

RIOT AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ryan D. Wilcox

Senate Sponsor: Don L. Ipson

LONG TITLE

General Description:

This bill adds specific sanctions for individuals arrested and convicted of rioting.

Highlighted Provisions:

This bill:

- ▶ provides that a person arrested for rioting must appear before a magistrate before being released;
- ▶ requires the court to order restitution upon a conviction for rioting; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-9-101, as last amended by Laws of Utah 1997, Chapter 289

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

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

Section 1. Section **76-9-101** is amended to read:

76-9-101. Riot -- Penalties.

(1) [~~A person~~] An individual is guilty of riot if the individual:

(a) simultaneously with two or more other [~~persons he~~] individuals engages in

30 ~~[tumultuous or]~~ violent conduct ~~[and thereby]~~, knowingly or recklessly ~~[creates]~~ creating a
31 substantial risk of causing public alarm; ~~[or]~~

32 (b) ~~[he]~~ assembles with two or more other ~~[persons]~~ individuals with the purpose of
33 engaging, soon thereafter, in ~~[tumultuous or]~~ violent conduct, knowing, that two or more other
34 ~~[persons]~~ individuals in the assembly have the same purpose; or

35 (c) ~~[he]~~ assembles with two or more other ~~[persons]~~ individuals with the purpose of
36 committing an offense against a person, or the property of another person who ~~[he]~~ the
37 individual supposes to be guilty of a violation of law, believing that two or more other
38 ~~[persons]~~ individuals in the assembly have the same purpose.

39 (2) ~~[Any person]~~ Any individual who refuses to comply with a lawful order to
40 withdraw ~~[given to him immediately]~~ prior to, during, or immediately following a violation of
41 Subsection (1) is guilty of riot. It is no defense to a prosecution under this Subsection (2) that
42 withdrawal must take place over private property; provided, however, that ~~[no persons so~~
43 ~~withdrawing shall]~~ an individual who withdraws in compliance with an order to withdraw may
44 not incur criminal or civil liability by virtue of acts reasonably necessary to accomplish the
45 withdrawal.

46 ~~[(3) Riot is a felony of the third degree if, in the course of and as a result of the~~
47 ~~conduct, any person suffers bodily injury, or substantial property damage, arson occurs or the~~
48 ~~defendant was armed with a dangerous weapon, as defined in Section 76-1-601; otherwise it is~~
49 ~~a class B misdemeanor.]~~

50 (3) Except as provided in Subsection (4), riot is a class B misdemeanor.

51 (4) Riot is a third degree felony if, in the course of the conduct:

52 (a) the individual causes substantial or serious bodily injury;

53 (b) the individual causes substantial property damage or commits arson; or

54 (c) the individual was in possession of a dangerous weapon as defined in Section
55 76-1-601.

56 (5) An individual arrested for a violation of Subsection (4) may not be released from
57 custody before the individual appears before a magistrate or a judge.

58 (6) The court shall order a defendant convicted under Subsection (4) to pay restitution
59 as calculated in accordance with Section [77-38a-302](#).

60 Section 2. Section **77-20-1** is amended to read:

61 **77-20-1. Right to bail -- Pretrial status order -- Denial of bail -- Detention hearing**
62 **-- Motion to modify.**

63 (1) As used in this chapter:

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

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

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

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

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

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

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

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

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

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

86 released on bail;

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

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

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

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

94 (f) a felony violation of Section 76-9-101 if there is substantial evidence to support the
95 charge and the court finds by clear and convincing evidence that the individual is not likely to
96 appear for a subsequent court appearance.

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

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

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

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

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

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

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

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

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

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

116 (4) (a) Except as otherwise provided in this section, [Section 76-9-101](#), or Section
117 [78B-7-802](#), the court shall order that an individual charged with a criminal offense be released
118 on the individual's own recognizance, on condition that the individual appear at all required
119 court proceedings, if the court finds that additional conditions are not necessary to reasonably
120 ensure compliance with Subsection (3)(b).

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

- 124 (i) not commit a federal, state, or local offense during the period of release;
- 125 (ii) avoid contact with a victim or victims of the alleged offense;
- 126 (iii) avoid contact with a witness or witnesses who may testify concerning the alleged
127 offense that are named in the pretrial status order;
- 128 (iv) not use or consume alcohol, or any narcotic drug or other controlled substance
129 except as prescribed by a licensed medical practitioner;
- 130 (v) submit to drug or alcohol testing;
- 131 (vi) complete a substance abuse evaluation and comply with any recommended
132 treatment or release program;
- 133 (vii) submit to electronic monitoring or location device tracking;
- 134 (viii) participate in inpatient or outpatient medical, behavioral, psychological, or
135 psychiatric treatment;
- 136 (ix) maintain employment, or if unemployed, actively seek employment;
- 137 (x) maintain or commence an education program;
- 138 (xi) comply with limitations on where the individual is allowed to be located or the
139 times the individual shall be or may not be at a specified location;
- 140 (xii) comply with specified restrictions on personal associations, place of residence, or
141 travel;

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

144 (xiv) comply with a specified curfew;

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

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

151 (xvii) comply with requirements for house arrest;

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

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

157 (xx) comply with a financial condition; or

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

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

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

165 (a) any form of pretrial services assessment;

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

168 (c) the nature and circumstances of the individual, including the individual's character,
169 physical and mental health, family and community ties, employment status and history,

170 financial resources, past criminal conduct, history of drug or alcohol abuse, and history of
171 timely appearances at required court proceedings;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

234 (14) For purposes of this section, any arrest or charge for a violation of Section
235 [76-5-202](#), Aggravated murder, is a capital felony unless:

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