

DUI REVISIONS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: Jerry W. Stevenson

LONG TITLE

Committee Note:

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.

Legislative Vote: 13 voting for 0 voting against 3 absent

General Description:

This bill makes changes to bail provisions for DUI offenses.

Highlighted Provisions:

This bill:

- ▶ defines terms; and
- ▶ creates a presumption of detention for individuals charged with certain DUI offenses while awaiting trial.

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

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

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



28 **77-20-1. Right to bail -- Pretrial status order -- Denial of bail -- Detention hearing**
29 **-- Motion to modify.**

30 (1) As used in this chapter:

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

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

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

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

41 (e) "Substantial evidence" means evidence that is beyond a scintilla and that a
42 reasonable mind would accept as adequate to support a conclusion. Substantial evidence does
43 not require witness testimony.

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

45 [~~(f)~~] (g) "Surety insurer" means the same as that term is defined in Section
46 [31A-35-102](#).

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

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

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

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

58 (d) a felony when the court finds there is substantial evidence to support the charge and

59 the court finds by clear and convincing evidence that the individual violated a material
60 condition of release while previously on bail; [~~or~~]

61 (e) a domestic violence offense if the court finds:

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

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

65 (f) the offense of driving under the influence or driving with a measurable controlled
66 substance in the body if:

67 (i) the offense results in death or serious bodily injury to an individual; and

68 (ii) the courts finds:

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

70 (B) by clear and convincing evidence that the person would constitute a substantial
71 danger to the community if released on bail.

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

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

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

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

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

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

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

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

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

89 (B) detaining the defendant until after the motion is heard is in the interests of justice

90 and public safety.

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

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

- 99 (i) not commit a federal, state, or local offense during the period of release;
- 100 (ii) avoid contact with a victim or victims of the alleged offense;
- 101 (iii) avoid contact with a witness or witnesses who may testify concerning the alleged
102 offense that are named in the pretrial status order;
- 103 (iv) not use or consume alcohol, or any narcotic drug or other controlled substance
104 except as prescribed by a licensed medical practitioner;
- 105 (v) submit to drug or alcohol testing;
- 106 (vi) complete a substance abuse evaluation and comply with any recommended
107 treatment or release program;
- 108 (vii) submit to electronic monitoring or location device tracking;
- 109 (viii) participate in inpatient or outpatient medical, behavioral, psychological, or
110 psychiatric treatment;
- 111 (ix) maintain employment, or if unemployed, actively seek employment;
- 112 (x) maintain or commence an education program;
- 113 (xi) comply with limitations on where the individual is allowed to be located or the
114 times the individual shall be or may not be at a specified location;
- 115 (xii) comply with specified restrictions on personal associations, place of residence, or
116 travel;
- 117 (xiii) report to a law enforcement agency, pretrial services program, or other designated
118 agency at a specified frequency or on specified dates;
- 119 (xiv) comply with a specified curfew;
- 120 (xv) forfeit or refrain from possession of a firearm or other dangerous weapon;

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

126 (xvii) comply with requirements for house arrest;

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

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

132 (xx) comply with a financial condition; or

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

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

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

140 (a) any form of pretrial services assessment;

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

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

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

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

151 (f) the availability of other individuals who agree to assist the individual in attending

152 court when required or other evidence relevant to the individual's opportunities for supervision
153 in the individual's community;

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

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

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

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

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

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

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

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

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

176 (c) except for the offenses identified in Subsection (8), the court finds that no
177 conditions that may be imposed upon granting the individual pretrial release will reasonably
178 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[-]; and
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 (iii) an offense of driving under the influence or driving with a measurable controlled
189 substance in the body if the offense results in death or serious bodily injury to any individual.
- 190 (9) Except as otherwise provided, the court issuing a pretrial warrant of arrest shall
191 issue the initial pretrial status order.
- 192 (10) (a) An individual arrested for a violation of a jail release agreement or jail release
193 court order issued in accordance with Section 78B-7-802:
- 194 (i) may be denied pretrial release by the court under Subsection (2); and
195 (ii) if denied pretrial release, may not be released before the individual's initial
196 appearance before the court.
- 197 (b) Nothing in this section precludes or nullifies a jail release agreement or jail release
198 order required under Section 78B-7-802.
- 199 (11) (a) A motion to modify the initial pretrial status order may be made by a party at
200 any time upon notice to the opposing party sufficient to permit the opposing party to prepare
201 for hearing and to permit each alleged victim to be notified and be present.
- 202 (b) Hearing on a motion to modify a pretrial status order may be held in conjunction
203 with a preliminary hearing or any other pretrial hearing.
- 204 (c) The court may rely on information as provided in Subsection (5) and may base its
205 ruling on evidence provided at the hearing so long as each party is provided an opportunity to
206 present additional evidence or information relevant to bail.
- 207 (12) Subsequent motions to modify a pretrial status order may be made only upon a
208 showing that there has been a material change in circumstances.
- 209 (13) An appeal may be taken from an order of a court denying bail to the Utah Court of
210 Appeals pursuant to the Utah Rules of Appellate Procedure, which shall review the
211 determination under Subsection (7).
- 212 (14) For purposes of this section, any arrest or charge for a violation of Section
213 76-5-202, Aggravated murder, is a capital felony unless:

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