

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 and creates a task force.

Highlighted Provisions:

This bill:

- ▶ makes changes to the pretrial detention process;
- ▶ allows for a defendant to appeal the denial of pretrial release;
- ▶ creates the Pretrial Services and Detention Task Force; 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

63I-2-277, as last amended by Laws of Utah 2016, Chapter 348

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



26 **77-20-1**, as last amended by Laws of Utah 2020, Chapters 142 and 185

27 ENACTS:

28 **77-20-14**, Utah Code Annotated 1953

29

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

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

32 **10-3-920. Bail commissioner -- Powers and duties.**

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

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

41 (a) misdemeanors under the laws of the state; or

42 (b) violation of the city ordinances.

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

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

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

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

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

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

54 **17-32-1. Powers and duties of bail commissioners.**

55 (1) The county executive, with the advice and consent of the county legislative body,
56 may appoint one or more responsible and discreet members of the sheriff's department of the

57 county as a bail commissioner.

58 (2) A bail commissioner may:

59 (a) receive monetary bail for persons arrested in the county for a felony; and

60 (b) fix and receive bail for persons arrested in the county for a misdemeanor under the
61 laws of the state, or for a violation of any of the county ordinances in accordance with the
62 uniform [~~bail~~] fine schedule adopted by the Judicial Council or a reasonable monetary bail for
63 county ordinances not contained in the schedule.

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

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

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

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

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

74 Section 3. Section **63I-2-277** is amended to read:

75 **63I-2-277. Repeal dates -- Title 77.**

76 Section 77-20-14 is repealed March 31, 2023.

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

78 **77-7-21. Proceeding on citation -- Voluntary forfeiture of bail -- Parent signature**
79 **required -- Information, when required.**

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

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

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

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

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

92 (iv) a violation of a local ordinance similar to the offenses described in Subsections
93 (1)(b)(i) through (iii); or

94 (v) a violation that appears to:

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

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

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

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

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

105 Section 5. Section 77-20-1 is amended to read:

106 **77-20-1. Right to bail -- Pretrial status order -- Denial of bail -- Detention hearing**
107 **-- Motion to modify.**

108 (1) As used in this chapter:

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

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

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

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

- 119 (e) "Surety" and "sureties" mean a surety insurer or a bail bond agency.
- 120 (f) "Surety insurer" means the same as that term is defined in Section [31A-35-102](#).
- 121 (2) An individual charged with or arrested for a criminal offense shall be admitted to
122 bail as a matter of right, except if the individual is charged with a:
- 123 (a) capital felony, when the court finds there is substantial evidence to support the
124 charge;
- 125 (b) felony committed while on probation or parole, or while free on bail awaiting trial
126 on a previous felony charge, when the court finds there is substantial evidence to support the
127 current felony charge;
- 128 (c) felony when there is substantial evidence to support the charge and the court finds
129 by clear and convincing evidence that the individual would constitute a substantial danger to
130 any other individual or to the community, or is likely to flee the jurisdiction of the court, if
131 released on bail;
- 132 (d) felony when the court finds there is substantial evidence to support the charge and
133 the court finds by clear and convincing evidence that the individual violated a material
134 condition of release while previously on bail; or
- 135 (e) domestic violence offense if the court finds:
- 136 (i) that there is substantial evidence to support the charge; and
- 137 (ii) by clear and convincing evidence, that the individual would constitute a substantial
138 danger to an alleged victim of domestic violence if released on bail.
- 139 (3) (a) A court exercising jurisdiction over an individual charged with or arrested for a
140 criminal offense shall issue a pretrial status order designating the conditions to be imposed
141 upon the individual's release or ordering that the individual be detained under this section
142 during the time the individual awaits trial or other resolution of the criminal charges.
- 143 (b) A court granting pretrial release shall impose the least restrictive reasonably
144 available conditions of release on the individual who is the subject of the pretrial status order
145 that the court determines will reasonably ensure:
- 146 (i) the individual's appearance in court when required;
- 147 (ii) the safety of any witnesses or victims of the offense allegedly committed by the
148 individual;
- 149 (iii) the safety and welfare of the public; and

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

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

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

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

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

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

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

165 [~~(4)~~] (5) (a) Except as otherwise provided in this section or Section 78B-7-802, the
166 court shall order that an individual charged with a criminal offense be released on the
167 individual's own recognizance, on condition that the individual appear at all required court
168 proceedings, if the court finds that additional conditions are not necessary to reasonably ensure
169 compliance with Subsection (3)(b).

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

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

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

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

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

179 (v) submit to drug or alcohol testing;

180 (vi) complete a substance abuse evaluation and comply with any recommended

181 treatment or release program;

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

183 (viii) participate in inpatient or outpatient medical, behavioral, psychological, or

184 psychiatric treatment;

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

186 (x) maintain or commence an education program;

187 (xi) comply with limitations on where the individual is allowed to be located or the

188 times the individual shall be or may not be at a specified location;

189 (xii) comply with specified restrictions on personal associations, place of residence, or

190 travel;

191 (xiii) report to a law enforcement agency, pretrial services program, or other designated

192 agency at a specified frequency or on specified dates;

193 (xiv) comply with a specified curfew;

194 (xv) forfeit or refrain from possession of a firearm or other dangerous weapon;

195 (xvi) if the individual is charged with an offense against a child, is limited or denied

196 access to any location or occupation where children are, including any residence where children

197 are on the premises, activities including organized activities in which children are involved,

198 locations where children congregate, or where a reasonable person should know that children

199 congregate;

200 (xvii) comply with requirements for house arrest;

201 (xviii) return to custody for a specified period of time following release for

202 employment, schooling, or other limited purposes;

203 (xix) remain in the custody of one or more designated individuals who agree to

204 supervise and report on the behavior and activities of the individual charged and to encourage

205 compliance with all court orders and attendance at all required court proceedings;

206 (xx) comply with a financial condition; or

207 (xxi) comply with any other condition that is necessary to reasonably ensure

208 compliance with Subsection (3)(b).

209 (c) If the court determines a financial condition, other than an unsecured bond, is

210 necessary to impose on an individual as part of the individual's pretrial release, the court shall

211 [consider] make an individualized determination after the court considers the individual's

212 ability to pay when determining the amount of the financial condition.

213 ~~[(5)]~~ (6) In making a determination under Subsection (3) or (10), the court may:

214 (a) rely on information contained in the following:

215 (i) the indictment or information;

216 (ii) any sworn or probable cause statement or other information provided by law
217 enforcement;

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

219 (iv) witness statements or testimony; and

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

221 (b) consider the following:

222 ~~[(b)]~~ (i) the nature and circumstances of the offense or offenses charged, including
223 whether the charges include a violent offense and the vulnerability of witnesses or alleged
224 victims;

225 ~~[(c)]~~ (ii) the nature and circumstances of the individual, including the individual's
226 character, physical and mental health, family and community ties, employment status and
227 history, financial resources, past criminal conduct, history of drug or alcohol abuse, and history
228 of timely appearances at required court proceedings;

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

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

233 ~~[(f)]~~ (v) the availability of other individuals who agree to assist the individual in
234 attending court when required or other evidence relevant to the individual's opportunities for
235 supervision in the individual's community;

236 ~~[(g)]~~ (vi) the eligibility and willingness of the individual to participate in various
237 treatment programs, including drug treatment; or

238 ~~[(h)]~~ (vii) other evidence relevant to the individual's likelihood of fleeing or violating
239 the law if released.

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

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

243 victim to testify may only be issued at the conclusion of a hearing on a motion for pretrial
244 detention when it seeks testimony that:

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

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

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

250 ~~[(6)]~~ (8) (a) If the criminal charges filed against the individual include one or more
251 offenses eligible for detention under Subsection (2) or Utah Constitution, Article I, Section 8,
252 the prosecution may file a motion for pretrial detention.

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

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

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

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

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

265 ~~[(7)]~~ (10) After hearing evidence on a motion for pretrial detention, the court may
266 detain the individual if:

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

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

272 (c) the court finds that no reasonably available conditions that may be imposed upon
273 granting the individual pretrial release will reasonably ensure compliance with Subsection

274 (3)(b).

275 ~~[(8)]~~ (11) (a) If an individual is charged with a criminal offense described in
276 Subsection ~~[(8)]~~ (11)(b), there is a rebuttable presumption that the individual be detained.

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

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

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

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

284 ~~[(9)]~~ (12) Except as otherwise provided, the court issuing a pretrial warrant of arrest
285 shall issue the initial pretrial status order.

286 ~~[(10)]~~ (13) (a) An individual arrested for a violation of a jail release agreement or jail
287 release court order issued in accordance with Section [78B-7-802](#):

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

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

291 (b) Nothing in this section precludes or nullifies a jail release agreement or jail release
292 order required under Section [78B-7-802](#).

293 ~~[(11)]~~ (14) (a) A motion to modify the initial pretrial status order may be made by a
294 party at any time upon notice to the opposing party sufficient to permit the opposing party to
295 prepare for hearing and to permit each alleged victim to be notified and be present.

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

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

301 ~~[(12)]~~ (15) Subsequent motions to modify a pretrial status order may be made only
302 upon a showing that there has been a material change in circumstances.

303 ~~[(13)]~~ (16) An appeal may be taken from an order of a court denying bail to the Utah
304 Court of Appeals pursuant to the Utah Rules of Appellate Procedure, which shall review the

305 determination under Subsection [~~(7)~~] (10).

306 [~~(14)~~] (17) For purposes of this section, any arrest or charge for a violation of Section
307 76-5-202, Aggravated murder, is a capital felony unless:

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

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

311 Section 6. Section 77-20-14 is enacted to read:

312 **77-20-14. Pretrial Services and Detention Task Force -- Creation -- Membership --**
313 **Quorum -- Compensation -- Staff -- Vacancies -- Duties -- Report.**

314 (1) As used in this section "pretrial services and detention" means determinations of
315 whether to detain or release an individual in custody from the time of an initial arrest or charge
316 until the adjudication of one or more criminal charges. It includes any terms imposed as
317 conditions of release.

318 (2) There is created a Pretrial Services and Detention Task Force consisting of the
319 following twenty-one members:

320 (a) two members of the Senate, not from the same political party, appointed by the
321 president of the Senate;

322 (b) two members of the House of Representatives, not from the same political party,
323 appointed by the speaker of the House of Representatives;

324 (c) The speaker of the House of Representatives and the president of the Senate shall
325 jointly appoint the following two members:

326 (i) a representative of an organization that specializes in civil rights or civil liberties on
327 behalf of incarcerated individuals;

328 (ii) a representative of an organization that represents the interests of the bail bond
329 industry;

330 (d) a district court judge familiar with pretrial services appointed by the chief justice;

331 (e) the state court administrator or the state court administrator's designee;

332 (f) the commissioner of the Department of Public Safety or the commissioner's
333 designee;

334 (g) the attorney general or an attorney designated by the attorney general;

335 (h) the president of the chiefs of police association or a chief of police designated by

336 the association's president;

337 (i) the president of the sheriffs' association or a sheriff designated by the association's
338 president;

339 (j) the chair of the Utah Sentencing Commission or a member of the Utah Sentencing
340 Commission designated by the chair;

341 (k) the chair of the Utah Council on Victims of Crime or a member of the Utah
342 Council on Victims of Crime designated by the chair;

343 (l) the executive director of the Salt Lake Legal Defender Association or the executive
344 director's designee;

345 (m) the chair of the Utah Indigent Defense Commission or the chair's designee;

346 (n) the Salt Lake County District Attorney or the District Attorney's designee;

347 (o) a representative of the statewide association of public attorneys designated by the
348 association's officers to represent prosecutors from a county of the second through sixth class;

349 (p) an attorney who primarily represents indigent defendants in the courts of a county
350 of the third through sixth class, recommended by the chair of the Indigent Defense

351 Commission; and

352 (q) the executive director of the Commission on Criminal and Juvenile Justice, or the
353 executive director's designee.

354 (3) A vacancy in a position appointed under Subsection (2)(a), (b), or (c) shall be filled
355 by appointing a replacement member in the same manner as the member creating the vacancy
356 was appointed under Subsection (2)(a), (b), or (c).

357 (4) (a) The president of the Senate shall designate a senator appointed under
358 Subsection (2)(a) as a co-chair of the task force.

359 (b) The speaker of the House of Representatives shall designate a member of the House
360 of Representatives appointed under Subsection (2)(b) as a co-chair of the task force.

361 (5) (a) A quorum consists of twelve members.

362 (b) The action of a majority of a quorum constitutes an action of the task force.

363 (6) (a) Salaries and expenses of the members of the task force who are legislators shall
364 be paid in accordance with Section [36-2-2](#) and Legislative Joint Rules, Title 5, Chapter 3,
365 Legislator Compensation.

366 (b) A member of the task force who is not a legislator:

367 (i) may not receive compensation or benefits for the member's service associated with
368 the task force; and

369 (ii) may receive per diem and travel expenses incurred as a member of the task force at
370 the rates established by the Division of Finance in accordance with Sections [63A-3-106](#) and
371 [63A-3-107](#) and rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
372 [63A-3-107](#).

373 (7) The Office of Legislative Research and General Counsel shall provide staff support
374 to the task force.

375 (8) The task force shall:

376 (a) seek input from various stakeholders, about how pretrial services are being
377 implemented statewide;

378 (b) identify barriers to effective implementation of pretrial services and develop model
379 protocols and procedures to overcome those barriers;

380 (c) identify and discuss the implementation of pretrial services and make legislative
381 recommendations to continue to improve them; and

382 (d) develop and make legislative recommendations regarding best practices related to
383 pretrial services, including:

384 (i) legal procedures and requirements around pretrial services; and

385 (ii) pretrial services which should be available and, where necessary, funded statewide
386 as alternatives to pretrial detention, including monetary bail;

387 (9) (a) On or before November 30, 2022, the task force shall provide a report to the
388 Law Enforcement and Criminal Justice Interim Committee.

389 (b) The report shall include:

390 (i) a summary of the task force's findings under Subsection (8);

391 (ii) recommendations for improvements in pretrial services in Utah; and

392 (iii) recommended legislation, if necessary.