{deleted text} shows text that was in SB0138 but was deleted in SB0138S01.

inserted text shows text that was not in SB0138 but was inserted into SB0138S01.

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.

Senator David P. Hinkins proposes the following substitute bill:

VIOLENCE, DISORDER, AND LOOTING ENFORCEMENT PROTECTION ACT

2021 GENERAL SESSION STATE OF UTAH

Chief Sponsor: David P. Hinkins

House Sponsor:	

LONG TITLE

General Description:

This bill provides for criminal violations and consequences related to rioting.

Highlighted Provisions:

This bill:

- increases penalties for the crime of rioting under certain circumstances;
- provides that a victim of a crime during a riot may sue a local governmental entity for damages if the local government {is grossly negligent in protecting} does not protect private property;
- increases the penalty for harassment <u>during a riot</u>;
- enhances the penalty for assaulting a peace officer during a riot;

- provides that a person may be denied bail if charged with rioting;
- makes an individual convicted of rioting ineligible for certain state benefits or assistance;} and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-7-301, as last amended by Laws of Utah 2020, Chapters 288, 338, and 365

76-5-102.4, as last amended by Laws of Utah 2017, Chapters 62 and 123

76-5-102.9, as enacted by Laws of Utah 2013, Chapter 153

76-5-106, as last amended by Laws of Utah 1995, Chapter 300

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 **63G-7-301** is amended to read:

63G-7-301. Waivers of immunity.

- (1) (a) Immunity from suit of each governmental entity is waived as to any contractual obligation.
- (b) Actions arising out of contractual rights or obligations are not subject to the requirements of Section 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.
- (c) The Division of Water Resources is not liable for failure to deliver water from a reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development Act, if the failure to deliver the contractual amount of water is due to drought, other natural condition, or safety condition that causes a deficiency in the amount of available water.
 - (2) Immunity from suit of each governmental entity is waived:
- (a) as to any action brought to recover, obtain possession of, or quiet title to real or personal property;

- (b) as to any action brought to foreclose mortgages or other liens on real or personal property, to determine any adverse claim on real or personal property, or to obtain an adjudication about any mortgage or other lien that the governmental entity may have or claim on real or personal property;
- (c) as to any action based on the negligent destruction, damage, or loss of goods, merchandise, or other property while it is in the possession of any governmental entity or employee, if the property was seized for the purpose of forfeiture under any provision of state law;
- (d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of Utah Constitution, Article I, Section 22, for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just compensation;
- (e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney fees under Sections 63G-2-405 and 63G-2-802;
- (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees Act;
- (g) as to any action brought to obtain relief from a land use regulation that imposes a substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious Land Use Act;
 - (h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:
- (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or
- (ii) any defective or dangerous condition of a public building, structure, dam, reservoir, or other public improvement;
- (i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment; [and]
- (j) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from a sexual battery, as provided in Section 76-9-702.1, committed:
- (i) against a student of a public elementary or secondary school, including a charter school; and

- (ii) by an employee of a public elementary or secondary school or charter school who:
- (A) at the time of the sexual battery, held a position of special trust, as defined in Section 76-5-404.1, with respect to the student;
 - (B) is criminally charged in connection with the sexual battery; and
- (C) the public elementary or secondary school or charter school knew or in the exercise of reasonable care should have known, at the time of the employee's hiring, to be a sex offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a background check under Section 53G-11-402[-]; and
- (k) {for grossly negligent conduct in which an employee acting within the scope of employment} when a governmental entity intentionally fails to protect private property or individuals during a riot{ or violent assembly}.
 - (3) (a) As used in this Subsection (3):
 - (i) "Code of conduct" means a code of conduct that:
- (A) is not less stringent than a model code of conduct, created by the State Board of Education, establishing a professional standard of care for preventing the conduct described in Subsection (3)(a)(i)(D);
 - (B) is adopted by the applicable local education governing body;
 - (C) regulates behavior of a school employee toward a student; and
- (D) includes a prohibition against any sexual conduct between an employee and a student and against the employee and student sharing any sexually explicit or lewd communication, image, or photograph.
 - (ii) "Local education agency" means:
 - (A) a school district;
 - (B) a charter school; or
 - (C) the Utah Schools for the Deaf and the Blind.
 - (iii) "Local education governing board" means:
 - (A) for a school district, the local school board;
 - (B) for a charter school, the charter school governing board; or
 - (C) for the Utah Schools for the Deaf and the Blind, the state board.
 - (iv) "Public school" means a public elementary or secondary school.

- (v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).
- (vi) "Sexual battery" means the offense described in Section 76-9-702.1, considering the term "child" in that section to include an individual under age 18.
- (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a claim against a local education agency for an injury resulting from a sexual battery or sexual abuse committed against a student of a public school by a paid employee of the public school who is criminally charged in connection with the sexual battery or sexual abuse, unless:
- (i) at the time of the sexual battery or sexual abuse, the public school was subject to a code of conduct; and
 - (ii) before the sexual battery or sexual abuse occurred, the public school had:
 - (A) provided training on the code of conduct to the employee; and
- (B) required the employee to sign a statement acknowledging that the employee has read and understands the code of conduct.
 - (4) (a) As used in this Subsection (4):
- (i) "Higher education institution" means an institution included within the state system of higher education under Section 53B-1-102.
- (ii) "Policy governing behavior" means a policy adopted by a higher education institution or the Utah Board of Higher Education that:
- (A) establishes a professional standard of care for preventing the conduct described in Subsections (4)(a)(ii)(C) and (D);
 - (B) regulates behavior of a special trust employee toward a subordinate student;
- (C) includes a prohibition against any sexual conduct between a special trust employee and a subordinate student; and
- (D) includes a prohibition against a special trust employee and subordinate student sharing any sexually explicit or lewd communication, image, or photograph.
 - (iii) "Sexual battery" means the offense described in Section 76-9-702.1.
- (iv) "Special trust employee" means an employee of a higher education institution who is in a position of special trust, as defined in Section 76-5-404.1, with a higher education student.
 - (v) "Subordinate student" means a student:
 - (A) of a higher education institution; and

- (B) whose educational opportunities could be adversely impacted by a special trust employee.
- (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a claim for an injury resulting from a sexual battery committed against a subordinate student by a special trust employee, unless:
- (i) the institution proves that the special trust employee's behavior that otherwise would constitute a sexual battery was:
- (A) with a subordinate student who was at least 18 years old at the time of the behavior; and
 - (B) with the student's consent; or
- (ii) (A) at the time of the sexual battery, the higher education institution was subject to a policy governing behavior; and
- (B) before the sexual battery occurred, the higher education institution had taken steps to implement and enforce the policy governing behavior.
 - Section 2. Section **76-5-102.4** is amended to read:

76-5-102.4. Assault against peace officer or a military servicemember in uniform -- Penalties.

- (1) As used in this section:
- (a) "Assault" means the same as that term is defined in Section 76-5-102.
- (b) "Military servicemember in uniform" means:
- (i) a member of any branch of the United States military who is wearing a uniform as authorized by the member's branch of service; or
 - (ii) a member of the National Guard serving as provided in Section 39-1-5 or 39-1-9.
 - (c) "Peace officer" means:
 - (i) a law enforcement officer certified under Section 53-13-103;
 - (ii) a correctional officer under Section 53-13-104;
 - (iii) a special function officer under Section 53-13-105; or
 - (iv) a federal officer under Section 53-13-106.
 - (d) "Threat of violence" means the same as that term is defined in Section 76-5-107.
- (2) A person is guilty of a class A misdemeanor, except as provided in Subsections (3) and (4), who:

- (a) commits an assault or threat of violence against a peace officer, with knowledge that the person is a peace officer, and when the peace officer is acting within the scope of authority as a peace officer; or
- (b) commits an assault or threat of violence against a military servicemember in uniform when that servicemember is on orders and acting within the scope of authority granted to the military servicemember in uniform.
- (3) A person who violates Subsection (2) is guilty of a third degree felony if the person:
- (a) has been previously convicted of a class A misdemeanor or a felony violation of this section; {{}}or{{}}}
 - (b) the person causes substantial bodily injury \{; or\}.
- (c) during the course of a riot, the person causes bodily injury to another individual or damages the property of another person.
- † (4) A person who violates Subsection (2) is guilty of a second degree felony if the person uses:
 - (a) a dangerous weapon as defined in Section 76-1-601; or
 - (b) other means or force likely to produce death or serious bodily injury.
- (5) A person who violates Subsection (2) is guilty of a first degree felony if the person causes serious bodily injury.
- [(5)](6) A person who violates this section shall serve, in jail or another correctional facility, a minimum of:

 - (b) [180] second offense;
 - (b) 180 consecutive days for a third offense; and
 - [(b) 180] (c) 270 consecutive days for each subsequent offense.
- [(6)] (7) The court may suspend the imposition or execution of the sentence required under Subsection [(5)] (6) if the court finds that the interests of justice would be best served by the suspension and the court makes specific findings concerning the disposition on the record.
- [(7)] (8) This section does not affect or limit any individual's constitutional right to the lawful expression of free speech, the right of assembly, or any other recognized rights secured by the Constitution or laws of Utah or by the Constitution or laws of the United States.

Section 3. Section 76-5-102.9 is amended to read:

76-5-102.9. Propelling an object or bodily substance -- Penalties.

- (1) As used in this section, a listed substance {{}} or{{}} material {, or object} is:
- (a) saliva, blood, urine, or fecal material;
- (b) an infectious agent as defined in Section 26-6-2 [of] or a material that carries an infectious agent; {{}}or{{}}}
 - (c) vomit or a material that carries vomit \{\frac{1}{2}, \text{ or }\}.
- (d) a dangerous weapon as defined in Section 76-1-601.
- ? (2) Any [person] individual who knowingly or intentionally {uses, } throws {1} or otherwise propels any bodily substance {[} or {]1} material {1, or object} listed under Subsection (1) at another [person] individual is guilty of a class B misdemeanor, except as provided in Subsection (3).
 - (3) A violation of this section is a class A misdemeanor if:
 - (a) the substance or material propelled is listed in Subsection (1) $\{(a), (b), or (c)\}$, and:
- {[}(a){] (i)} if the substance is the [person's] <u>individual's</u> saliva, the [person] <u>individual</u> knows he or she is infected with HIV, hepatitis B, or hepatitis C; or
- {[}(b){](ii)} the substance or material comes into contact with any portion of the other [person's] individual's face, including the eyes or mouth, or comes into contact with any open wound on the other [person's] individual's body{; or}.
- (b) a dangerous weapon is used, propelled, or thrown and causes bodily injury.
- † (4) A second or subsequent violation of Subsection (3) is a third degree felony.
- [(4)] (5) If an offense committed under this section amounts to an offense subject to a greater penalty under another provision of state law than under this section, this section does not prohibit prosecution and sentencing for the more serious offense.

Section 4. Section **76-5-106** is amended to read:

76-5-106. Harassment.

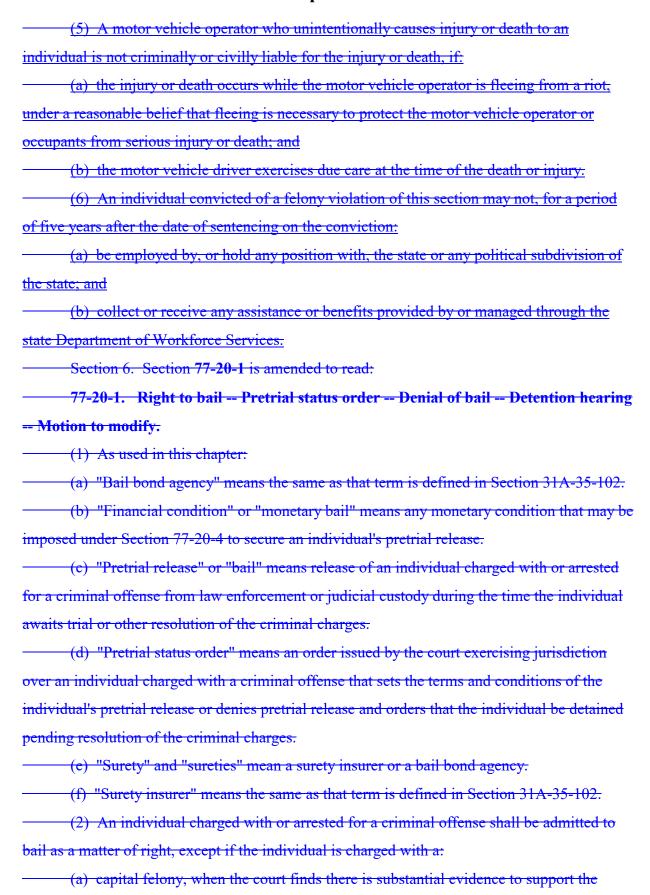
- (1) [A person] An individual is guilty of harassment if, with intent to frighten or [harass] intimidate another, [he] the individual \{ \cdot\}
 - (a) [he]} communicates a written or recorded threat to commit any violent felony {; or
- (b) communicates, either verbally or through overt action, the immediate or present ability to inflict bodily injury upon an individual or damage the property of another person}.

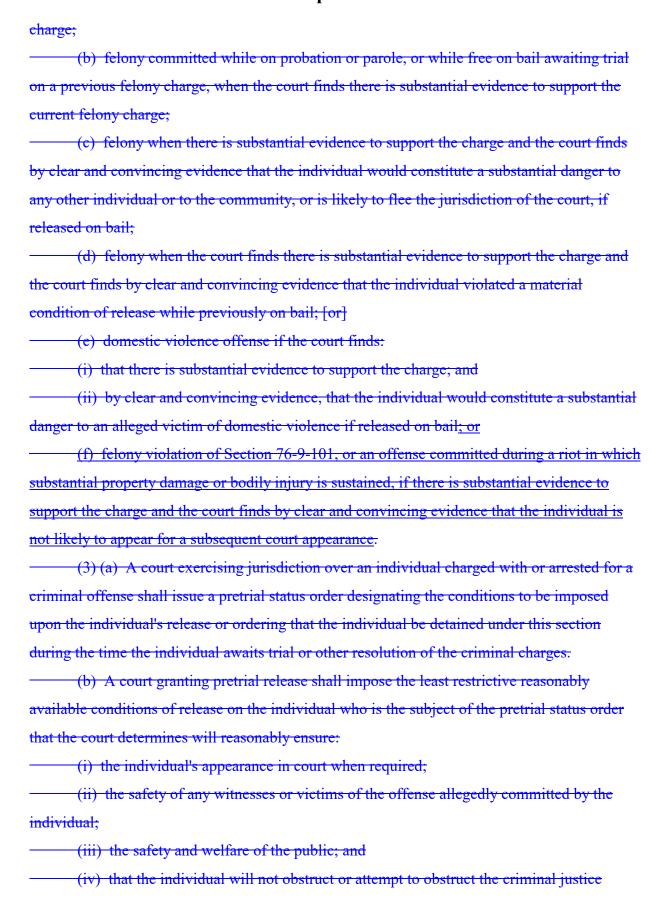
- (2) Harassment is a class B misdemeanor.
- (3) If the court determines that the defendant was a participant in a riot and the harassment was committed against an individual who was not a participant in the riot, the individual is guilty of a class A misdemeanor.

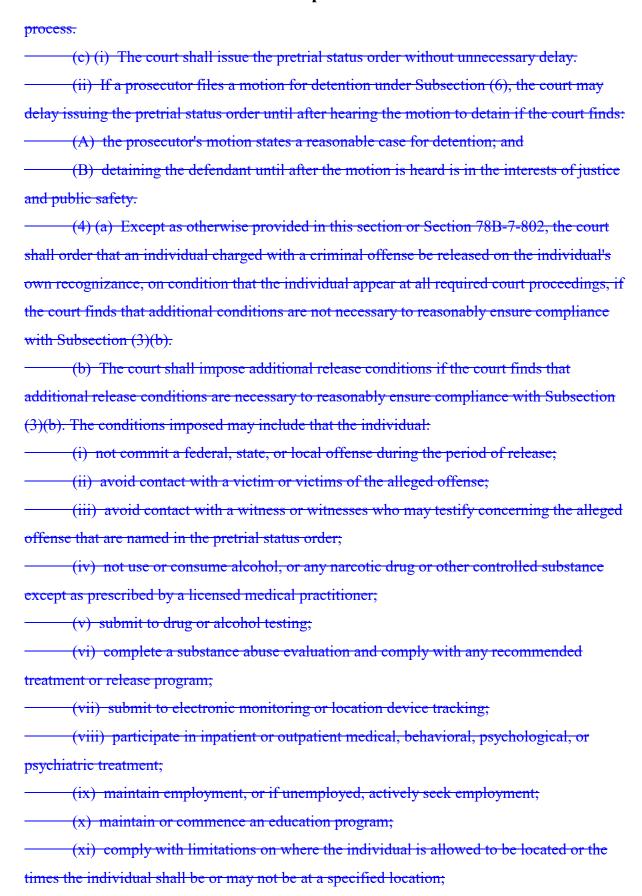
Section 5. Section **76-9-101** is amended to read:

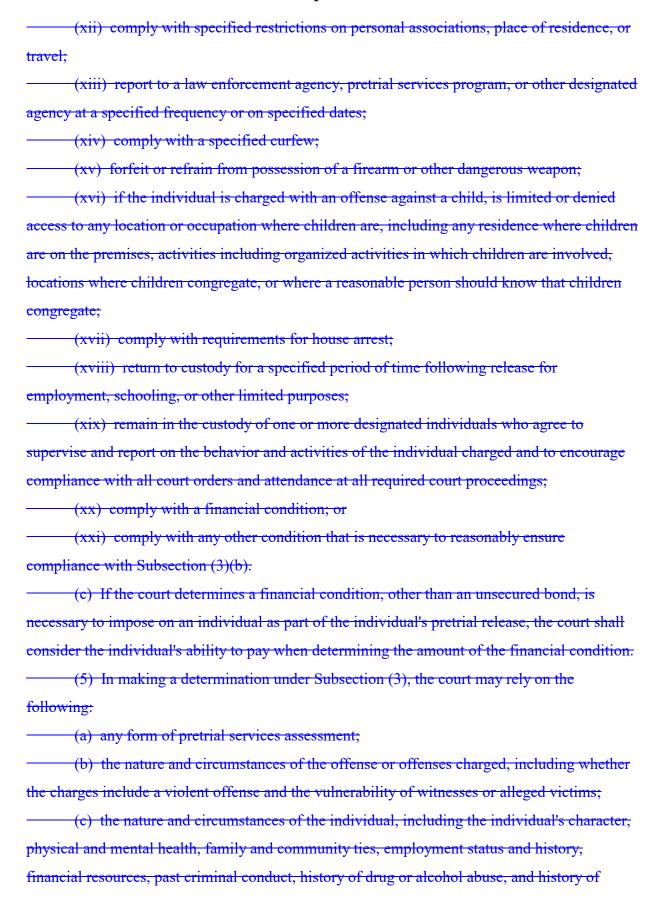
76-9-101. Riot -- Penalties -- Collateral consequences.

- (1) [A person] An individual is guilty of riot if the individual:
- (a) simultaneously with two or more other [persons he] individuals engages in [tumultuous or] violent conduct [and thereby], knowingly or recklessly [creates] creating a substantial risk of causing public alarm; [or]
- (b) [he] assembles with two or more other [persons] <u>individuals</u> 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] assembles with two or more other [persons] <u>individuals</u> with the purpose of committing an offense against a person, or <u>the</u> property of another <u>person</u> who [he] <u>the</u> <u>individual</u> supposes to be guilty of a violation of law, believing that two or more other [persons] <u>individuals</u> in the assembly have the same purpose.
- (2) Any [person] individual who refuses to comply with a lawful order to withdraw [given to him 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 withdrawing shall] an individual who withdraws may not incur criminal or civil liability by virtue of [acts] actions reasonably necessary to accomplish the withdrawal.
 - (3) Except as provided in Subsection (4), riot is a class B misdemeanor.
- [(3)] (4) Riot is a felony of the third degree if, in the course of and as a result of the conduct [5]:
 - (a) any [person] individual suffers bodily injury[, or];
 - (b) substantial property damage[-] or arson occurs; or
- (c) [or] the defendant was armed with a dangerous weapon, as defined in Section 76-1-601[; otherwise it is a class B misdemeanor{.}]{; or}:
- { (d) the defendant intentionally obstructed traffic.



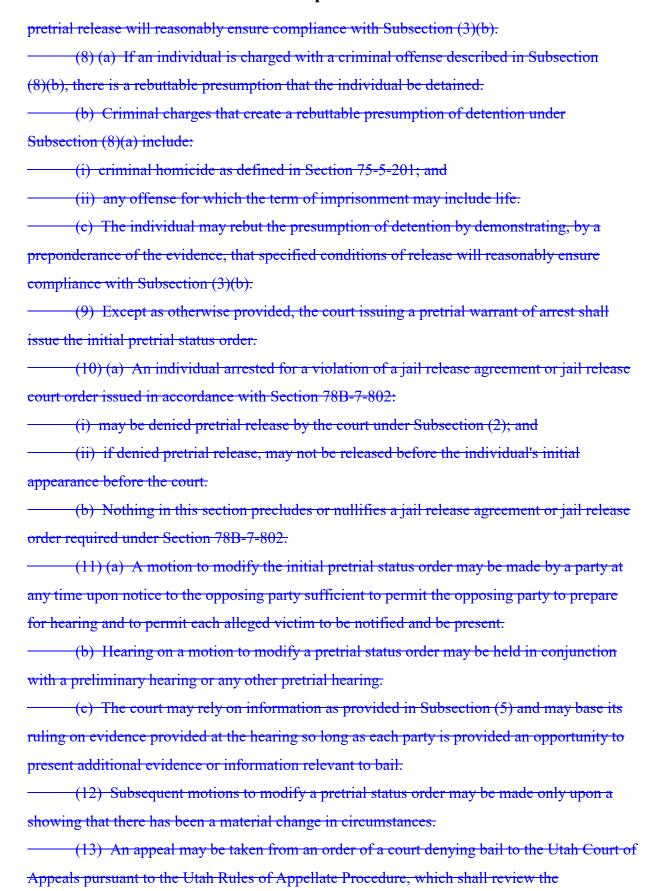






timely appearances at required court proceedings; (d) the potential danger to another individual or individuals posed by the release of the individual; (e) if the individual was on probation, parole, or release pending an upcoming court proceeding at the time the individual allegedly committed the offense; (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, Section 8; and

(c) the court finds that no conditions that may be imposed upon granting the individual



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.
}