

# HB0047S01 compared with HB0047

~~text~~ shows text that was in HB0047 but was deleted in HB0047S01.

text shows text that was not in HB0047 but was inserted into HB0047S01.

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Senator Jerry W. Stevenson proposes the following substitute bill:

## DUI REVISIONS

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Steve Eliason**

Senate Sponsor: ~~\_\_\_\_\_~~

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## ~~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~~

~~†~~ Jerry W. Stevenson

Cosponsors:

Melissa G. Ballard

Matthew H. Gwynn

Marsha Judkins

Karianne Lisonbee

Paul Ray

Jeffrey D. Stenquist

Andrew Stoddard

Christine F. Watkins

Brad R. Wilson

Mike Winder

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### LONG TITLE

#### General Description:

This bill makes changes to bail provisions for DUI offenses.

#### Highlighted Provisions:

This bill:

~~{~~ → defines terms; and

~~}~~ ▶ creates a presumption of pretrial 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

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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 ~~ff~~ or arrested for ~~ff~~ 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

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pending resolution of the criminal charges.

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

† ~~{(e)}(f)~~ "Surety" and "sureties" mean a surety insurer or a bail bond agency.

~~{(f)}(g)~~ "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 condition of release while previously on bail; [or]

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

(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[-]; or

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

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

(ii) the courts finds:

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

(B) by clear and convincing evidence that the person would constitute a substantial

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danger to the community if released on bail.

(3) (a) A court exercising jurisdiction over an individual charged with ~~ff~~ or arrested for ~~ff~~ 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.

(d) Witness or victim testimony is not required at the hearing on the motion to detain.

(e) Notwithstanding any other provisions of this section, there is a rebuttable presumption that an individual arrested for or charged with the offense of driving under the influence is a substantial danger to the community as long as the individual has a blood or breath alcohol concentration of .05 grams or greater.

(4) (a) Except as otherwise provided in this section or Section 78B-7-802, 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

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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 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

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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 consider the individual's ability to pay when determining the amount of the financial condition.

(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 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

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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) ~~except for the offenses identified in Subsection (8),~~ 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 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 ~~or~~ ~~and~~

~~(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).~~

~~(iii) an offense of driving under the influence or driving with a measurable controlled substance in the body if the offense results in death or serious bodily injury to any individual.~~

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

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

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

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

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

(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 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 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 opportunity to present additional evidence or information relevant to bail.

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

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

(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.