

Senator Todd D. Weiler proposes the following substitute bill:

**PRETRIAL DETENTION REVISIONS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd D. Weiler**

House Sponsor: \_\_\_\_\_

---

---

**LONG TITLE**

**General Description:**

This bill makes changes to the pretrial detention process.

**Highlighted Provisions:**

This bill:

- ▶ makes changes to the pretrial detention process;
- ▶ allows for a defendant to appeal the denial of pretrial release; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**10-3-920**, as last amended by Laws of Utah 2015, Chapter 99

**17-32-1**, as last amended by Laws of Utah 2015, Chapter 99

**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:*



26 Section 1. Section **10-3-920** is amended to read:

27 **10-3-920. Bail commissioner -- Powers and duties.**

28 (1) With the advice and consent of the city council and the board of commissioners in  
29 other cities, the mayor of a city of the third, fourth, or fifth class may appoint from among the  
30 officers and members of the police department of the city one or more discreet persons as a bail  
31 commissioner.

32 (2) A bail commissioner shall have authority to fix and receive monetary bail for a  
33 person arrested within the corporate limits of the city in accordance with the uniform [bail]  
34 fine schedule adopted by the Judicial Council or a reasonable bail for city ordinances not  
35 contained in the schedule for:

- 36 (a) misdemeanors under the laws of the state; or
- 37 (b) violation of the city ordinances.

38 (3) A person who has been ordered by a bail commissioner to give monetary bail may  
39 deposit with the bail commissioner the amount:

- 40 (a) in money, by cash, certified or cashier's check, personal check with check guarantee  
41 card, money order, or credit card, if the bail commissioner has chosen to establish any of those  
42 options; or
- 43 (b) by a bond issued by a licensed bail bond surety.

44 (4) Any money or bond collected by a bail commissioner shall be delivered to the  
45 appropriate court within three days of receipt of the money or bond.

46 (5) The court may review the amount of bail ordered by a bail commissioner and  
47 modify the amount of bail required for good cause.

48 Section 2. Section **17-32-1** is amended to read:

49 **17-32-1. Powers and duties of bail commissioners.**

50 (1) The county executive, with the advice and consent of the county legislative body,  
51 may appoint one or more responsible and discreet members of the sheriff's department of the  
52 county as a bail commissioner.

53 (2) A bail commissioner may:

- 54 (a) receive monetary bail for persons arrested in the county for a felony; and
- 55 (b) fix and receive bail for persons arrested in the county for a misdemeanor under the  
56 laws of the state, or for a violation of any of the county ordinances in accordance with the

57 uniform [~~bail~~] fine schedule adopted by the Judicial Council or a reasonable monetary bail for  
58 county ordinances not contained in the schedule.

59 (3) Any person who has been ordered by a magistrate, judge, or bail commissioner to  
60 give monetary bail may deposit the amount with the bail commissioner:

61 (a) in money, by cash, certified or cashier's check, personal check with check guarantee  
62 card, money order, or credit card, if the bail commissioner has chosen to establish any of those  
63 options; or

64 (b) by a bond issued by a licensed bail bond surety.

65 (4) Any money or bond collected by a bail commissioner shall be delivered to the  
66 appropriate court within three days of receipt of the money or bond.

67 (5) The court may review the amount of monetary bail ordered by a bail commissioner  
68 and may modify the amount of bail required for good cause.

69 Section 3. Section **77-20-1** is amended to read:

70 **77-20-1. Right to bail -- Pretrial status order -- Denial of bail -- Detention hearing**  
71 **-- Motion to modify.**

72 (1) As used in this chapter:

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

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

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

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

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

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

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

87 (a) capital felony, when the court finds there is substantial evidence to support the

88 charge;

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

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

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

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

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

101 (ii) by clear and convincing evidence, that the individual would constitute a substantial  
102 danger to an alleged victim of domestic violence if released on bail.

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

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

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

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

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

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

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

117 (ii) If a prosecutor files a motion for detention under Subsection [~~(6)~~] (8), the court  
118 may delay issuing the pretrial status order until after hearing the motion to detain if the court

119 finds:

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

121 (B) detaining the defendant until after the motion is heard is in the interests of justice  
122 and public safety.

123 (4) (a) If a county has established a pretrial services program, the court shall consider  
124 the services the county has identified as available in determining what conditions to impose.  
125 The court may not order conditions which would require the county to provide services which  
126 are not currently available from the county.

127 (b) Notwithstanding Subsection (4)(a), the court may impose conditions not identified  
128 by the county as long as the condition does not require county assistance or resources.

129 ~~[(4)]~~ (5) (a) Except as otherwise provided in this section or Section 78B-7-802, the  
130 court shall order that an individual charged with a criminal offense be released on the  
131 individual's own recognizance, on condition that the individual appear at all required court  
132 proceedings, if the court finds that additional conditions are not necessary to reasonably ensure  
133 compliance with Subsection (3)(b).

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

137 (i) not commit a federal, state, or local offense during the period of release;

138 (ii) avoid contact with a victim or victims of the alleged offense;

139 (iii) avoid contact with a witness or witnesses who may testify concerning the alleged  
140 offense that are named in the pretrial status order;

141 (iv) not use or consume alcohol, or any narcotic drug or other controlled substance  
142 except as prescribed by a licensed medical practitioner;

143 (v) submit to drug or alcohol testing;

144 (vi) complete a substance abuse evaluation and comply with any recommended  
145 treatment or release program;

146 (vii) submit to electronic monitoring or location device tracking;

147 (viii) participate in inpatient or outpatient medical, behavioral, psychological, or  
148 psychiatric treatment;

149 (ix) maintain employment, or if unemployed, actively seek employment;

- 150 (x) maintain or commence an education program;
- 151 (xi) comply with limitations on where the individual is allowed to be located or the  
152 times the individual shall be or may not be at a specified location;
- 153 (xii) comply with specified restrictions on personal associations, place of residence, or  
154 travel;
- 155 (xiii) report to a law enforcement agency, pretrial services program, or other designated  
156 agency at a specified frequency or on specified dates;
- 157 (xiv) comply with a specified curfew;
- 158 (xv) forfeit or refrain from possession of a firearm or other dangerous weapon;
- 159 (xvi) if the individual is charged with an offense against a child, is limited or denied  
160 access to any location or occupation where children are, including any residence where children  
161 are on the premises, activities including organized activities in which children are involved,  
162 locations where children congregate, or where a reasonable person should know that children  
163 congregate;
- 164 (xvii) comply with requirements for house arrest;
- 165 (xviii) return to custody for a specified period of time following release for  
166 employment, schooling, or other limited purposes;
- 167 (xix) remain in the custody of one or more designated individuals who agree to  
168 supervise and report on the behavior and activities of the individual charged and to encourage  
169 compliance with all court orders and attendance at all required court proceedings;
- 170 (xx) comply with a financial condition; or
- 171 (xxi) comply with any other condition that is necessary to reasonably ensure  
172 compliance with Subsection (3)(b).
- 173 (c) If the court determines a financial condition, other than an unsecured bond, is  
174 necessary to impose on an individual as part of the individual's pretrial release, the court shall  
175 consider the individual's ability to pay when determining the amount of the financial condition.
- 176 [~~5~~] (6) In making a determination under Subsection (3) or (10), the court may:
- 177 (a) rely on information contained in the following:
- 178 (i) the indictment or information;
- 179 (ii) any sworn or probable cause statement or other information provided by law  
180 enforcement;

181           ~~[(a)]~~ (iii) any ~~[form of]~~ pretrial services assessment;

182           (iv) witness statements or testimony; and

183           (v) any other reliable record or source, including proffered evidence; and

184           (b) consider the following:

185           ~~[(b)]~~ (i) the nature and circumstances of the offense or offenses charged, including

186 whether the charges include a violent offense and the vulnerability of witnesses or alleged

187 victims;

188           ~~[(c)]~~ (ii) the nature and circumstances of the individual, including the individual's

189 character, physical and mental health, family and community ties, employment status and

190 history, financial resources, past criminal conduct, history of drug or alcohol abuse, and history

191 of timely appearances at required court proceedings;

192           ~~[(d)]~~ (iii) the potential danger to another individual or individuals posed by the release

193 of the individual;

194           ~~[(e)]~~ (iv) if the individual was on probation, parole, or release pending an upcoming

195 court proceeding at the time the individual allegedly committed the offense;

196           ~~[(f)]~~ (v) the availability of other individuals who agree to assist the individual in

197 attending court when required or other evidence relevant to the individual's opportunities for

198 supervision in the individual's community;

199           ~~[(g)]~~ (vi) the eligibility and willingness of the individual to participate in various

200 treatment programs, including drug treatment; or

201           ~~[(h)]~~ (vii) other evidence relevant to the individual's likelihood of fleeing or violating

202 the law if released.

203           (7) (a) The prosecution and defendant have a right to subpoena witnesses to testify at a

204 hearing on a motion for pretrial detention.

205           (b) Notwithstanding Subsection (7)(a), a defendant's subpoena compelling an alleged

206 victim to testify may only be issued at the conclusion of a hearing on a motion for pretrial

207 detention when it seeks testimony that:

208           (i) is material to the substantial evidence or clear and convincing evidence

209 determinations in light of all information presented to the court; and

210           (ii) would not unnecessarily intrude on the rights of the victim.

211           (c) An alleged victim has the right to be heard at a hearing on a motion for pretrial

212 detention.

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

216 (b) A motion to detain shall comply with Utah Rules of Criminal Procedure, Rule 12.

217 ~~[(6)]~~ (c) Upon receiving a motion under Subsection ~~[(6)]~~ (8)(a), the court shall set a  
218 hearing on the matter as soon as practicable.

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

223 ~~[(6)]~~ (e) The court shall give both parties the opportunity to make arguments and to  
224 present relevant evidence at the detention hearing.

225 (9) A defendant has the right to request a review of the magistrate's decision to deny  
226 release. The magistrate's decision shall be reviewed by the judge with no deference to the initial  
227 decision.

228 ~~[(7)]~~ (10) After hearing evidence on a motion for pretrial detention, the court may  
229 detain the individual if:

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

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

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

238 ~~[(8)]~~ (11) (a) If an individual is charged with a criminal offense described in  
239 Subsection ~~[(8)]~~ (11)(b), there is a rebuttable presumption that the individual be detained.

240 (b) Criminal charges that create a rebuttable presumption of detention under  
241 Subsection ~~[(8)]~~ (11)(a) include:

242 (i) criminal homicide as defined in Section ~~[75-5-201]~~ [76-5-201](#); and



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

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

247 ~~[(9)]~~ (12) Except as otherwise provided, the court issuing a pretrial warrant of arrest  
248 shall issue the initial pretrial status order.

249 ~~[(10)]~~ (13) (a) An individual arrested for a violation of a jail release agreement or jail  
250 release court order issued in accordance with Section 78B-7-802:

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

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

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

256 ~~[(11)]~~ (14) (a) A motion to modify the initial pretrial status order may be made by a  
257 party at any time upon notice to the opposing party sufficient to permit the opposing party to  
258 prepare for hearing and to permit each alleged victim to be notified and be present.

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

261 (c) The court may rely on information as provided in Subsection ~~[(5)]~~ (6) and may base  
262 its ruling on evidence provided at the hearing so long as each party is provided an opportunity  
263 to present additional evidence or information relevant to bail.

264 ~~[(12)]~~ (15) Subsequent motions to modify a pretrial status order may be made only  
265 upon a showing that there has been a material change in circumstances.

266 ~~[(13)]~~ (16) An appeal may be taken from an order of a court denying bail to the Utah  
267 Court of Appeals pursuant to the Utah Rules of Appellate Procedure, which shall review the  
268 determination under Subsection ~~[(7)]~~ (10).

269 ~~[(14)]~~ (17) For purposes of this section, any arrest or charge for a violation of Section  
270 76-5-202, Aggravated murder, is a capital felony unless:

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

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