c) If the court determines a financial condition, other than an unsecured bond, is
137 necessary to impose on an individual as part of the individual's pretrial release, the court shall
138 consider the individual's ability to pay when determining the amount of the financial condition.

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

141 (a) any form of pretrial services assessment;

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

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

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

149 individual;

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

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

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

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

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

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

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

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

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

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

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

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

179 (8) (a) If an individual is charged with a criminal offense described in Subsection

180 (8)(b), there is a rebuttable presumption that the individual be detained.

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

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

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

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

188 (9) Except as otherwise provided, the court issuing a pretrial warrant of arrest shall
189 issue the initial pretrial status order.

190 (10) (a) An individual arrested for a violation of a jail release agreement or jail release
191 court order issued in accordance with Section 78B-7-802:

192 (i) may be denied pretrial release by the court under Subsection (2); and

193 (ii) if denied pretrial release, may not be released before the individual's initial
194 appearance before the court.

195 (b) Nothing in this section precludes or nullifies a jail release agreement or jail release
196 order required under Section 78B-7-802.

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

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

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

205 (12) Subsequent motions to modify a pretrial status order may be made only upon a
206 showing that there has been a material change in circumstances.

207 (13) An appeal may be taken from an order of a court denying bail to the Utah Court of
208 Appeals pursuant to the Utah Rules of Appellate Procedure, which shall review the
209 determination under Subsection (7).

210 (14) For purposes of this section, any arrest or charge for a violation of Section

211 [76-5-202](#), Aggravated murder, is a capital felony unless:

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

213 (b) the time for filing a notice to seek the death penalty has expired and the prosecutor

214 has not filed a notice to seek the death penalty.