

## SB0171S02 compared with SB0171S01

~~deleted text~~ shows text that was in SB0171S01 but was deleted in SB0171S02.

inserted text shows text that was not in SB0171S01 but was inserted into SB0171S02.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Todd D. Weiler proposes the following substitute bill:

### PRETRIAL DETENTION REVISIONS

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd D. Weiler**

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

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#### 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

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### 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

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

#### ENACTS:

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

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*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 bail for city ordinances not contained in the schedule for:

- (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.

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(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.

(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.

(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 **63I-2-277** is amended to read:

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

Section 77-20-14 is repealed March 31, 2023.

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

**77-7-21. Proceeding on citation -- Voluntary forfeiture of bail -- 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

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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 (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 cited is under 18 years of age, 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 ~~33~~5. 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

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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 arrested for 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 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

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available conditions of release on the individual who is the subject of the pretrial status order that the court determines will reasonably 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 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.

[~~(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;

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- (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 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;

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(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 make an individualized determination after the court considers the individual's ability to pay when determining the amount of the financial condition.

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

(a) rely on information contained in 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) 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 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 the individual was on probation, parole, or release pending an upcoming court proceeding at the time the individual allegedly committed the offense;

~~(f)~~ (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)~~ (vi) the eligibility and willingness of the individual to participate in various



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treatment programs, including drug treatment; or

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

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

~~[(c)]~~ (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

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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.

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

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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.

~~[(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.

~~[(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 arrest or charge for a violation of Section 76-5-202, Aggravated murder, is a capital felony unless:

- (a) the prosecutor files a notice of intent to not seek the death penalty; or
- (b) the time for filing a notice to seek the death penalty has expired and the prosecutor has not filed a notice to seek the death penalty.

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) the president of the chiefs of police association or a chief of police designated by the association's president;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) The task force shall:

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

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

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

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

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

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

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

(b) The report shall include:

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

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

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(ii) recommended legislation, if necessary.