

Representative Karianne Lisonbee 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: Karianne Lisonbee

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 person may be denied bail if charged with rioting;
- ▶ enhances penalties for a list of offenses committed during a riot; and
- ▶ makes technical and conforming changes.

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



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

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

28 **76-9-101. Riot -- Penalties -- Collateral consequences.**

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

30 (a) simultaneously with two or more other [~~persons~~~~he~~] individuals engages in
31 [~~tumultuous or~~] violent conduct [~~and thereby~~], knowingly or recklessly [~~creates~~] creating a
32 substantial risk of causing public alarm; [~~or~~]

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

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

40 (2) "Riot offense" means the commission of or attempt to commit any of the following
41 offenses while participating in a riot:

42 (a) assault, as described in Section [76-5-102](#);

43 (b) assault against peace officer or a military servicemember in uniform, as described
44 in Section [76-5-102.4](#);

45 (c) aggravated assault, as described in Section [76-5-103](#);

46 (d) mayhem, as described in Section [76-5-105](#);

47 (e) harassment, as described in Section [76-5-106](#);

48 (f) threat of violence, as described in Section [76-5-107](#);

49 (g) arson, as described in Section [76-6-102](#);

50 (h) aggravated arson, as described in Section [76-6-103](#);

51 (i) causing a catastrophe, as described in Section [76-6-105](#);

52 (j) criminal mischief, as described in Section [76-6-106](#);

53 (k) graffiti, as described in Section [76-6-107](#);

54 (l) burglary, as described in Section [76-6-202](#);

55 (m) aggravated burglary, as described in Section [76-6-203](#); and

56 (n) theft, as described in Section [76-6-404](#).

57 ~~[(2)]~~ (3) Any ~~[person]~~ individual who refuses to comply with a lawful order to
 58 withdraw ~~[given to him immediately]~~ prior to, during, or immediately following a violation of
 59 Subsection (1) is guilty of riot. It is no defense to a prosecution under this Subsection (2) that
 60 withdrawal must take place over private property; provided, however, that ~~[no persons so~~
 61 ~~withdrawing shall]~~ an individual who withdraws may not incur criminal or civil liability by
 62 virtue of [acts] actions reasonably necessary to accomplish the withdrawal.

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

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

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

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

70 (b) the individual causes substantial property damage; or

71 (c) the individual was in possession of a dangerous weapon as defined in Section
 72 76-1-601.

73 (6) An individual who commits any offense listed in Subsection (2) is subject to an
 74 enhanced penalty for the offense as provided in this Subsection if the trier of fact finds beyond
 75 a reasonable doubt that the individual was a participant in a riot at the time of the offense. The
 76 enhanced penalty for a:

77 (a) class B misdemeanor is a class A misdemeanor;

78 (b) class A misdemeanor is a third degree felony;

79 (c) third degree felony is a second degree felony;

80 (d) second degree felony is a first degree felony; and

81 (e) first degree felony is an indeterminate prison term of not less than five years in
 82 addition to the statutory minimum prison term for the offense, and which may be for life.

83 (7) (a) A motor vehicle operator who is fleeing from a riot shall exercise due care.

84 (b) It is an affirmative defense to a charge of homicide or aggravated assault that
 85 occurs while the motor vehicle operator was fleeing from a riot that the motor vehicle operator
 86 reasonably believed that fleeing was necessary to protect the motor vehicle operator or
 87 occupants from serious injury or death.

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

89 **77-20-1. Right to bail -- Pretrial status order -- Denial of bail -- Detention hearing**
90 **-- Motion to modify.**

91 (1) As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

119 (i) that there is substantial evidence to support the charge; and
120 (ii) by clear and convincing evidence, that the individual would constitute a substantial
121 danger to an alleged victim of domestic violence if released on bail; or

122 (f) felony violation of Section 76-9-101, or an offense committed during a riot in which
123 substantial property damage or bodily injury is sustained, if there is substantial evidence to
124 support the charge and the court finds by clear and convincing evidence that the individual is
125 not likely to appear for a subsequent court appearance.

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

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

- 133 (i) the individual's appearance in court when required;
134 (ii) the safety of any witnesses or victims of the offense allegedly committed by the
135 individual;
136 (iii) the safety and welfare of the public; and
137 (iv) that the individual will not obstruct or attempt to obstruct the criminal justice
138 process.

139 (c) (i) The court shall issue the pretrial status order without unnecessary delay.
140 (ii) If a prosecutor files a motion for detention under Subsection (6), the court may
141 delay issuing the pretrial status order until after hearing the motion to detain if the court finds:

- 142 (A) the prosecutor's motion states a reasonable case for detention; and
143 (B) detaining the defendant until after the motion is heard is in the interests of justice
144 and public safety.

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

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

- 153 (i) not commit a federal, state, or local offense during the period of release;
- 154 (ii) avoid contact with a victim or victims of the alleged offense;
- 155 (iii) avoid contact with a witness or witnesses who may testify concerning the alleged
156 offense that are named in the pretrial status order;
- 157 (iv) not use or consume alcohol, or any narcotic drug or other controlled substance
158 except as prescribed by a licensed medical practitioner;
- 159 (v) submit to drug or alcohol testing;
- 160 (vi) complete a substance abuse evaluation and comply with any recommended
161 treatment or release program;
- 162 (vii) submit to electronic monitoring or location device tracking;
- 163 (viii) participate in inpatient or outpatient medical, behavioral, psychological, or
164 psychiatric treatment;
- 165 (ix) maintain employment, or if unemployed, actively seek employment;
- 166 (x) maintain or commence an education program;
- 167 (xi) comply with limitations on where the individual is allowed to be located or the
168 times the individual shall be or may not be at a specified location;
- 169 (xii) comply with specified restrictions on personal associations, place of residence, or
170 travel;
- 171 (xiii) report to a law enforcement agency, pretrial services program, or other designated
172 agency at a specified frequency or on specified dates;
- 173 (xiv) comply with a specified curfew;
- 174 (xv) forfeit or refrain from possession of a firearm or other dangerous weapon;
- 175 (xvi) if the individual is charged with an offense against a child, is limited or denied
176 access to any location or occupation where children are, including any residence where children
177 are on the premises, activities including organized activities in which children are involved,
178 locations where children congregate, or where a reasonable person should know that children
179 congregate;
- 180 (xvii) comply with requirements for house arrest;

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

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

186 (xx) comply with a financial condition; or

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

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

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

194 (a) any form of pretrial services assessment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

263 (14) For purposes of this section, any arrest or charge for a violation of Section
264 76-5-202, Aggravated murder, is a capital felony unless:

265 (a) the prosecutor files a notice of intent to not seek the death penalty; or

266 (b) the time for filing a notice to seek the death penalty has expired and the prosecutor
267 has not filed a notice to seek the death penalty.