

HB0058S01 compared with HB0058

~~{deleted text}~~ shows text that was in HB0058 but was deleted in HB0058S01.

inserted text shows text that was not in HB0058 but was inserted into HB0058S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Ryan D. Wilcox proposes the following substitute bill:

RIOT AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ryan D. Wilcox

Senate Sponsor: _____

LONG TITLE

~~{Committee Note:~~

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

~~_____ Legislative Vote: 10 voting for 3 voting against _____ 3 absent~~

~~{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:

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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]~~ {the individual} individuals engages in ~~[tumultuous or]~~ violent conduct {simultaneously with two or more other individuals} ~~{[and {} thereby]}~~, knowingly or recklessly ~~[creates]~~ creating a substantial risk of causing public alarm; ~~[or]~~

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

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

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

~~[(3) Riot is a felony of the third degree if, in the course of and as a result of the~~

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~~conduct, any person suffers bodily injury, or substantial property damage, arson occurs or the defendant was armed with a dangerous weapon, as defined in Section 76-1-601; otherwise it is a class B misdemeanor.]~~

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

(4) Riot is a third degree felony if, in the course of ~~}, and as a result of,~~ the conduct:

(a) ~~{any}~~the individual ~~{other than the defendant suffers}~~~~causes substantial or serious~~ bodily injury;

(b) the individual causes substantial property damage or commits arson~~{ occurs}~~; or

(c) the ~~{defendant}~~individual was in possession of a dangerous weapon as defined in Section 76-1-601.

(5) An individual arrested for a violation of Subsection (4) may not be released from custody before the ~~{matter is submitted to}~~individual appears before a magistrate ~~{in accordance with Section 77-7-23}~~or a judge.

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

Section 2. 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.

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(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 the court 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:

(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) violation of Subsection 76-9-101(4) if the court finds that there is substantial evidence to support the charge and, by clear and convincing evidence, that the individual is unlikely to appear for a subsequent court appearance.

(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;

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(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.

(4) (a) Except as otherwise provided in this section, Section 76-9-101, 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 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;

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(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 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,

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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 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,

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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 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).

(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.

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(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.