

SB0171S01 compared with SB0171

~~{deleted text}~~ shows text that was in SB0171 but was deleted in SB0171S01.

inserted text shows text that was not in SB0171 but was inserted into SB0171S01.

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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 ~~{outlines requirements for}~~makes changes to the pretrial detention ~~{and the}~~handling of citations~~{process}~~.

Highlighted Provisions:

This bill:

- ▶ ~~{requires that a magistrate make}~~makes changes to the ~~{determination to hold a}~~
~~person in}~~ pretrial detention ~~{after arrest;}~~
- ~~sets out required conditions for pretrial detention or release;~~
- ~~details offenses for which~~process;
- ▶ allows for a defendant to appeal the denial of pretrial release ~~{may not be granted;}~~
- ~~allows the court to permit a person who has received a citation to pay a fine rather~~
~~than appear in court;~~

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- ~~directs the disposition of funds paid to the court when a person does not appear;~~
- and
- makes technical and conforming ~~corrections~~ 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

{ ~~77-7-21, as last amended by Laws of Utah 2020, Chapter 185~~

~~77-7-23, as last amended by Laws of Utah 2018, Chapter 140~~

~~77-18a-1, as last amended by Laws of Utah 2020, Chapter 185~~

‡ **77-20-1**, as last amended by Laws of Utah 2020, Chapters 142 and 185

{ ~~77-20-4, as last amended by Laws of Utah 2020, Chapter 185~~

~~77-20-9, as last amended by Laws of Utah 2020, Chapter 185~~

ENACTS:

76-5-417, Utah Code Annotated 1953

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

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

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

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

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

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

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

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

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

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

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

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

- (1) The county executive, with the advice and consent of the county legislative body, may appoint one or more responsible and discreet members of the sheriff's department of the county as a bail commissioner.
- (2) A bail commissioner may:
 - (a) receive monetary bail for persons arrested in the county for a felony; and
 - (b) fix and receive bail for persons arrested in the county for a misdemeanor under the laws of the state, or for a violation of any of the county ordinances in accordance with the uniform [bail] fine schedule adopted by the Judicial Council or a reasonable monetary bail for county ordinances not contained in the schedule.~~or~~
- (3) Any person who has been ordered by a magistrate, judge, or bail commissioner to give monetary bail may deposit the amount with the bail commissioner:
 - (a) in money, by cash, certified or cashier's check, personal check with check guarantee card, money order, or credit card, if the bail commissioner has chosen to establish any of those options; or
 - (b) by a bond issued by a licensed bail bond surety.
- (4) Any money or bond collected by a bail commissioner shall be delivered to the appropriate court within three days of receipt of the money or bond.

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

Section 3. ~~Section 76-5-417 is enacted to read:~~

76-5-417. Appearance of defendant required -- Considerations by court.

~~(1) A defendant who has been arrested for a sexual offense shall appear in person or by video before the court or a magistrate within one judicial day after the day on which the arrest is made.~~

~~(2) A defendant who has been charged by citation, indictment, or information with a sexual offense but has not been arrested, shall appear before the court in person for arraignment or initial appearance as soon as practicable, but no later than 14 days after the next day on which court is in session following the issuance of the citation or the filing of the indictment or information.~~

~~(3) At the time of an appearance under Subsection (1) or (2), the court shall consider imposing a pretrial protective order in accordance with Section 78B-7-803.~~

~~(4) Appearances required by this section are mandatory and may not be waived.~~

Section 4. ~~Section 77-7-21 is amended to read:~~

77-7-21. Proceeding on citation -- Voluntary remittance of fine -- Parent signature required -- Information, when required.

~~(1) (a) A citation filed with the court may, with the consent of the defendant, serve in lieu of an information to which the defendant may plead guilty or no contest to the charge or charges listed and be sentenced accordingly.~~

~~(b) If provided by the uniform fine schedule described in Section 76-3-301.5, or with the court's approval, an individual may remit the fine and other penalties without a personal appearance before the court in any case charging a class B misdemeanor or lower offense, unless the charge is:~~

~~(i) a domestic violence offense as defined in Section 77-36-1;~~

~~(ii) a violation of Section 41-6a-502, driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration;~~

~~(iii) a violation of Section 41-6a-517, driving with any measurable controlled substance in the body;~~

~~(iv) a violation of a local ordinance similar to the offenses described in Subsections~~

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(1)(b)(i) through (iii), or

_____ (v) a violation that appears to:

_____ (A) affect a victim, as defined in Section 77-38a-102; or

_____ (B) require restitution, as defined in Section 77-38a-102.

_____ (c) The remittal of fines and other penalties shall be entered as a conviction and treated the same as if the accused pleaded no contest.

_____ (d) If the [person] individual cited is under 18 years [of age] old, the court shall promptly mail a copy or notice of the citation to the address as shown on the citation, to the attention of the parent or guardian of the defendant.

_____ (2) If the individual pleads not guilty to the offense charged, further proceedings shall be held in accordance with the Rules of Criminal Procedure and all other applicable provisions of this code.

_____ Section 5. Section 77-7-23 is amended to read:

77-7-23. ~~Delivery of prisoner arrested without warrant to magistrate -- Transfer to court with jurisdiction -- Transfer of duties -- Violation as misdemeanor.~~

_____ (1) (a) When an arrest is made without a warrant by a peace officer or private person, the [person] individual arrested shall be [taken] presented without unnecessary delay to [the] a magistrate in the district court, the precinct of the county, or the municipality in which the offense occurred, except under Subsection (2). [An information stating the charge against the person shall be made before the magistrate] A sworn statement containing the facts known to support probable cause to believe the individual has committed a crime shall be presented to the magistrate in accordance with Section 77-2-1.1 and the Utah Rules of Criminal Procedure.

_____ (b) If the justice court judge of the precinct or municipality or the district court judge is not available, the arrested [person] individual shall be taken before the magistrate within the same county who is nearest to the scene of the alleged offense or nearest to the jail under Subsection (2), who may act as committing magistrate for arraigning the accused, setting bail, or issuing warrants.

_____ (2) (a) If the arrested [person] individual under Subsection (1) must be transported from jail to a magistrate, the [person] individual may be taken before the magistrate nearest to the jail rather than the magistrate specified in Subsection (1) for arraignment, setting bail, or issuing warrants.

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— (b) The case shall then be transferred to the court having jurisdiction.

— (3) If a jail accepts custody of [a person] an individual arrested under Subsection (1), the duties under this section of the peace officer or private person who makes the arrest are transferred to the jail and the jail's personnel.

— (4) A magistrate shall order an individual held without bail if the magistrate determines probable cause exists to believe that the individual committed:

— (a) a capital or first degree felony;

— (b) a felony committed while on probation or parole;

— (c) a felony when the magistrate finds probable cause to believe 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 prior to prosecutors having an opportunity to file charges;

— (d) a felony when the magistrate finds there is probable cause to believe that the individual violated a material condition of release while previously on bail;

— (e) a domestic violence offense if the magistrate finds probable cause to believe that the individual would constitute a substantial danger to an alleged victim of domestic violence if released prior to prosecutors having an opportunity to file charges; or

— (f) a violation of a protective order, stalking injunction, or violation of a Jail Release Agreement or Jail Release Order pursuant to Section 78B-7-802 if the magistrate finds probable cause to believe that the suspect would constitute a danger to an individual protected by the order, injunction, or agreement.

— (5) For individuals arrested for any offense not described in Subsections (4)(a) through (f), a magistrate shall make an initial pretrial determination by considering the factors in Subsections 77-20-1(3)(b)(i) through (iv).

— (6) Upon the filing of charges, or upon the expiration of the time to file charges for an in-custody defendant, the magistrate's order denying release, or setting conditions of release, shall be superseded by the pretrial status order issued under Subsection 77-20-1(3)(a).

— [(4)] (7) This section does not confer jurisdiction upon a court unless otherwise provided by law.

— [(5)] (8) Any officer or [person violating] individual who violates this section is guilty of a class B misdemeanor.

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Section 6. Section 77-18a-1 is amended to read:

77-18a-1. Appeals -- When proper.

- (1) A defendant may, as a matter of right, appeal from:
 - (a) a final judgment of conviction, whether by verdict or plea;
 - (b) an order made after judgment that affects the substantial rights of the defendant;
 - (c) an order adjudicating the defendant's competency to proceed further in a pending prosecution; or
 - [(d) an order denying bail, as provided in Section 77-20-1.]
 - (d) a pretrial status order under Section 77-20-1.
- (2) In addition to any appeal permitted by Subsection (1), a defendant may seek discretionary appellate review of any interlocutory order:
 - (3) The prosecution may, as a matter of right, appeal from:
 - (a) a final judgment of dismissal, including a dismissal of a felony information following a refusal to bind the defendant over for trial;
 - (b) a pretrial order dismissing a charge on the ground that the court's suppression of evidence has substantially impaired the prosecution's case;
 - (c) an order granting a motion to withdraw a plea of guilty or no contest;
 - (d) an order arresting judgment or granting a motion for merger;
 - (e) an order terminating the prosecution because of a finding of double jeopardy or denial of a speedy trial;
 - (f) an order granting a new trial;
 - (g) an order holding a statute or any part of it invalid;
 - (h) an order adjudicating the defendant's competency to proceed further in a pending prosecution;
 - (i) an order finding, pursuant to Title 77, Chapter 19, Part 2, Competency for Execution, that an inmate sentenced to death is incompetent to be executed;
 - (j) an order reducing the degree of offense pursuant to Section 76-3-402; [or]
 - (k) an illegal sentence[.]; or
 - (l) a pretrial status order under Section 77-20-1.
 - (4) In addition to any appeal permitted by Subsection (3), the prosecution may seek discretionary appellate review of any interlocutory order entered before jeopardy attaches.

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— **Section 7.;** 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.
- (2) An individual charged with ~~or~~ or arrested for ~~or~~ 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 ~~, or a violation of a jail release agreement or jail release~~

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court order issued in accordance with Section 78B-7-802,} 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.

(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 ~~§ only the release conditions reasonably available and necessary to~~ 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 ~~§ moves~~ for detention under Subsection [(6)](8), 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) If a county has established a pretrial services program, the court shall consider the services the county has identified as available in determining what conditions to impose. The court may not order conditions which would require the county to provide services which are not currently available from the county.

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

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~~(4)~~(5) (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 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

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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]~~~~[6]~~ In making a determination under ~~{}~~ Subsection (3)~~{}~~ Subsections (3) and (4), the court:

- (a) may rely on [the following:(a)}~~{}~~ or (10), the court may:
 - (a) rely on information contained in {any form of} the following:
 - (i) the indictment or information;
 - (ii) any sworn or probable cause statement or other information provided by law enforcement;
 - [(a)] (iii) any [form of] pretrial services assessment;
 - (iv) witness statements or testimony; and
 - (v) any other reliable record or source, including proffered evidence; and
- (b) {shall, if presented,} consider the following:
 - [{b}] (i) 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}] (ii) the nature and circumstances of the individual, including the individual's

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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)~~] (iii) the potential danger to another individual or individuals posed by the release of the individual;

[~~(e)~~] (iv) ~~{if whether}~~ the individual was on probation, parole, or release pending an upcoming court proceeding at the time the individual allegedly committed the offense;

~~{ (v) whether the individual violated a material condition of release while previously on bail, and }~~

~~{ (vi) other evidence relevant to the individual's likelihood of fleeing or violating the law if released, and }~~

~~{ (c) may consider: }~~

~~{ (f) (iii) v 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)~~] ~~{(iii) vi}~~ the eligibility and willingness of the individual to participate in various treatment programs, including drug treatment ~~{if}~~; or ~~{if}~~

~~{(h) (vii) other evidence relevant to the individual's likelihood of fleeing or violating the law if released. }~~

~~{(6)}~~

~~(7) (a) The prosecution and defendant have a right to subpoena witnesses to testify at a hearing on a motion for pretrial detention.~~

~~(b) Notwithstanding Subsection (7)(a), a defendant's subpoena compelling an alleged victim to testify may only be issued at the conclusion of a hearing on a motion for pretrial detention when it seeks testimony that:~~

~~(i) is material to the substantial evidence or clear and convincing evidence determinations in light of all information presented to the court; and~~

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

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

~~[(6)] (8) (a) If the criminal charges filed against the individual include one or more~~

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offenses eligible for detention under Subsection (2) or Utah Constitution, Article I, Section 8, the prosecution may ~~file~~ file a motion ~~move~~ for pretrial detention.

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

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

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

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

~~[(7)](10)~~ 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 reasonably available conditions that may be imposed upon granting the individual pretrial release will reasonably ensure compliance with Subsection (3)(b).

~~[(8)](11)~~(a) If an individual is charged with a criminal offense described in Subsection ~~[(8)](11)~~(b), there is a rebuttable presumption that the individual be detained ~~if~~
~~(i) there is substantial evidence to support the charge, and~~
~~(ii) the court finds by clear and convincing evidence that the person would constitute a substantial danger to the community or is likely to flee the jurisdiction.~~

~~;~~

(b) Criminal charges that create a rebuttable presumption of detention under

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Subsection [(8)](11)(a) include:

- (i) criminal homicide as defined in Section ~~[75-5-201]~~ 76-5-201; 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 ~~the~~ a preponderance of the ~~clear and convincing~~ evidence, that specified conditions of release will reasonably ensure compliance with Subsection (3)(b).

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

[(10)](13) (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)](14) (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)](6) 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.

(c) The provisions of Subsection (5) shall govern the information and considerations for determining whether to modify the pretrial release order.

(d) The court shall consider any violation of a jail release agreement or jail release order issued under Section 78B-7-802.

(e) The court 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 pretrial release.

[(12)](11)

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

~~(12) Following the issuance of a pretrial status order, if an individual fails to appear in court when required, or violates any material term of a pretrial status order the court may:~~

~~(a) issue a no bail warrant; or~~

~~(b) impose any other conditions necessary to comply with Subsection (3)(b).~~

~~}[13] (16) 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] (10).~~

[14] (17) For purposes of this section, any ~~ff~~ arrest or ~~ff~~ 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.~~

~~{ Section 8. Section 77-20-4 is amended to read:~~

~~77-20-4. Bail to be posted in cash, by credit or debit card, or by written undertaking -- Specific monetary bail methods:~~

~~(1) (a) Except as provided in Subsection (2), the judge or magistrate shall set bail at a single amount per case or charge.~~

~~(b) Subject to Subsection (2), a defendant may choose to post the amount described in Subsection (1)(a) by any of the following methods:~~

~~(i) in cash;~~

~~(ii) by written undertaking with sureties;~~

~~(iii) by written undertaking without sureties, at the discretion of the judge or magistrate; or~~

~~(iv) by credit or debit card, at the discretion of the judge or bail commissioner.~~

~~(2) A judge or magistrate may limit a defendant to a specific method of posting monetary bail described in Subsection (1)(b)(i), (ii), (iii), or (iv):~~

~~(a) if, after charges are filed, the defendant fails to appear in the case on a bond and the case involves a violent offense;~~

~~(b) in order to allow the defendant to voluntarily [forfeit monetary bail] remit the fine~~

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in accordance with Section 77-7-21 and the offense with which the defendant is charged is listed in the shared master offense table as one for which an appearance is not mandatory;

— (c) if the defendant has failed to respond to a citation or summons and the offense with which the defendant is charged is listed in the shared master offense table as one for which an appearance is not mandatory;

— (d) if a warrant is issued for the defendant solely for failure to pay a criminal judgment account receivable, as defined in Section 77-32a-101, and the defendant's monetary bail is limited to the amount owed; or

— (e) if a court has entered a judgment of bond forfeiture under Section 77-20b-104 in any case involving the defendant.

— (3) Monetary bail may not be accepted without receiving in writing at the time the monetary bail is posted the current mailing address, telephone number, and email address of the surety.

— (4) Monetary bail paid by debit or credit card, less the fee charged by the financial institution, shall be tendered to the courts.

— (5) Monetary bail refunded by the court may be refunded by credit to the debit or credit card, or cash. The amount refunded shall be the full amount received by the court under Subsection (4), which may be less than the full amount of the monetary bail set by the court.

— (6) Before refunding monetary bail that is posted by the defendant in cash, by credit card, or by debit card, the court may apply the amount posted toward accounts receivable, as defined in Section 77-32a-101, that are owed by the defendant in the priority set forth in Section 77-38a-404.

— Section 9. Section 77-20-9 is amended to read:

77-20-9. Disposition of forfeitures.

— If by reason of the neglect of the defendant to appear, money deposited as a financial condition or money paid by sureties on bond is forfeited and the forfeiture is not discharged or remitted, the clerk with whom it is deposited or paid shall, immediately after final adjournment of the court, pay over the money forfeited as follows:

— (1) the forfeited amount in cases in precinct justice courts or in municipal justice courts shall be distributed as provided in Sections 78A-7-120 and 78A-7-121; [and]

— [(2) in all other cases.]

SB0171S01 compared with SB0171

- (2) in cases where the financial condition was paid by a surety:
 - (a) ~~60% of the forfeited [bond] amount shall be paid to the Pretrial Release Programs Special Revenue Fund established in Section 63M-7-215;~~
 - (b) ~~[25%] 20% of the forfeited [bond] amount shall be paid to the General Fund; and~~
 - (c) ~~[15%] 20% of the forfeited [bond] amount shall be paid to the prosecuting agency that brings an action to collect under Section 77-20b-104[.]; and~~
- (3) in cases where the financial condition was paid without the assistance of a surety:
 - (a) 75% of the forfeited amount shall be paid to the Pretrial Release Programs Special Revenue Fund established in Section 63M-7-215; and
 - (b) 25% of the forfeited amount shall be paid to the General Fund.

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