

**PRETRIAL AMENDMENTS**

2021 SECOND SPECIAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephanie Pitcher**

Senate Sponsor: Todd D. Weiler

---

---

**LONG TITLE**

**General Description:**

This bill amends provisions related to the pretrial process.

**Highlighted Provisions:**

This bill:

- ▶ recodifies Title 77, Chapter 20, Bail, and Chapter 20b, Bail Surety;
- ▶ amends provisions related to a bail commissioner;
- ▶ amends provisions related to a mistake made in charging an offense;
- ▶ defines terms related to bail;
- ▶ addresses the collection of pretrial information for a magistrate or judge;
- ▶ amends provisions related to the release of individuals by a sheriff or bail commissioner on own recognizance;
- ▶ addresses the release of an individual by a bail commissioner on a financial condition;
- ▶ addresses the release of an individual by a magistrate or judge, including the standards and guidance for pretrial status orders and imposing pretrial release or detention;
- ▶ addresses motions for pretrial detention filed by prosecuting attorneys;
- ▶ addresses pretrial detention hearings, including the time in which a pretrial detention hearing shall be held;
- ▶ addresses modification of a pretrial status order;
- ▶ addresses the release from pretrial conditions when charges are not filed within 120 days;

- 30           ▶ modifies the time-period requirement for an issuance of a warrant for failure to
- 31 appear and for a prosecuting attorney to send notice of a failure to appear to a
- 32 surety;
- 33           ▶ modifies the time-period requirement for bail bond forfeiture;
- 34           ▶ provides that a justice court judge, who is exercising the authority of a magistrate,
- 35 may not perform any act or function in a capital felony case;
- 36           ▶ addresses affidavits of indigency and requires certain individuals to submit an
- 37 affidavit of indigency to the court;
- 38           ▶ creates a pilot program to verify the indigency of certain individuals;
- 39           ▶ repeals statutes related to bail; and
- 40           ▶ makes technical and conforming changes.

**41 Money Appropriated in this Bill:**

42           None

**43 Other Special Clauses:**

44           This bill provides a special effective date.

**45 Utah Code Sections Affected:**

46           AMENDS:

- 47           **17-22-5.5**, as last amended by Laws of Utah 2021, First Special Session, Chapter 6
- 48           **17-32-1**, as last amended by Laws of Utah 2021, First Special Session, Chapter 6
- 49           **17-32-2**, as last amended by Laws of Utah 1990, Chapter 283
- 50           **31A-1-301**, as last amended by Laws of Utah 2021, Chapter 252
- 51           **31A-35-504**, as last amended by Laws of Utah 2016, Chapter 234
- 52           **63M-7-215**, as enacted by Laws of Utah 2020, Chapter 185
- 53           **77-17-8**, as last amended by Laws of Utah 2021, Chapter 431
- 54           **77-18a-1**, as last amended by Laws of Utah 2021, Chapters 147 and 431
- 55           **78A-2-220**, as last amended by Laws of Utah 2021, Chapter 431
- 56           **78A-7-118**, as last amended by Laws of Utah 2017, Chapter 115
- 57           **78B-7-802**, as last amended by Laws of Utah 2021, Chapter 159

58 **78B-9-108**, as last amended by Laws of Utah 2017, Chapter 447

59 **78B-22-202**, as enacted by Laws of Utah 2019, Chapter 326

60 ENACTS:

61 **77-20-101**, Utah Code Annotated 1953

62 **77-20-102**, Utah Code Annotated 1953

63 **77-20-201**, Utah Code Annotated 1953

64 **77-20-202**, Utah Code Annotated 1953

65 **77-20-204**, Utah Code Annotated 1953

66 **77-20-205**, Utah Code Annotated 1953

67 **77-20-206**, Utah Code Annotated 1953

68 **77-20-207**, Utah Code Annotated 1953

69 **77-20-208**, Utah Code Annotated 1953

70 **77-20-401**, Utah Code Annotated 1953

71 **77-20-504**, Utah Code Annotated 1953

72 **78B-22-201.5**, Utah Code Annotated 1953

73 **78B-22-1001**, Utah Code Annotated 1953

74 **78B-22-1002**, Utah Code Annotated 1953

75 RENUMBERS AND AMENDS:

76 **77-20-103**, (Renumbered from 77-20-1.1, as last amended by Laws of Utah 2021,  
77 Chapter 431)

78 **77-20-203**, (Renumbered from 77-20-3.2, as enacted by Laws of Utah 2021, First  
79 Special Session, Chapter 6)

80 **77-20-301**, (Renumbered from 77-20-8, as last amended by Laws of Utah 2021,  
81 Chapter 431)

82 **77-20-302**, (Renumbered from 77-20-10, as last amended by Laws of Utah 2021,  
83 Chapter 431)

84 **77-20-402**, (Renumbered from 77-20-4, as last amended by Laws of Utah 2021,  
85 Chapters 260 and 431)

86 77-20-404, (Renumbered from 77-20-9, as last amended by Laws of Utah 2021,  
87 Chapter 431)

88 77-20-501, (Renumbered from 77-20b-101, as last amended by Laws of Utah 2021,  
89 Chapters 260 and 431)

90 77-20-502, (Renumbered from 77-20b-102, as last amended by Laws of Utah 2021,  
91 Chapter 431)

92 77-20-503, (Renumbered from 77-20-8.5, as last amended by Laws of Utah 2021,  
93 Chapter 431)

94 77-20-505, (Renumbered from 77-20b-104, as last amended by Laws of Utah 2021,  
95 Chapter 431)

96 REPEALS:

97 10-3-920, as last amended by Laws of Utah 2015, Chapter 99

98 77-20-1, as last amended by Laws of Utah 2021, Chapters 88, 94, 431 and last amended  
99 by Coordination Clause, Laws of Utah 2021, Chapter 431

100 77-20-3.1, as enacted by Laws of Utah 2021, Chapter 431

101 77-20-7, as last amended by Laws of Utah 2021, Chapter 431

102 77-20b-100, as enacted by Laws of Utah 2016, Chapter 234

103 77-20b-103, as last amended by Laws of Utah 2016, Chapter 234

104 77-20b-105, as last amended by Laws of Utah 2016, Chapter 234

105 

---

---

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

107 Section 1. Section 17-22-5.5 is amended to read:

108 **17-22-5.5. Sheriff's classification of jail facilities -- Maximum operating capacity**  
109 **of jail facilities -- Transfer or release of prisoners -- Limitation -- Records regarding**  
110 **release.**

111 (1) (a) Except as provided in Subsection (4), a county sheriff shall determine:

112 (i) subject to Subsection (1)(b), the classification of each jail facility or section of a jail  
113 facility under the sheriff's control;

114 (ii) the nature of each program conducted at a jail facility under the sheriff's control;

115 and

116 (iii) the internal operation of a jail facility under the sheriff's control.

117 (b) A classification under Subsection (1)(a)(i) of a jail facility may not violate any

118 applicable zoning ordinance or conditional use permit of the county or municipality.

119 (2) Except as provided in Subsection (4), each county sheriff shall:

120 (a) with the approval of the county legislative body, establish a maximum operating  
121 capacity for each jail facility under the sheriff's control, based on facility design and staffing;

122 and

123 (b) upon a jail facility reaching the jail facility's maximum operating capacity:

124 (i) transfer prisoners to another appropriate facility:

125 (A) under the sheriff's control; or

126 (B) available to the sheriff by contract;

127 (ii) release prisoners:

128 (A) to a supervised release program, according to release criteria established by the  
129 sheriff; or

130 (B) to another alternative incarceration program developed by the sheriff; or

131 (iii) admit prisoners in accordance with law and a uniform admissions policy imposed  
132 equally upon all entities using the county jail.

133 (3) (a) The sheriff shall keep records of the release status and the type of release  
134 program or alternative incarceration program for any prisoner released under Subsection  
135 (2)(b)(ii).

136 (b) The sheriff shall make these records available upon request to the Department of  
137 Corrections, the Judiciary, and the Commission on Criminal and Juvenile Justice.

138 (4) This section may not be construed to authorize a sheriff to modify provisions of a  
139 contract with the Department of Corrections to house in a county jail an individual sentenced to  
140 the Department of Corrections.

141 (5) Regardless of whether a jail facility has reached the jail facility's maximum

142 operating capacity under Subsection (2), a sheriff may release an individual from a jail facility  
143 in accordance with Section ~~[77-20-3.2]~~ 77-20-203 or 77-20-204.

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

145 **17-32-1. Appointment of bail commissioners.**

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

149 ~~[(2) A bail commissioner may:]~~

150 ~~[(a) receive bail for an individual arrested in the county for a felony;]~~

151 ~~[(b) fix and receive bail for an individual arrested in the county for a misdemeanor~~  
152 ~~under the laws of the state, or for a violation of any of the county ordinances in accordance~~  
153 ~~with the uniform bail schedule adopted by the Judicial Council or a reasonable bail for county~~  
154 ~~ordinances not contained in the schedule; and]~~

155 ~~[(c) authorize the release of an individual from a jail facility on the individual's own~~  
156 ~~recognizance in accordance with Section 77-20-3.2.]~~

157 ~~[(3) An individual who has been ordered by a magistrate, judge, or bail commissioner~~  
158 ~~to give bail may deposit the amount with the bail commissioner:]~~

159 ~~[(a) in money, by cash, certified or cashier's check, personal check with check~~  
160 ~~guarantee card, money order, or credit card, if the bail commissioner has chosen to establish~~  
161 ~~any of those options; or]~~

162 ~~[(b) by a bond issued by a licensed bail bond surety.]~~

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

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

167 (2) The power, duties, and responsibilities of a bail commissioner are described in this  
168 chapter and Sections 77-20-203, 77-20-204, and 77-20-401.

169 Section 3. Section **17-32-2** is amended to read:

170 **17-32-2. Collection of fines by bail commissioners -- Disposition.**

171 (1) ~~[In addition to the duty of fixing bail, a]~~ A bail commissioner shall have power to  
172 ~~[collect and receipt]~~ receive money tendered in payment of the fine of ~~[a person]~~ an individual  
173 serving sentence in default of the payment of the fine when the court is closed.

174 ~~[(2) Money collected by a bail commissioner shall be delivered to the court that issued~~  
175 ~~the commitment order within three days of receipt of the money.]~~

176 (2) A bail commissioner shall deliver any money received by a bail commissioner  
177 under Subsection (1) to the court that issued the commitment order within three days after the  
178 day on which the money is received.

179 Section 4. Section **31A-1-301** is amended to read:

180 **31A-1-301. Definitions.**

181 As used in this title, unless otherwise specified:

182 (1) (a) "Accident and health insurance" means insurance to provide protection against  
183 economic losses resulting from:

184 (i) a medical condition including:

185 (A) a medical care expense; or

186 (B) the risk of disability;

187 (ii) accident; or

188 (iii) sickness.

189 (b) "Accident and health insurance":

190 (i) includes a contract with disability contingencies including:

191 (A) an income replacement contract;

192 (B) a health care contract;

193 (C) an expense reimbursement contract;

194 (D) a credit accident and health contract;

195 (E) a continuing care contract; and

196 (F) a long-term care contract; and

197 (ii) may provide:

- 198 (A) hospital coverage;
- 199 (B) surgical coverage;
- 200 (C) medical coverage;
- 201 (D) loss of income coverage;
- 202 (E) prescription drug coverage;
- 203 (F) dental coverage; or
- 204 (G) vision coverage.
- 205 (c) "Accident and health insurance" does not include workers' compensation insurance.
- 206 (d) For purposes of a national licensing registry, "accident and health insurance" is the
- 207 same as "accident and health or sickness insurance."
- 208 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title
- 209 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 210 (3) "Administrator" means the same as that term is defined in Subsection (178).
- 211 (4) "Adult" means an individual who has attained the age of at least 18 years.
- 212 (5) "Affiliate" means a person who controls, is controlled by, or is under common
- 213 control with, another person. A corporation is an affiliate of another corporation, regardless of
- 214 ownership, if substantially the same group of individuals manage the corporations.
- 215 (6) "Agency" means:
- 216 (a) a person other than an individual, including a sole proprietorship by which an
- 217 individual does business under an assumed name; and
- 218 (b) an insurance organization licensed or required to be licensed under Section
- 219 [31A-23a-301](#), [31A-25-207](#), or [31A-26-209](#).
- 220 (7) "Alien insurer" means an insurer domiciled outside the United States.
- 221 (8) "Amendment" means an endorsement to an insurance policy or certificate.
- 222 (9) "Annuity" means an agreement to make periodical payments for a period certain or
- 223 over the lifetime of one or more individuals if the making or continuance of all or some of the
- 224 series of the payments, or the amount of the payment, is dependent upon the continuance of
- 225 human life.



226 (10) "Application" means a document:  
227 (a) (i) completed by an applicant to provide information about the risk to be insured;

228 and

229 (ii) that contains information that is used by the insurer to evaluate risk and decide  
230 whether to:

231 (A) insure the risk under:

232 (I) the coverage as originally offered; or

233 (II) a modification of the coverage as originally offered; or

234 (B) decline to insure the risk; or

235 (b) used by the insurer to gather information from the applicant before issuance of an  
236 annuity contract.

237 (11) "Articles" or "articles of incorporation" means:

238 (a) the original articles;

239 (b) a special law;

240 (c) a charter;

241 (d) an amendment;

242 (e) restated articles;

243 (f) articles of merger or consolidation;

244 (g) a trust instrument;

245 (h) another constitutive document for a trust or other entity that is not a corporation;

246 and

247 (i) an amendment to an item listed in Subsections (11)(a) through (h).

248 (12) "Bail bond insurance" means a guarantee that a person will attend court when  
249 required, up to and including surrender of the person in execution of a sentence imposed under  
250 Subsection [~~77-20-7~~] [77-20-501](#)(1), as a condition to the release of that person from  
251 confinement.

252 (13) "Binder" means the same as that term is defined in Section [31A-21-102](#).

253 (14) "Blanket insurance policy" or "blanket contract" means a group insurance policy

254 covering a defined class of persons:

255 (a) without individual underwriting or application; and

256 (b) that is determined by definition without designating each person covered.

257 (15) "Board," "board of trustees," or "board of directors" means the group of persons

258 with responsibility over, or management of, a corporation, however designated.

259 (16) "Bona fide office" means a physical office in this state:

260 (a) that is open to the public;

261 (b) that is staffed during regular business hours on regular business days; and

262 (c) at which the public may appear in person to obtain services.

263 (17) "Business entity" means:

264 (a) a corporation;

265 (b) an association;

266 (c) a partnership;

267 (d) a limited liability company;

268 (e) a limited liability partnership; or

269 (f) another legal entity.

270 (18) "Business of insurance" means the same as that term is defined in Subsection (94).

271 (19) "Business plan" means the information required to be supplied to the

272 commissioner under Subsections [31A-5-204](#)(2)(i) and (j), including the information required

273 when these subsections apply by reference under:

274 (a) Section [31A-8-205](#); or

275 (b) Subsection [31A-9-205](#)(2).

276 (20) (a) "Bylaws" means the rules adopted for the regulation or management of a

277 corporation's affairs, however designated.

278 (b) "Bylaws" includes comparable rules for a trust or other entity that is not a

279 corporation.

280 (21) "Captive insurance company" means:

281 (a) an insurer:

- 282 (i) owned by a parent organization; and
- 283 (ii) whose purpose is to insure risks of the parent organization and other risks as
- 284 authorized under:
  - 285 (A) Chapter 37, Captive Insurance Companies Act; and
  - 286 (B) Chapter 37a, Special Purpose Financial Captive Insurance Company Act; or
  - 287 (b) in the case of a group or association, an insurer:
    - 288 (i) owned by the insureds; and
    - 289 (ii) whose purpose is to insure risks of:
      - 290 (A) a member organization;
      - 291 (B) a group member; or
      - 292 (C) an affiliate of:
        - 293 (I) a member organization; or
        - 294 (II) a group member.
  - 295 (22) "Casualty insurance" means liability insurance.
  - 296 (23) "Certificate" means evidence of insurance given to:
    - 297 (a) an insured under a group insurance policy; or
    - 298 (b) a third party.
  - 299 (24) "Certificate of authority" is included within the term "license."
  - 300 (25) "Claim," unless the context otherwise requires, means a request or demand on an
  - 301 insurer for payment of a benefit according to the terms of an insurance policy.
  - 302 (26) "Claims-made coverage" means an insurance contract or provision limiting
  - 303 coverage under a policy insuring against legal liability to claims that are first made against the
  - 304 insured while the policy is in force.
  - 305 (27) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance
  - 306 commissioner.
  - 307 (b) When appropriate, the terms listed in Subsection (27)(a) apply to the equivalent
  - 308 supervisory official of another jurisdiction.
  - 309 (28) (a) "Continuing care insurance" means insurance that:

- 310 (i) provides board and lodging;
- 311 (ii) provides one or more of the following:
  - 312 (A) a personal service;
  - 313 (B) a nursing service;
  - 314 (C) a medical service; or
  - 315 (D) any other health-related service; and
- 316 (iii) provides the coverage described in this Subsection (28)(a) under an agreement
- 317 effective:
  - 318 (A) for the life of the insured; or
  - 319 (B) for a period in excess of one year.
- 320 (b) Insurance is continuing care insurance regardless of whether or not the board and
- 321 lodging are provided at the same location as a service described in Subsection (28)(a)(ii).
- 322 (29) (a) "Control," "controlling," "controlled," or "under common control" means the
- 323 direct or indirect possession of the power to direct or cause the direction of the management
- 324 and policies of a person. This control may be:
  - 325 (i) by contract;
  - 326 (ii) by common management;
  - 327 (iii) through the ownership of voting securities; or
  - 328 (iv) by a means other than those described in Subsections (29)(a)(i) through (iii).
- 329 (b) There is no presumption that an individual holding an official position with another
- 330 person controls that person solely by reason of the position.
- 331 (c) A person having a contract or arrangement giving control is considered to have
- 332 control despite the illegality or invalidity of the contract or arrangement.
- 333 (d) There is a rebuttable presumption of control in a person who directly or indirectly
- 334 owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the
- 335 voting securities of another person.
- 336 (30) "Controlled insurer" means a licensed insurer that is either directly or indirectly
- 337 controlled by a producer.

338 (31) "Controlling person" means a person that directly or indirectly has the power to  
339 direct or cause to be directed, the management, control, or activities of a reinsurance  
340 intermediary.

341 (32) "Controlling producer" means a producer who directly or indirectly controls an  
342 insurer.

343 (33) "Corporate governance annual disclosure" means a report an insurer or insurance  
344 group files in accordance with the requirements of Chapter 16b, Corporate Governance Annual  
345 Disclosure Act.

346 (34) (a) "Corporation" means an insurance corporation, except when referring to:

347 (i) a corporation doing business:

348 (A) as:

349 (I) an insurance producer;

350 (II) a surplus lines producer;

351 (III) a limited line producer;

352 (IV) a consultant;

353 (V) a managing general agent;

354 (VI) a reinsurance intermediary;

355 (VII) a third party administrator; or

356 (VIII) an adjuster; and

357 (B) under:

358 (I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and

359 Reinsurance Intermediaries;

360 (II) Chapter 25, Third Party Administrators; or

361 (III) Chapter 26, Insurance Adjusters; or

362 (ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance

363 Holding Companies.

364 (b) "Mutual" or "mutual corporation" means a mutual insurance corporation.

365 (c) "Stock corporation" means a stock insurance corporation.

366 (35) (a) "Creditable coverage" has the same meaning as provided in federal regulations  
367 adopted pursuant to the Health Insurance Portability and Accountability Act.

368 (b) "Creditable coverage" includes coverage that is offered through a public health plan  
369 such as:

370 (i) the Primary Care Network Program under a Medicaid primary care network  
371 demonstration waiver obtained subject to Section 26-18-3;

372 (ii) the Children's Health Insurance Program under Section 26-40-106; or

373 (iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L.  
374 No. 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. No.  
375 109-415.

376 (36) "Credit accident and health insurance" means insurance on a debtor to provide  
377 indemnity for payments coming due on a specific loan or other credit transaction while the  
378 debtor has a disability.

379 (37) (a) "Credit insurance" means insurance offered in connection with an extension of  
380 credit that is limited to partially or wholly extinguishing that credit obligation.

381 (b) "Credit insurance" includes:

382 (i) credit accident and health insurance;

383 (ii) credit life insurance;

384 (iii) credit property insurance;

385 (iv) credit unemployment insurance;

386 (v) guaranteed automobile protection insurance;

387 (vi) involuntary unemployment insurance;

388 (vii) mortgage accident and health insurance;

389 (viii) mortgage guaranty insurance; and

390 (ix) mortgage life insurance.

391 (38) "Credit life insurance" means insurance on the life of a debtor in connection with  
392 an extension of credit that pays a person if the debtor dies.

393 (39) "Creditor" means a person, including an insured, having a claim, whether:

- 394 (a) matured;
- 395 (b) unmatured;
- 396 (c) liquidated;
- 397 (d) unliquidated;
- 398 (e) secured;
- 399 (f) unsecured;
- 400 (g) absolute;
- 401 (h) fixed; or
- 402 (i) contingent.
- 403 (40) "Credit property insurance" means insurance:
- 404 (a) offered in connection with an extension of credit; and
- 405 (b) that protects the property until the debt is paid.
- 406 (41) "Credit unemployment insurance" means insurance:
- 407 (a) offered in connection with an extension of credit; and
- 408 (b) that provides indemnity if the debtor is unemployed for payments coming due on a:
- 409 (i) specific loan; or
- 410 (ii) credit transaction.
- 411 (42) (a) "Crop insurance" means insurance providing protection against damage to
- 412 crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation,
- 413 disease, or other yield-reducing conditions or perils that is:
- 414 (i) provided by the private insurance market; or
- 415 (ii) subsidized by the Federal Crop Insurance Corporation.
- 416 (b) "Crop insurance" includes multiperil crop insurance.
- 417 (43) (a) "Customer service representative" means a person that provides an insurance
- 418 service and insurance product information:
- 419 (i) for the customer service representative's:
- 420 (A) producer;
- 421 (B) surplus lines producer; or

422 (C) consultant employer; and

423 (ii) to the customer service representative's employer's:

424 (A) customer;

425 (B) client; or

426 (C) organization.

427 (b) A customer service representative may only operate within the scope of authority of  
428 the customer service representative's producer, surplus lines producer, or consultant employer.

429 (44) "Deadline" means a final date or time:

430 (a) imposed by:

431 (i) statute;

432 (ii) rule; or

433 (iii) order; and

434 (b) by which a required filing or payment must be received by the department.

435 (45) "Deemer clause" means a provision under this title under which upon the  
436 occurrence of a condition precedent, the commissioner is considered to have taken a specific  
437 action. If the statute so provides, a condition precedent may be the commissioner's failure to  
438 take a specific action.

439 (46) "Degree of relationship" means the number of steps between two persons  
440 determined by counting the generations separating one person from a common ancestor and  
441 then counting the generations to the other person.

442 (47) "Department" means the Insurance Department.

443 (48) "Director" means a member of the board of directors of a corporation.

444 (49) "Disability" means a physiological or psychological condition that partially or  
445 totally limits an individual's ability to:

446 (a) perform the duties of:

447 (i) that individual's occupation; or

448 (ii) an occupation for which the individual is reasonably suited by education, training,  
449 or experience; or



450 (b) perform two or more of the following basic activities of daily living:

451 (i) eating;

452 (ii) toileting;

453 (iii) transferring;

454 (iv) bathing; or

455 (v) dressing.

456 (50) "Disability income insurance" means the same as that term is defined in

457 Subsection (85).

458 (51) "Domestic insurer" means an insurer organized under the laws of this state.

459 (52) "Domiciliary state" means the state in which an insurer:

460 (a) is incorporated;

461 (b) is organized; or

462 (c) in the case of an alien insurer, enters into the United States.

463 (53) (a) "Eligible employee" means:

464 (i) an employee who:

465 (A) works on a full-time basis; and

466 (B) has a normal work week of 30 or more hours; or

467 (ii) a person described in Subsection (53)(b).

468 (b) "Eligible employee" includes:

469 (i) an owner who:

470 (A) works on a full-time basis;

471 (B) has a normal work week of 30 or more hours; and

472 (C) employs at least one common employee; and

473 (ii) if the individual is included under a health benefit plan of a small employer:

474 (A) a sole proprietor;

475 (B) a partner in a partnership; or

476 (C) an independent contractor.

477 (c) "Eligible employee" does not include, unless eligible under Subsection (53)(b):

- 478 (i) an individual who works on a temporary or substitute basis for a small employer;  
479 (ii) an employer's spouse who does not meet the requirements of Subsection (53)(a)(i);  
480 or  
481 (iii) a dependent of an employer who does not meet the requirements of Subsection  
482 (53)(a)(i).
- 483 (54) "Employee" means:  
484 (a) an individual employed by an employer; and  
485 (b) an owner who meets the requirements of Subsection (53)(b)(i).
- 486 (55) "Employee benefits" means one or more benefits or services provided to:  
487 (a) an employee; or  
488 (b) a dependent of an employee.
- 489 (56) (a) "Employee welfare fund" means a fund:  
490 (i) established or maintained, whether directly or through a trustee, by:  
491 (A) one or more employers;  
492 (B) one or more labor organizations; or  
493 (C) a combination of employers and labor organizations; and  
494 (ii) that provides employee benefits paid or contracted to be paid, other than income  
495 from investments of the fund:  
496 (A) by or on behalf of an employer doing business in this state; or  
497 (B) for the benefit of a person employed in this state.
- 498 (b) "Employee welfare fund" includes a plan funded or subsidized by a user fee or tax  
499 revenues.
- 500 (57) "Endorsement" means a written agreement attached to a policy or certificate to  
501 modify the policy or certificate coverage.
- 502 (58) (a) "Enrollee" means:  
503 (i) a policyholder;  
504 (ii) a certificate holder;  
505 (iii) a subscriber; or

- 506 (iv) a covered individual:
- 507 (A) who has entered into a contract with an organization for health care; or
- 508 (B) on whose behalf an arrangement for health care has been made.
- 509 (b) "Enrollee" includes an insured.
- 510 (59) "Enrollment date," with respect to a health benefit plan, means:
- 511 (a) the first day of coverage; or
- 512 (b) if there is a waiting period, the first day of the waiting period.
- 513 (60) "Enterprise risk" means an activity, circumstance, event, or series of events
- 514 involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a
- 515 material adverse effect upon the financial condition or liquidity of the insurer or its insurance
- 516 holding company system as a whole, including anything that would cause:
- 517 (a) the insurer's risk-based capital to fall into an action or control level as set forth in
- 518 Sections [31A-17-601](#) through [31A-17-613](#); or
- 519 (b) the insurer to be in hazardous financial condition set forth in Section [31A-27a-101](#).
- 520 (61) (a) "Escrow" means:
- 521 (i) a transaction that effects the sale, transfer, encumbering, or leasing of real property,
- 522 when a person not a party to the transaction, and neither having nor acquiring an interest in the
- 523 title, performs, in accordance with the written instructions or terms of the written agreement
- 524 between the parties to the transaction, any of the following actions:
- 525 (A) the explanation, holding, or creation of a document; or
- 526 (B) the receipt, deposit, and disbursement of money;
- 527 (ii) a settlement or closing involving:
- 528 (A) a mobile home;
- 529 (B) a grazing right;
- 530 (C) a water right; or
- 531 (D) other personal property authorized by the commissioner.
- 532 (b) "Escrow" does not include:
- 533 (i) the following notarial acts performed by a notary within the state:

534 (A) an acknowledgment;

535 (B) a copy certification;

536 (C) jurat; and

537 (D) an oath or affirmation;

538 (ii) the receipt or delivery of a document; or

539 (iii) the receipt of money for delivery to the escrow agent.

540 (62) "Escrow agent" means an agency title insurance producer meeting the

541 requirements of Sections 31A-4-107, 31A-14-211, and 31A-23a-204, who is acting through an

542 individual title insurance producer licensed with an escrow subline of authority.

543 (63) (a) "Excludes" is not exhaustive and does not mean that another thing is not also  
544 excluded.

545 (b) The items listed in a list using the term "excludes" are representative examples for  
546 use in interpretation of this title.

547 (64) "Exclusion" means for the purposes of accident and health insurance that an  
548 insurer does not provide insurance coverage, for whatever reason, for one of the following:

549 (a) a specific physical condition;

550 (b) a specific medical procedure;

551 (c) a specific disease or disorder; or

552 (d) a specific prescription drug or class of prescription drugs.

553 (65) "Expense reimbursement insurance" means insurance:

554 (a) written to provide a payment for an expense relating to hospital confinement  
555 resulting from illness or injury; and

556 (b) written:

557 (i) as a daily limit for a specific number of days in a hospital; and

558 (ii) to have a one or two day waiting period following a hospitalization.

559 (66) "Fidelity insurance" means insurance guaranteeing the fidelity of a person holding  
560 a position of public or private trust.

561 (67) (a) "Filed" means that a filing is:

562 (i) submitted to the department as required by and in accordance with applicable  
563 statute, rule, or filing order;

564 (ii) received by the department within the time period provided in applicable statute,  
565 rule, or filing order; and

566 (iii) accompanied by the appropriate fee in accordance with:

567 (A) Section 31A-3-103; or

568 (B) rule.

569 (b) "Filed" does not include a filing that is rejected by the department because it is not  
570 submitted in accordance with Subsection (67)(a).

571 (68) "Filing," when used as a noun, means an item required to be filed with the  
572 department including:

573 (a) a policy;

574 (b) a rate;

575 (c) a form;

576 (d) a document;

577 (e) a plan;

578 (f) a manual;

579 (g) an application;

580 (h) a report;

581 (i) a certificate;

582 (j) an endorsement;

583 (k) an actuarial certification;

584 (l) a licensee annual statement;

585 (m) a licensee renewal application;

586 (n) an advertisement;

587 (o) a binder; or

588 (p) an outline of coverage.

589 (69) "First party insurance" means an insurance policy or contract in which the insurer

590 agrees to pay a claim submitted to it by the insured for the insured's losses.

591 (70) "Foreign insurer" means an insurer domiciled outside of this state, including an  
592 alien insurer.

593 (71) (a) "Form" means one of the following prepared for general use:

594 (i) a policy;

595 (ii) a certificate;

596 (iii) an application;

597 (iv) an outline of coverage; or

598 (v) an endorsement.

599 (b) "Form" does not include a document specially prepared for use in an individual  
600 case.

601 (72) "Franchise insurance" means an individual insurance policy provided through a  
602 mass marketing arrangement involving a defined class of persons related in some way other  
603 than through the purchase of insurance.

604 (73) "General lines of authority" include:

605 (a) the general lines of insurance in Subsection (74);

606 (b) title insurance under one of the following sublines of authority:

607 (i) title examination, including authority to act as a title marketing representative;

608 (ii) escrow, including authority to act as a title marketing representative; and

609 (iii) title marketing representative only;

610 (c) surplus lines;

611 (d) workers' compensation; and

612 (e) another line of insurance that the commissioner considers necessary to recognize in  
613 the public interest.

614 (74) "General lines of insurance" include:

615 (a) accident and health;

616 (b) casualty;

617 (c) life;

- 618 (d) personal lines;
- 619 (e) property; and
- 620 (f) variable contracts, including variable life and annuity.

621 (75) "Group health plan" means an employee welfare benefit plan to the extent that the  
622 plan provides medical care:

- 623 (a) (i) to an employee; or
- 624 (ii) to a dependent of an employee; and
- 625 (b) (i) directly;
- 626 (ii) through insurance reimbursement; or
- 627 (iii) through another method.

628 (76) (a) "Group insurance policy" means a policy covering a group of persons that is  
629 issued:

- 630 (i) to a policyholder on behalf of the group; and
- 631 (ii) for the benefit of a member of the group who is selected under a procedure defined  
632 in:

- 633 (A) the policy; or
- 634 (B) an agreement that is collateral to the policy.

635 (b) A group insurance policy may include a member of the policyholder's family or a  
636 dependent.

637 (77) "Group-wide supervisor" means the commissioner or other regulatory official  
638 designated as the group-wide supervisor for an internationally active insurance group under  
639 Section [31A-16-108.6](#).

640 (78) "Guaranteed automobile protection insurance" means insurance offered in  
641 connection with an extension of credit that pays the difference in amount between the  
642 insurance settlement and the balance of the loan if the insured automobile is a total loss.

643 (79) (a) "Health benefit plan" means, except as provided in Subsection (79)(b), a  
644 policy, contract, certificate, or agreement offered or issued by a health carrier to provide,  
645 deliver, arrange for, pay for, or reimburse any of the costs of health care.

- 646 (b) "Health benefit plan" does not include:
- 647 (i) coverage only for accident or disability income insurance, or any combination
- 648 thereof;
- 649 (ii) coverage issued as a supplement to liability insurance;
- 650 (iii) liability insurance, including general liability insurance and automobile liability
- 651 insurance;
- 652 (iv) workers' compensation or similar insurance;
- 653 (v) automobile medical payment insurance;
- 654 (vi) credit-only insurance;
- 655 (vii) coverage for on-site medical clinics;
- 656 (viii) other similar insurance coverage, specified in federal regulations issued pursuant
- 657 to Pub. L. No. 104-191, under which benefits for health care services are secondary or
- 658 incidental to other insurance benefits;
- 659 (ix) the following benefits if they are provided under a separate policy, certificate, or
- 660 contract of insurance or are otherwise not an integral part of the plan:
- 661 (A) limited scope dental or vision benefits;
- 662 (B) benefits for long-term care, nursing home care, home health care,
- 663 community-based care, or any combination thereof; or
- 664 (C) other similar limited benefits, specified in federal regulations issued pursuant to
- 665 Pub. L. No. 104-191;
- 666 (x) the following benefits if the benefits are provided under a separate policy,
- 667 certificate, or contract of insurance, there is no coordination between the provision of benefits
- 668 and any exclusion of benefits under any health plan, and the benefits are paid with respect to an
- 669 event without regard to whether benefits are provided under any health plan:
- 670 (A) coverage only for specified disease or illness; or
- 671 (B) hospital indemnity or other fixed indemnity insurance;
- 672 (xi) the following if offered as a separate policy, certificate, or contract of insurance:
- 673 (A) Medicare supplemental health insurance as defined under the Social Security Act,



674 42 U.S.C. Sec. 1395ss(g)(1);

675 (B) coverage supplemental to the coverage provided under United States Code, Title  
676 10, Chapter 55, Civilian Health and Medical Program of the Uniformed Services  
677 (CHAMPUS); or

678 (C) similar supplemental coverage provided to coverage under a group health insurance  
679 plan;

680 (xii) short-term limited duration health insurance; and

681 (xiii) student health insurance, except as required under 45 C.F.R. Sec. 147.145.

682 (80) "Health care" means any of the following intended for use in the diagnosis,  
683 treatment, mitigation, or prevention of a human ailment or impairment:

684 (a) a professional service;

685 (b) a personal service;

686 (c) a facility;

687 (d) equipment;

688 (e) a device;

689 (f) supplies; or

690 (g) medicine.

691 (81) (a) "Health care insurance" or "health insurance" means insurance providing:

692 (i) a health care benefit; or

693 (ii) payment of an incurred health care expense.

694 (b) "Health care insurance" or "health insurance" does not include accident and health  
695 insurance providing a benefit for:

696 (i) replacement of income;

697 (ii) short-term accident;

698 (iii) fixed indemnity;

699 (iv) credit accident and health;

700 (v) supplements to liability;

701 (vi) workers' compensation;

702 (vii) automobile medical payment;  
703 (viii) no-fault automobile;  
704 (ix) equivalent self-insurance; or  
705 (x) a type of accident and health insurance coverage that is a part of or attached to  
706 another type of policy.

707 (82) "Health care provider" means the same as that term is defined in Section  
708 [78B-3-403](#).

709 (83) "Health insurance exchange" means an exchange as defined in 45 C.F.R. Sec.  
710 155.20.

711 (84) "Health Insurance Portability and Accountability Act" means the Health Insurance  
712 Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, as amended.

713 (85) "Income replacement insurance" or "disability income insurance" means insurance  
714 written to provide payments to replace income lost from accident or sickness.

715 (86) "Indemnity" means the payment of an amount to offset all or part of an insured  
716 loss.

717 (87) "Independent adjuster" means an insurance adjuster required to be licensed under  
718 Section [31A-26-201](#) who engages in insurance adjusting as a representative of an insurer.

719 (88) "Independently procured insurance" means insurance procured under Section  
720 [31A-15-104](#).

721 (89) "Individual" means a natural person.

722 (90) "Inland marine insurance" includes insurance covering:

723 (a) property in transit on or over land;

724 (b) property in transit over water by means other than boat or ship;

725 (c) bailee liability;

726 (d) fixed transportation property such as bridges, electric transmission systems, radio  
727 and television transmission towers and tunnels; and

728 (e) personal and commercial property floaters.

729 (91) "Insolvency" or "insolvent" means that:

- 730 (a) an insurer is unable to pay the insurer's obligations as the obligations are due;
- 731 (b) an insurer's total adjusted capital is less than the insurer's mandatory control level
- 732 RBC under Subsection 31A-17-601(8)(c); or
- 733 (c) an insurer's admitted assets are less than the insurer's liabilities.
- 734 (92) (a) "Insurance" means:
- 735 (i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more
- 736 persons to one or more other persons; or
- 737 (ii) an arrangement, contract, or plan for the distribution of a risk or risks among a
- 738 group of persons that includes the person seeking to distribute that person's risk.
- 739 (b) "Insurance" includes:
- 740 (i) a risk distributing arrangement providing for compensation or replacement for
- 741 damages or loss through the provision of a service or a benefit in kind;
- 742 (ii) a contract of guaranty or suretyship entered into by the guarantor or surety as a
- 743 business and not as merely incidental to a business transaction; and
- 744 (iii) a plan in which the risk does not rest upon the person who makes an arrangement,
- 745 but with a class of persons who have agreed to share the risk.
- 746 (93) "Insurance adjuster" means a person who directs or conducts the investigation,
- 747 negotiation, or settlement of a claim under an insurance policy other than life insurance or an
- 748 annuity, on behalf of an insurer, policyholder, or a claimant under an insurance policy.
- 749 (94) "Insurance business" or "business of insurance" includes:
- 750 (a) providing health care insurance by an organization that is or is required to be
- 751 licensed under this title;
- 752 (b) providing a benefit to an employee in the event of a contingency not within the
- 753 control of the employee, in which the employee is entitled to the benefit as a right, which
- 754 benefit may be provided either:
- 755 (i) by a single employer or by multiple employer groups; or
- 756 (ii) through one or more trusts, associations, or other entities;
- 757 (c) providing an annuity;

- 758 (i) including an annuity issued in return for a gift; and  
759 (ii) except an annuity provided by a person specified in Subsections 31A-22-1305(2)  
760 and (3);  
761 (d) providing the characteristic services of a motor club as outlined in Subsection  
762 (125);  
763 (e) providing another person with insurance;  
764 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,  
765 or surety, a contract or policy offering title insurance;  
766 (g) transacting or proposing to transact any phase of title insurance, including:  
767 (i) solicitation;  
768 (ii) negotiation preliminary to execution;  
769 (iii) execution of a contract of title insurance;  
770 (iv) insuring; and  
771 (v) transacting matters subsequent to the execution of the contract and arising out of  
772 the contract, including reinsurance;  
773 (h) transacting or proposing a life settlement; and  
774 (i) doing, or proposing to do, any business in substance equivalent to Subsections  
775 (94)(a) through (h) in a manner designed to evade this title.  
776 (95) "Insurance consultant" or "consultant" means a person who:  
777 (a) advises another person about insurance needs and coverages;  
778 (b) is compensated by the person advised on a basis not directly related to the insurance  
779 placed; and  
780 (c) except as provided in Section 31A-23a-501, is not compensated directly or  
781 indirectly by an insurer or producer for advice given.  
782 (96) "Insurance group" means the persons that comprise an insurance holding company  
783 system.  
784 (97) "Insurance holding company system" means a group of two or more affiliated  
785 persons, at least one of whom is an insurer.

786 (98) (a) "Insurance producer" or "producer" means a person licensed or required to be  
787 licensed under the laws of this state to sell, solicit, or negotiate insurance.

788 (b) (i) "Producer for the insurer" means a producer who is compensated directly or  
789 indirectly by an insurer for selling, soliciting, or negotiating an insurance product of that  
790 insurer.

791 (ii) "Producer for the insurer" may be referred to as an "agent."

792 (c) (i) "Producer for the insured" means a producer who:

793 (A) is compensated directly and only by an insurance customer or an insured; and

794 (B) receives no compensation directly or indirectly from an insurer for selling,  
795 soliciting, or negotiating an insurance product of that insurer to an insurance customer or  
796 insured.

797 (ii) "Producer for the insured" may be referred to as a "broker."

798 (99) (a) "Insured" means a person to whom or for whose benefit an insurer makes a  
799 promise in an insurance policy and includes:

800 (i) a policyholder;

801 (ii) a subscriber;

802 (iii) a member; and

803 (iv) a beneficiary.

804 (b) The definition in Subsection (99)(a):

805 (i) applies only to this title;

806 (ii) does not define the meaning of "insured" as used in an insurance policy or  
807 certificate; and

808 (iii) includes an enrollee.

809 (100) (a) "Insurer" means a person doing an insurance business as a principal  
810 including:

811 (i) a fraternal benefit society;

812 (ii) an issuer of a gift annuity other than an annuity specified in Subsections  
813 [31A-22-1305\(2\)](#) and (3);

- 814 (iii) a motor club;
- 815 (iv) an employee welfare plan;
- 816 (v) a person purporting or intending to do an insurance business as a principal on that  
817 person's own account; and
- 818 (vi) a health maintenance organization.
- 819 (b) "Insurer" does not include a governmental entity.
- 820 (101) "Interinsurance exchange" means the same as that term is defined in Subsection  
821 (160).
- 822 (102) "Internationally active insurance group" means an insurance holding company  
823 system:
- 824 (a) that includes an insurer registered under Section [31A-16-105](#);
- 825 (b) that has premiums written in at least three countries;
- 826 (c) whose percentage of gross premiums written outside the United States is at least  
827 10% of its total gross written premiums; and
- 828 (d) that, based on a three-year rolling average, has:
- 829 (i) total assets of at least \$50,000,000,000; or
- 830 (ii) total gross written premiums of at least \$10,000,000,000.
- 831 (103) "Involuntary unemployment insurance" means insurance:
- 832 (a) offered in connection with an extension of credit; and
- 833 (b) that provides indemnity if the debtor is involuntarily unemployed for payments  
834 coming due on a:
- 835 (i) specific loan; or
- 836 (ii) credit transaction.
- 837 (104) "Large employer," in connection with a health benefit plan, means an employer  
838 who, with respect to a calendar year and to a plan year:
- 839 (a) employed an average of at least 51 employees on business days during the  
840 preceding calendar year; and
- 841 (b) employs at least one employee on the first day of the plan year.

842 (105) "Late enrollee," with respect to an employer health benefit plan, means an  
843 individual whose enrollment is a late enrollment.

844 (106) "Late enrollment," with respect to an employer health benefit plan, means  
845 enrollment of an individual other than:

846 (a) on the earliest date on which coverage can become effective for the individual  
847 under the terms of the plan; or

848 (b) through special enrollment.

849 (107) (a) Except for a retainer contract or legal assistance described in Section  
850 [31A-1-103](#), "legal expense insurance" means insurance written to indemnify or pay for a  
851 specified legal expense.

852 (b) "Legal expense insurance" includes an arrangement that creates a reasonable  
853 expectation of an enforceable right.

854 (c) "Legal expense insurance" does not include the provision of, or reimbursement for,  
855 legal services incidental to other insurance coverage.

856 (108) (a) "Liability insurance" means insurance against liability:

857 (i) for death, injury, or disability of a human being, or for damage to property,  
858 exclusive of the coverages under:

859 (A) medical malpractice insurance;

860 (B) professional liability insurance; and

861 (C) workers' compensation insurance;

862 (ii) for a medical, hospital, surgical, and funeral benefit to a person other than the  
863 insured who is injured, irrespective of legal liability of the insured, when issued with or  
864 supplemental to insurance against legal liability for the death, injury, or disability of a human  
865 being, exclusive of the coverages under:

866 (A) medical malpractice insurance;

867 (B) professional liability insurance; and

868 (C) workers' compensation insurance;

869 (iii) for loss or damage to property resulting from an accident to or explosion of a

870 boiler, pipe, pressure container, machinery, or apparatus;  
871 (iv) for loss or damage to property caused by:  
872 (A) the breakage or leakage of a sprinkler, water pipe, or water container; or  
873 (B) water entering through a leak or opening in a building; or  
874 (v) for other loss or damage properly the subject of insurance not within another kind  
875 of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.  
876 (b) "Liability insurance" includes:  
877 (i) vehicle liability insurance;  
878 (ii) residential dwelling liability insurance; and  
879 (iii) making inspection of, and issuing a certificate of inspection upon, an elevator,  
880 boiler, machinery, or apparatus of any kind when done in connection with insurance on the  
881 elevator, boiler, machinery, or apparatus.  
882 (109) (a) "License" means authorization issued by the commissioner to engage in an  
883 activity that is part of or related to the insurance business.  
884 (b) "License" includes a certificate of authority issued to an insurer.  
885 (110) (a) "Life insurance" means:  
886 (i) insurance on a human life; and  
887 (ii) insurance pertaining to or connected with human life.  
888 (b) The business of life insurance includes:  
889 (i) granting a death benefit;  
890 (ii) granting an annuity benefit;  
891 (iii) granting an endowment benefit;  
892 (iv) granting an additional benefit in the event of death by accident;  
893 (v) granting an additional benefit to safeguard the policy against lapse; and  
894 (vi) providing an optional method of settlement of proceeds.  
895 (111) "Limited license" means a license that:  
896 (a) is issued for a specific product of insurance; and  
897 (b) limits an individual or agency to transact only for that product or insurance.



898 (112) "Limited line credit insurance" includes the following forms of insurance:  
899 (a) credit life;  
900 (b) credit accident and health;  
901 (c) credit property;  
902 (d) credit unemployment;  
903 (e) involuntary unemployment;  
904 (f) mortgage life;  
905 (g) mortgage guaranty;  
906 (h) mortgage accident and health;  
907 (i) guaranteed automobile protection; and  
908 (j) another form of insurance offered in connection with an extension of credit that:  
909 (i) is limited to partially or wholly extinguishing the credit obligation; and  
910 (ii) the commissioner determines by rule should be designated as a form of limited line  
911 credit insurance.

912 (113) "Limited line credit insurance producer" means a person who sells, solicits, or  
913 negotiates one or more forms of limited line credit insurance coverage to an individual through  
914 a master, corporate, group, or individual policy.

915 (114) "Limited line insurance" includes:  
916 (a) bail bond;  
917 (b) limited line credit insurance;  
918 (c) legal expense insurance;  
919 (d) motor club insurance;  
920 (e) car rental related insurance;  
921 (f) travel insurance;  
922 (g) crop insurance;  
923 (h) self-service storage insurance;  
924 (i) guaranteed asset protection waiver;  
925 (j) portable electronics insurance; and

926 (k) another form of limited insurance that the commissioner determines by rule should  
927 be designated a form of limited line insurance.

928 (115) "Limited lines authority" includes the lines of insurance listed in Subsection  
929 (114).

930 (116) "Limited lines producer" means a person who sells, solicits, or negotiates limited  
931 lines insurance.

932 (117) (a) "Long-term care insurance" means an insurance policy or rider advertised,  
933 marketed, offered, or designated to provide coverage:

934 (i) in a setting other than an acute care unit of a hospital;

935 (ii) for not less than 12 consecutive months for a covered person on the basis of:

936 (A) expenses incurred;

937 (B) indemnity;

938 (C) prepayment; or

939 (D) another method;

940 (iii) for one or more necessary or medically necessary services that are:

941 (A) diagnostic;

942 (B) preventative;

943 (C) therapeutic;

944 (D) rehabilitative;

945 (E) maintenance; or

946 (F) personal care; and

947 (iv) that may be issued by:

948 (A) an insurer;

949 (B) a fraternal benefit society;

950 (C) (I) a nonprofit health hospital; and

951 (II) a medical service corporation;

952 (D) a prepaid health plan;

953 (E) a health maintenance organization; or

954 (F) an entity similar to the entities described in Subsections (117)(a)(iv)(A) through (E)  
955 to the extent that the entity is otherwise authorized to issue life or health care insurance.

956 (b) "Long-term care insurance" includes:

957 (i) any of the following that provide directly or supplement long-term care insurance:

958 (A) a group or individual annuity or rider; or

959 (B) a life insurance policy or rider;

960 (ii) a policy or rider that provides for payment of benefits on the basis of:

961 (A) cognitive impairment; or

962 (B) functional capacity; or

963 (iii) a qualified long-term care insurance contract.

964 (c) "Long-term care insurance" does not include:

965 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;

966 (ii) basic hospital expense coverage;

967 (iii) basic medical/surgical expense coverage;

968 (iv) hospital confinement indemnity coverage;

969 (v) major medical expense coverage;

970 (vi) income replacement or related asset-protection coverage;

971 (vii) accident only coverage;

972 (viii) coverage for a specified:

973 (A) disease; or

974 (B) accident;

975 (ix) limited benefit health coverage; or

976 (x) a life insurance policy that accelerates the death benefit to provide the option of a  
977 lump sum payment:

978 (A) if the following are not conditioned on the receipt of long-term care:

979 (I) benefits; or

980 (II) eligibility; and

981 (B) the coverage is for one or more the following qualifying events:

- 982 (I) terminal illness;
- 983 (II) medical conditions requiring extraordinary medical intervention; or
- 984 (III) permanent institutional confinement.
- 985 (118) "Managed care organization" means a person:
- 986 (a) licensed as a health maintenance organization under Chapter 8, Health Maintenance
- 987 Organizations and Limited Health Plans; or
- 988 (b) (i) licensed under:
- 989 (A) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
- 990 (B) Chapter 7, Nonprofit Health Service Insurance Corporations; or
- 991 (C) Chapter 14, Foreign Insurers; and
- 992 (ii) that requires an enrollee to use, or offers incentives, including financial incentives,
- 993 for an enrollee to use, network providers.
- 994 (119) "Medical malpractice insurance" means insurance against legal liability incident
- 995 to the practice and provision of a medical service other than the practice and provision of a
- 996 dental service.
- 997 (120) "Member" means a person having membership rights in an insurance
- 998 corporation.
- 999 (121) "Minimum capital" or "minimum required capital" means the capital that must be
- 1000 constantly maintained by a stock insurance corporation as required by statute.
- 1001 (122) "Mortgage accident and health insurance" means insurance offered in connection
- 1002 with an extension of credit that provides indemnity for payments coming due on a mortgage
- 1003 while the debtor has a disability.
- 1004 (123) "Mortgage guaranty insurance" means surety insurance under which a mortgagee
- 1005 or other creditor is indemnified against losses caused by the default of a debtor.
- 1006 (124) "Mortgage life insurance" means insurance on the life of a debtor in connection
- 1007 with an extension of credit that pays if the debtor dies.
- 1008 (125) "Motor club" means a person:
- 1009 (a) licensed under:

- 1010 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;  
1011 (ii) Chapter 11, Motor Clubs; or  
1012 (iii) Chapter 14, Foreign Insurers; and  
1013 (b) that promises for an advance consideration to provide for a stated period of time  
1014 one or more:  
1015 (i) legal services under Subsection 31A-11-102(1)(b);  
1016 (ii) bail services under Subsection 31A-11-102(1)(c); or  
1017 (iii) (A) trip reimbursement;  
1018 (B) towing services;  
1019 (C) emergency road services;  
1020 (D) stolen automobile services;  
1021 (E) a combination of the services listed in Subsections (125)(b)(iii)(A) through (D); or  
1022 (F) other services given in Subsections 31A-11-102(1)(b) through (f).  
1023 (126) "Mutual" means a mutual insurance corporation.  
1024 (127) "Network plan" means health care insurance:  
1025 (a) that is issued by an insurer; and  
1026 (b) under which the financing and delivery of medical care is provided, in whole or in  
1027 part, through a defined set of providers under contract with the insurer, including the financing  
1028 and delivery of an item paid for as medical care.  
1029 (128) "Network provider" means a health care provider who has an agreement with a  
1030 managed care organization to provide health care services to an enrollee with an expectation of  
1031 receiving payment, other than coinsurance, copayments, or deductibles, directly from the  
1032 managed care organization.  
1033 (129) "Nonparticipating" means a plan of insurance under which the insured is not  
1034 entitled to receive a dividend representing a share of the surplus of the insurer.  
1035 (130) "Ocean marine insurance" means insurance against loss of or damage to:  
1036 (a) ships or hulls of ships;  
1037 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, money,

1038 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia  
1039 interests, or other cargoes in or awaiting transit over the oceans or inland waterways;

1040 (c) earnings such as freight, passage money, commissions, or profits derived from  
1041 transporting goods or people upon or across the oceans or inland waterways; or

1042 (d) a vessel owner or operator as a result of liability to employees, passengers, bailors,  
1043 owners of other vessels, owners of fixed objects, customs or other authorities, or other persons  
1044 in connection with maritime activity.

1045 (131) "Order" means an order of the commissioner.

1046 (132) "ORSA guidance manual" means the current version of the Own Risk and  
1047 Solvency Assessment Guidance Manual developed and adopted by the National Association of  
1048 Insurance Commissioners and as amended from time to time.

1049 (133) "ORSA summary report" means a confidential high-level summary of an insurer  
1050 or insurance group's own risk and solvency assessment.

1051 (134) "Outline of coverage" means a summary that explains an accident and health  
1052 insurance policy.

1053 (135) "Own risk and solvency assessment" means an insurer or insurance group's  
1054 confidential internal assessment:

1055 (a) (i) of each material and relevant risk associated with the insurer or insurance group;

1056 (ii) of the insurer or insurance group's current business plan to support each risk  
1057 described in Subsection (135)(a)(i); and

1058 (iii) of the sufficiency of capital resources to support each risk described in Subsection  
1059 (135)(a)(i); and

1060 (b) that is appropriate to the nature, scale, and complexity of an insurer or insurance  
1061 group.

1062 (136) "Participating" means a plan of insurance under which the insured is entitled to  
1063 receive a dividend representing a share of the surplus of the insurer.

1064 (137) "Participation," as used in a health benefit plan, means a requirement relating to  
1065 the minimum percentage of eligible employees that must be enrolled in relation to the total

- 1066 number of eligible employees of an employer reduced by each eligible employee who  
1067 voluntarily declines coverage under the plan because the employee:
- 1068 (a) has other group health care insurance coverage; or
  - 1069 (b) receives:
    - 1070 (i) Medicare, under the Health Insurance for the Aged Act, Title XVIII of the Social  
1071 Security Amendments of 1965; or
    - 1072 (ii) another government health benefit.
- 1073 (138) "Person" includes:
- 1074 (a) an individual;
  - 1075 (b) a partnership;
  - 1076 (c) a corporation;
  - 1077 (d) an incorporated or unincorporated association;
  - 1078 (e) a joint stock company;
  - 1079 (f) a trust;
  - 1080 (g) a limited liability company;
  - 1081 (h) a reciprocal;
  - 1082 (i) a syndicate; or
  - 1083 (j) another similar entity or combination of entities acting in concert.
- 1084 (139) "Personal lines insurance" means property and casualty insurance coverage sold  
1085 for primarily noncommercial purposes to:
- 1086 (a) an individual; or
  - 1087 (b) a family.
- 1088 (140) "Plan sponsor" means the same as that term is defined in 29 U.S.C. Sec.  
1089 1002(16)(B).
- 1090 (141) "Plan year" means:
- 1091 (a) the year that is designated as the plan year in:
    - 1092 (i) the plan document of a group health plan; or
    - 1093 (ii) a summary plan description of a group health plan;

1094 (b) if the plan document or summary plan description does not designate a plan year or  
1095 there is no plan document or summary plan description:

1096 (i) the year used to determine deductibles or limits;

1097 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;

1098 or

1099 (iii) the employer's taxable year if:

1100 (A) the plan does not impose deductibles or limits on a yearly basis; and

1101 (B) (I) the plan is not insured; or

1102 (II) the insurance policy is not renewed on an annual basis; or

1103 (c) in a case not described in Subsection (141)(a) or (b), the calendar year.

1104 (142) (a) "Policy" means a document, including an attached endorsement or application

1105 that:

1106 (i) purports to be an enforceable contract; and

1107 (ii) memorializes in writing some or all of the terms of an insurance contract.

1108 (b) "Policy" includes a service contract issued by:

1109 (i) a motor club under Chapter 11, Motor Clubs;

1110 (ii) a service contract provided under Chapter 6a, Service Contracts; and

1111 (iii) a corporation licensed under:

1112 (A) Chapter 7, Nonprofit Health Service Insurance Corporations; or

1113 (B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.

1114 (c) "Policy" does not include:

1115 (i) a certificate under a group insurance contract; or

1116 (ii) a document that does not purport to have legal effect.

1117 (143) "Policyholder" means a person who controls a policy, binder, or oral contract by  
1118 ownership, premium payment, or otherwise.

1119 (144) "Policy illustration" means a presentation or depiction that includes  
1120 nonguaranteed elements of a policy offering life insurance over a period of years.

1121 (145) "Policy summary" means a synopsis describing the elements of a life insurance



1122 policy.

1123 (146) "PPACA" means the Patient Protection and Affordable Care Act, Pub. L. No.  
1124 111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and  
1125 related federal regulations and guidance.

1126 (147) "Preexisting condition," with respect to health care insurance:

1127 (a) means a condition that was present before the effective date of coverage, whether or  
1128 not medical advice, diagnosis, care, or treatment was recommended or received before that day;  
1129 and

1130 (b) does not include a condition indicated by genetic information unless an actual  
1131 diagnosis of the condition by a physician has been made.

1132 (148) (a) "Premium" means the monetary consideration for an insurance policy.

1133 (b) "Premium" includes, however designated:

1134 (i) an assessment;

1135 (ii) a membership fee;

1136 (iii) a required contribution; or

1137 (iv) monetary consideration.

1138 (c) (i) "Premium" does not include consideration paid to a third party administrator for  
1139 the third party administrator's services.

1140 (ii) "Premium" includes an amount paid by a third party administrator to an insurer for  
1141 insurance on the risks administered by the third party administrator.

1142 (149) "Principal officers" for a corporation means the officers designated under  
1143 Subsection [31A-5-203\(3\)](#).

1144 (150) "Proceeding" includes an action or special statutory proceeding.

1145 (151) "Professional liability insurance" means insurance against legal liability incident  
1146 to the practice of a profession and provision of a professional service.

1147 (152) (a) Except as provided in Subsection (152)(b), "property insurance" means  
1148 insurance against loss or damage to real or personal property of every kind and any interest in  
1149 that property:

1150 (i) from all hazards or causes; and  
1151 (ii) against loss consequential upon the loss or damage including vehicle  
1152 comprehensive and vehicle physical damage coverages.

1153 (b) "Property insurance" does not include:  
1154 (i) inland marine insurance; and  
1155 (ii) ocean marine insurance.

1156 (153) "Qualified long-term care insurance contract" or "federally tax qualified  
1157 long-term care insurance contract" means:  
1158 (a) an individual or group insurance contract that meets the requirements of Section  
1159 7702B(b), Internal Revenue Code; or  
1160 (b) the portion of a life insurance contract that provides long-term care insurance:  
1161 (i) (A) by rider; or  
1162 (B) as a part of the contract; and  
1163 (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue  
1164 Code.

1165 (154) "Qualified United States financial institution" means an institution that:  
1166 (a) is:  
1167 (i) organized under the laws of the United States or any state; or  
1168 (ii) in the case of a United States office of a foreign banking organization, licensed  
1169 under the laws of the United States or any state;  
1170 (b) is regulated, supervised, and examined by a United States federal or state authority  
1171 having regulatory authority over a bank or trust company; and  
1172 (c) meets the standards of financial condition and standing that are considered  
1173 necessary and appropriate to regulate the quality of a financial institution whose letters of credit  
1174 will be acceptable to the commissioner as determined by:  
1175 (i) the commissioner by rule; or  
1176 (ii) the Securities Valuation Office of the National Association of Insurance  
1177 Commissioners.

1178 (155) (a) "Rate" means:  
1179 (i) the cost of a given unit of insurance; or  
1180 (ii) for property or casualty insurance, that cost of insurance per exposure unit either  
1181 expressed as:  
1182 (A) a single number; or  
1183 (B) a pure premium rate, adjusted before the application of individual risk variations  
1184 based on loss or expense considerations to account for the treatment of:  
1185 (I) expenses;  
1186 (II) profit; and  
1187 (III) individual insurer variation in loss experience.  
1188 (b) "Rate" does not include a minimum premium.  
1189 (156) (a) Except as provided in Subsection (156)(b), "rate service organization" means  
1190 a person who assists an insurer in rate making or filing by:  
1191 (i) collecting, compiling, and furnishing loss or expense statistics;  
1192 (ii) recommending, making, or filing rates or supplementary rate information; or  
1193 (iii) advising about rate questions, except as an attorney giving legal advice.  
1194 (b) "Rate service organization" does not mean:  
1195 (i) an employee of an insurer;  
1196 (ii) a single insurer or group of insurers under common control;  
1197 (iii) a joint underwriting group; or  
1198 (iv) an individual serving as an actuarial or legal consultant.  
1199 (157) "Rating manual" means any of the following used to determine initial and  
1200 renewal policy premiums:  
1201 (a) a manual of rates;  
1202 (b) a classification;  
1203 (c) a rate-related underwriting rule; and  
1204 (d) a rating formula that describes steps, policies, and procedures for determining  
1205 initial and renewal policy premiums.

1206 (158) (a) "Rebate" means a licensee paying, allowing, giving, or offering to pay, allow,  
1207 or give, directly or indirectly:

- 1208 (i) a refund of premium or portion of premium;
- 1209 (ii) a refund of commission or portion of commission;
- 1210 (iii) a refund of all or a portion of a consultant fee; or
- 1211 (iv) providing services or other benefits not specified in an insurance or annuity  
1212 contract.

1213 (b) "Rebate" does not include:

- 1214 (i) a refund due to termination or changes in coverage;
- 1215 (ii) a refund due to overcharges made in error by the licensee; or
- 1216 (iii) savings or wellness benefits as provided in the contract by the licensee.

1217 (159) "Received by the department" means:

- 1218 (a) the date delivered to and stamped received by the department, if delivered in  
1219 person;
- 1220 (b) the post mark date, if delivered by mail;
- 1221 (c) the delivery service's post mark or pickup date, if delivered by a delivery service;
- 1222 (d) the received date recorded on an item delivered, if delivered by:
  - 1223 (i) facsimile;
  - 1224 (ii) email; or
  - 1225 (iii) another electronic method; or
- 1226 (e) a date specified in:
  - 1227 (i) a statute;
  - 1228 (ii) a rule; or
  - 1229 (iii) an order.

1230 (160) "Reciprocal" or "interinsurance exchange" means an unincorporated association  
1231 of persons:

- 1232 (a) operating through an attorney-in-fact common to all of the persons; and
- 1233 (b) exchanging insurance contracts with one another that provide insurance coverage

1234 on each other.

1235 (161) "Reinsurance" means an insurance transaction where an insurer, for  
1236 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to  
1237 reinsurance transactions, this title sometimes refers to:

1238 (a) the insurer transferring the risk as the "ceding insurer"; and

1239 (b) the insurer assuming the risk as the:

1240 (i) "assuming insurer"; or

1241 (ii) "assuming reinsurer."

1242 (162) "Reinsurer" means a person licensed in this state as an insurer with the authority  
1243 to assume reinsurance.

1244 (163) "Residential dwelling liability insurance" means insurance against liability  
1245 resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is  
1246 a detached single family residence or multifamily residence up to four units.

1247 (164) (a) "Retrocession" means reinsurance with another insurer of a liability assumed  
1248 under a reinsurance contract.

1249 (b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a  
1250 liability assumed under a reinsurance contract.

1251 (165) "Rider" means an endorsement to:

1252 (a) an insurance policy; or

1253 (b) an insurance certificate.

1254 (166) "Secondary medical condition" means a complication related to an exclusion  
1255 from coverage in accident and health insurance.

1256 (167) (a) "Security" means a:

1257 (i) note;

1258 (ii) stock;

1259 (iii) bond;

1260 (iv) debenture;

1261 (v) evidence of indebtedness;

- 1262 (vi) certificate of interest or participation in a profit-sharing agreement;
- 1263 (vii) collateral-trust certificate;
- 1264 (viii) preorganization certificate or subscription;
- 1265 (ix) transferable share;
- 1266 (x) investment contract;
- 1267 (xi) voting trust certificate;
- 1268 (xii) certificate of deposit for a security;
- 1269 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
- 1270 payments out of production under such a title or lease;
- 1271 (xiv) commodity contract or commodity option;
- 1272 (xv) certificate of interest or participation in, temporary or interim certificate for,
- 1273 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed
- 1274 in Subsections (167)(a)(i) through (xiv); or
- 1275 (xvi) another interest or instrument commonly known as a security.
- 1276 (b) "Security" does not include:
- 1277 (i) any of the following under which an insurance company promises to pay money in a
- 1278 specific lump sum or periodically for life or some other specified period:
- 1279 (A) insurance;
- 1280 (B) an endowment policy; or
- 1281 (C) an annuity contract; or
- 1282 (ii) a burial certificate or burial contract.
- 1283 (168) "Securityholder" means a specified person who owns a security of a person,
- 1284 including:
- 1285 (a) common stock;
- 1286 (b) preferred stock;
- 1287 (c) debt obligations; and
- 1288 (d) any other security convertible into or evidencing the right of any of the items listed
- 1289 in this Subsection (168).

1290 (169) (a) "Self-insurance" means an arrangement under which a person provides for  
1291 spreading its own risks by a systematic plan.

1292 (b) Except as provided in this Subsection (169), "self-insurance" does not include an  
1293 arrangement under which a number of persons spread their risks among themselves.

1294 (c) "Self-insurance" includes:

1295 (i) an arrangement by which a governmental entity undertakes to indemnify an  
1296 employee for liability arising out of the employee's employment; and

1297 (ii) an arrangement by which a person with a managed program of self-insurance and  
1298 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or  
1299 employees for liability or risk that is related to the relationship or employment.

1300 (d) "Self-insurance" does not include an arrangement with an independent contractor.

1301 (170) "Sell" means to exchange a contract of insurance:

1302 (a) by any means;

1303 (b) for money or its equivalent; and

1304 (c) on behalf of an insurance company.

1305 (171) "Short-term limited duration health insurance" means a health benefit product  
1306 that:

1307 (a) after taking into account any renewals or extensions, has a total duration of no more  
1308 than 36 months; and

1309 (b) has an expiration date specified in the contract that is less than 12 months after the  
1310 original effective date of coverage under the health benefit product.

1311 (172) "Significant break in coverage" means a period of 63 consecutive days during  
1312 each of which an individual does not have creditable coverage.

1313 (173) (a) "Small employer" means, in connection with a health benefit plan and with  
1314 respect to a calendar year and to a plan year, an employer who:

1315 (i) (A) employed at least one but not more than 50 eligible employees on business days  
1316 during the preceding calendar year; or

1317 (B) if the employer did not exist for the entirety of the preceding calendar year,

1318 reasonably expects to employ an average of at least one but not more than 50 eligible  
1319 employees on business days during the current calendar year;

1320 (ii) employs at least one employee on the first day of the plan year; and

1321 (iii) for an employer who has common ownership with one or more other employers, is  
1322 treated as a single employer under 26 U.S.C. Sec. 414(b), (c), (m), or (o).

1323 (b) "Small employer" does not include a sole proprietor that does not employ at least  
1324 one employee.

1325 (174) "Special enrollment period," in connection with a health benefit plan, has the  
1326 same meaning as provided in federal regulations adopted pursuant to the Health Insurance  
1327 Portability and Accountability Act.

1328 (175) (a) "Subsidiary" of a person means an affiliate controlled by that person either  
1329 directly or indirectly through one or more affiliates or intermediaries.

1330 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting  
1331 shares are owned by that person either alone or with its affiliates, except for the minimum  
1332 number of shares the law of the subsidiary's domicile requires to be owned by directors or  
1333 others.

1334 (176) Subject to Subsection (91)(b), "surety insurance" includes:

1335 (a) a guarantee against loss or damage resulting from the failure of a principal to pay or  
1336 perform the principal's obligations to a creditor or other obligee;

1337 (b) bail bond insurance; and

1338 (c) fidelity insurance.

1339 (177) (a) "Surplus" means the excess of assets over the sum of paid-in capital and  
1340 liabilities.

1341 (b) (i) "Permanent surplus" means the surplus of an insurer or organization that is  
1342 designated by the insurer or organization as permanent.

1343 (ii) Sections [31A-5-211](#), [31A-7-201](#), [31A-8-209](#), [31A-9-209](#), and [31A-14-205](#) require  
1344 that insurers or organizations doing business in this state maintain specified minimum levels of  
1345 permanent surplus.



1346 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is the  
1347 same as the minimum required capital requirement that applies to stock insurers.

1348 (c) "Excess surplus" means:

1349 (i) for a life insurer, accident and health insurer, health organization, or property and  
1350 casualty insurer as defined in Section 31A-17-601, the lesser of:

1351 (A) that amount of an insurer's or health organization's total adjusted capital that  
1352 exceeds the product of:

1353 (I) 2.5; and

1354 (II) the sum of the insurer's or health organization's minimum capital or permanent  
1355 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1356 (B) that amount of an insurer's or health organization's total adjusted capital that  
1357 exceeds the product of:

1358 (I) 3.0; and

1359 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1360 (ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer  
1361 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1362 (A) 1.5; and

1363 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

1364 (178) "Third party administrator" or "administrator" means a person who collects  
1365 charges or premiums from, or who, for consideration, adjusts or settles claims of residents of  
1366 the state in connection with insurance coverage, annuities, or service insurance coverage,  
1367 except:

1368 (a) a union on behalf of its members;

1369 (b) a person administering a:

1370 (i) pension plan subject to the federal Employee Retirement Income Security Act of  
1371 1974;

1372 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or

1373 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;

1374 (c) an employer on behalf of the employer's employees or the employees of one or  
1375 more of the subsidiary or affiliated corporations of the employer;

1376 (d) an insurer licensed under the following, but only for a line of insurance for which  
1377 the insurer holds a license in this state:

1378 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

1379 (ii) Chapter 7, Nonprofit Health Service Insurance Corporations;

1380 (iii) Chapter 8, Health Maintenance Organizations and Limited Health Plans;

1381 (iv) Chapter 9, Insurance Fraternal; or

1382 (v) Chapter 14, Foreign Insurers;

1383 (e) a person:

1384 (i) licensed or exempt from licensing under:

1385 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and  
1386 Reinsurance Intermediaries; or

1387 (B) Chapter 26, Insurance Adjusters; and

1388 (ii) whose activities are limited to those authorized under the license the person holds  
1389 or for which the person is exempt; or

1390 (f) an institution, bank, or financial institution:

1391 (i) that is:

1392 (A) an institution whose deposits and accounts are to any extent insured by a federal  
1393 deposit insurance agency, including the Federal Deposit Insurance Corporation or National  
1394 Credit Union Administration; or

1395 (B) a bank or other financial institution that is subject to supervision or examination by  
1396 a federal or state banking authority; and

1397 (ii) that does not adjust claims without a third party administrator license.

1398 (179) "Title insurance" means the insuring, guaranteeing, or indemnifying of an owner  
1399 of real or personal property or the holder of liens or encumbrances on that property, or others  
1400 interested in the property against loss or damage suffered by reason of liens or encumbrances  
1401 upon, defects in, or the unmarketability of the title to the property, or invalidity or

1402 unenforceability of any liens or encumbrances on the property.

1403 (180) "Total adjusted capital" means the sum of an insurer's or health organization's  
1404 statutory capital and surplus as determined in accordance with:

1405 (a) the statutory accounting applicable to the annual financial statements required to be  
1406 filed under Section 31A-4-113; and

1407 (b) another item provided by the RBC instructions, as RBC instructions is defined in  
1408 Section 31A-17-601.

1409 (181) (a) "Trustee" means "director" when referring to the board of directors of a  
1410 corporation.

1411 (b) "Trustee," when used in reference to an employee welfare fund, means an  
1412 individual, firm, association, organization, joint stock company, or corporation, whether acting  
1413 individually or jointly and whether designated by that name or any other, that is charged with  
1414 or has the overall management of an employee welfare fund.

1415 (182) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer"  
1416 means an insurer:

1417 (i) not holding a valid certificate of authority to do an insurance business in this state;

1418 or

1419 (ii) transacting business not authorized by a valid certificate.

1420 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1421 (i) holding a valid certificate of authority to do an insurance business in this state; and

1422 (ii) transacting business as authorized by a valid certificate.

1423 (183) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

1424 (184) "Vehicle liability insurance" means insurance against liability resulting from or  
1425 incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a vehicle  
1426 comprehensive or vehicle physical damage coverage under Subsection (152).

1427 (185) "Voting security" means a security with voting rights, and includes a security  
1428 convertible into a security with a voting right associated with the security.

1429 (186) "Waiting period" for a health benefit plan means the period that must pass before

1430 coverage for an individual, who is otherwise eligible to enroll under the terms of the health  
1431 benefit plan, can become effective.

1432 (187) "Workers' compensation insurance" means:

1433 (a) insurance for indemnification of an employer against liability for compensation  
1434 based on:

1435 (i) a compensable accidental injury; and

1436 (ii) occupational disease disability;

1437 (b) employer's liability insurance incidental to workers' compensation insurance and  
1438 written in connection with workers' compensation insurance; and

1439 (c) insurance assuring to a person entitled to workers' compensation benefits the  
1440 compensation provided by law.

1441 Section 5. Section **31A-35-504** is amended to read:

1442 **31A-35-504. Failure to pay bail bond forfeiture -- Grounds for suspension and**  
1443 **revocation of bail bond agency license.**

1444 (1) As used in this section:

1445 (a) "Agency" means a bail bond agency.

1446 (b) "Judgment" means a judgment of bail bond forfeiture issued under Section  
1447 ~~[77-20b-104]~~ [77-20-505](#).

1448 (2) (a) (i) An agency shall pay a judgment not later than 15 days following service of  
1449 notice upon the agency from a prosecutor of the entry of the judgment.

1450 (ii) An agency may pay a bail bond forfeiture to the court prior to judgment.

1451 (b) (i) A prosecutor who does not receive proof of or notice of payment of the  
1452 judgment within 15 days after the service of notice to the agency of a judgment shall notify the  
1453 commissioner of the failure to pay the judgment.

1454 (ii) The commissioner shall notify the agency, by the most expeditious means  
1455 available, of the nonpayment of the judgment.

1456 (iii) The agency shall satisfy the judgment within five business days after receiving  
1457 notice under Subsection (2)(b)(ii). If the judgment is not satisfied at the end of the five days,

1458 the commissioner may suspend the agency's license under Subsection (3).

1459 (c) If notice of entry of judgment is served upon the agency by mail, three additional  
1460 days are added to the 15 days provided in Subsections (2)(a), (2)(b), and (2)(d).

1461 (d) A prosecutor may not proceed under Subsection (2)(b) if an agency, within 15 days  
1462 after service of notice of the entry of judgment is served:

1463 (i) files a motion to set aside the judgment or files an application for an extraordinary  
1464 writ; and

1465 (ii) provides proof that the agency has posted the judgment amount with the court in  
1466 the form of cash, a cashier's check, or certified funds.

1467 (e) As used in this section, the filing of the following tolls the time within which an  
1468 agency is required to pay a judgment if the motion or application is filed within 15 days after  
1469 the day on which service of notice of the entry of a judgment is served:

1470 (i) a motion to set aside a judgment; or

1471 (ii) an application for extraordinary writ.

1472 (3) The commissioner shall suspend the license of the agency not later than five days  
1473 following the agency's failure to satisfy the judgment as required under Subsection (2)(b).

1474 (4) If the prosecutor receives proof of or notice of payment of the judgment during the  
1475 suspension period under Subsection (3), the prosecutor shall immediately notify the  
1476 commissioner of the payment. The notice shall be in writing and by the most expeditious  
1477 means possible, including facsimile or other electronic means.

1478 (5) The commissioner shall lift a suspension under Subsection (3) within five days of  
1479 the day on which all of the following conditions are met:

1480 (a) the suspension has been in place for no fewer than 14 days;

1481 (b) the commissioner has received written notice of payment of the unpaid forfeiture  
1482 from the prosecutor; and

1483 (c) the commissioner has received:

1484 (i) no other notice of any unpaid forfeiture from a prosecutor; or

1485 (ii) if a notice of unpaid forfeiture is received, written notice from the prosecutor that

1486 the unpaid forfeiture has been paid.

1487 (6) The commissioner shall commence an administrative proceeding and revoke the  
1488 license of an agency that fails to meet the conditions under Subsection (5) within 60 days  
1489 following the initial date of suspension.

1490 (7) This section does not restrict or otherwise affect the rights of a prosecutor to  
1491 commence collection proceedings under Subsection [~~77-20b-104~~] [77-20-505](#)(5).

1492 Section 6. Section **63M-7-215** is amended to read:

1493 **63M-7-215. Pretrial Release Programs Special Revenue Fund -- Funding -- Uses.**

1494 (1) As used in this section:

1495 (a) "Commission" means the Commission on Criminal and Juvenile Justice created in  
1496 Section [63M-7-201](#).

1497 (b) "Fund" means the Pretrial Release Programs Special Revenue Fund created in this  
1498 section.

1499 (2) There is created an expendable special revenue fund known as the "Pretrial Release  
1500 Programs Special Revenue Fund."

1501 (3) The Division of Finance shall administer the fund in accordance with this section.

1502 (4) The fund shall consist of:

1503 (a) money collected and remitted to the fund under Section [~~77-20-9~~] [77-20-403](#);

1504 (b) appropriations from the Legislature;

1505 (c) interest earned on money in the fund; and

1506 (d) contributions from other public or private sources.

1507 (5) The commission shall award grants from the fund to county agencies and other  
1508 agencies the commission determines appropriate to assist counties with establishing and  
1509 expanding pretrial services programs that serve the purpose of:

1510 (a) assisting a court in making an informed decision regarding an individual's pretrial  
1511 release; and

1512 (b) providing supervision of an individual released from law enforcement custody on  
1513 conditions pending a final determination of a criminal charge filed against the individual.

1514 (6) The commission may retain up to 3% of the money deposited into the fund to pay  
1515 for administrative costs incurred by the commission, including salary and benefits, equipment,  
1516 supplies, or travel costs that are directly related to the administration of this section.

1517 (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1518 commission shall establish a grant application and review process for the expenditure of money  
1519 from the fund.

1520 (8) The grant application and review process shall describe:

- 1521 (a) the requirements to complete the grant application;
- 1522 (b) requirements for receiving funding;
- 1523 (c) criteria for the approval of a grant application; and
- 1524 (d) support offered by the commission to complete a grant application.

1525 (9) Upon receipt of a grant application, the commission shall:

- 1526 (a) review the grant application for completeness;
- 1527 (b) make a determination regarding the grant application;
- 1528 (c) inform the grant applicant of the commission's determination regarding the grant  
1529 application; and
- 1530 (d) if approved, award grants from the fund to the grant applicant.

1531 (10) Before November 30 of each year, the commission shall provide an electronic  
1532 report to the Law Enforcement and Criminal Justice Interim Committee regarding the status of  
1533 the fund and expenditures made from the fund.

1534 Section 7. Section 77-17-8 is amended to read:

1535 **77-17-8. Mistake in charging offense -- Procedure -- Witnesses.**

1536 (1) If, at any time before verdict or judgment, a mistake is made in charging the proper  
1537 offense, and there is probable cause to believe that the defendant is chargeable with another  
1538 offense, the court may [~~commit the defendant or require the defendant to give bail under~~  
1539 ~~Section 77-20-1 for the defendant's appearance to answer to the proper charge when filed, and~~  
1540 ~~may also require witnesses to give bail for their appearance.];~~

- 1541 (a) release the individual on the individual's own recognizance, as defined in Section

1542 77-20-102, during the time the individual awaits trial or other resolution of criminal charges;

1543 (b) designate a condition, or a combination of conditions, described in Subsection  
1544 77-20-205(4), to be imposed upon the individual's release during the time the individual awaits  
1545 trial or other resolution of criminal charges; or

1546 (c) order the individual be detained during the time the individual awaits trial or other  
1547 resolution of criminal charges.

1548 (2) A court may require a witness to post monetary bail, as defined in Section  
1549 77-20-102, to ensure that the witness appears in court.

1550 Section 8. Section **77-18a-1** is amended to read:

1551 **77-18a-1. Appeals -- When proper.**

1552 (1) A defendant may, as a matter of right, appeal from:

- 1553 (a) a final judgment of conviction, whether by verdict or plea;
- 1554 (b) an order made after judgment that affects the substantial rights of the defendant;
- 1555 (c) an order adjudicating the defendant's competency to proceed further in a pending  
1556 prosecution; or

1557 (d) an order denying bail~~[, as provided in Subsection 77-20-1(9)]~~ under Chapter 20,  
1558 Bail.

1559 (2) In addition to any appeal permitted by Subsection (1), a defendant may seek  
1560 discretionary appellate review of any interlocutory order.

1561 (3) The prosecution may, as a matter of right, appeal from:

- 1562 (a) a final judgment of dismissal, including a dismissal of a felony information  
1563 following a refusal to bind the defendant over for trial;
- 1564 (b) a pretrial order dismissing a charge on the ground that the court's suppression of  
1565 evidence has substantially impaired the prosecution's case;
- 1566 (c) an order granting a motion to withdraw a plea of guilty or no contest;
- 1567 (d) an order arresting judgment or granting a motion for merger;
- 1568 (e) an order terminating the prosecution because of a finding of double jeopardy or  
1569 denial of a speedy trial;



- 1570 (f) an order granting a new trial;
- 1571 (g) an order holding a statute or any part of it invalid;
- 1572 (h) an order adjudicating the defendant's competency to proceed further in a pending
- 1573 prosecution;
- 1574 (i) an order finding, pursuant to Title 77, Chapter 19, Part 2, Competency for
- 1575 Execution, that an inmate sentenced to death is incompetent to be executed;
- 1576 (j) an order reducing the degree of offense pursuant to Section [76-3-402](#);
- 1577 (k) an illegal sentence; or
- 1578 (l) an order dismissing a charge pursuant to Subsection [76-2-309\(3\)](#).
- 1579 (4) In addition to any appeal permitted by Subsection (3), the prosecution may seek
- 1580 discretionary appellate review of any interlocutory order entered before jeopardy attaches.
- 1581 Section 9. Section **77-20-101** is enacted to read:

**CHAPTER 20. BAIL**

**Part 1. General Provisions**

**77-20-101. Title.**

This chapter is known as "Bail."

Section 10. Section **77-20-102** is enacted to read:

**77-20-102. Definitions.**

As used in this chapter:

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

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

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

(4) "Bail commissioner" means a bail commissioner appointed in accordance with Section [17-32-1](#).

(5) "Exonerate" means to release and discharge a surety, or a surety's bail bond producer, from liability for a bail bond.

(6) "Financial condition" or "monetary bail" means any monetary condition that is

1598 imposed to secure an individual's pretrial release.

1599 (7) "Forfeiture" means:

1600 (a) to divest an individual or surety from a right to the repayment of monetary bail; or

1601 (b) to enforce a pledge of assets or real or personal property from an individual or

1602 surety used to secure an individual's pretrial release.

1603 (8) "Magistrate" means the same as that term is defined in Section [77-1-3](#).

1604 (9) "Own recognizance" means the release of an individual without any condition of

1605 release other than the individual's promise to:

1606 (a) appear for all required court proceedings; and

1607 (b) not commit any criminal offense.

1608 (10) "Pretrial detention hearing" means a hearing described in Section [77-20-206](#).

1609 (11) "Pretrial release" or "bail" means the release of an individual from law

1610 enforcement custody during the time the individual awaits trial or other resolution of criminal

1611 charges.

1612 (12) "Pretrial risk assessment" means an objective, research-based, validated

1613 assessment tool that measures an individual's risk of flight and risk of anticipated criminal

1614 conduct while on pretrial release.

1615 (13) "Pretrial services program" means a program that is established to:

1616 (a) gather information on individuals booked into a jail facility;

1617 (b) conduct pretrial risk assessments; and

1618 (c) supervise individuals granted pretrial release.

1619 (14) "Pretrial status order" means an order issued by a magistrate or judge that:

1620 (a) releases the individual on the individual's own recognizance while the individual

1621 awaits trial or other resolution of criminal charges;

1622 (b) sets the terms and conditions of the individual's pretrial release while the individual

1623 awaits trial or other resolution of criminal charges; or

1624 (c) denies pretrial release and orders that the individual be detained while the

1625 individual awaits trial or other resolution of criminal charges.

- 1626           (15) "Principal" means the same as that term is defined in Section 31A-35-102.
- 1627           (16) "Surety" means a surety insurer or a bail bond agency.
- 1628           (17) "Surety insurer" means the same as that term is defined in Section 31A-35-102.
- 1629           (18) "Temporary pretrial status order" means an order issued by a magistrate that:
- 1630           (a) releases the individual on the individual's own recognizance until a pretrial status  
 1631 order is issued;
- 1632           (b) sets the terms and conditions of the individual's pretrial release until a pretrial status  
 1633 order is issued; or
- 1634           (c) denies pretrial release and orders that the individual be detained until a pretrial  
 1635 status order is issued.
- 1636           (19) "Unsecured bond" means an individual's promise to pay a financial condition if  
 1637 the individual fails to appear for any required court appearance.
- 1638           Section 11. Section **77-20-103**, which is renumbered from Section 77-20-1.1 is  
 1639 renumbered and amended to read:
- 1640           ~~[77-20-1.1].~~   **77-20-103. Release data requirements.**
- 1641           (1) The Administrative Office of the Courts shall submit the following data on cases  
 1642 involving individuals for whom the Administrative Office of the Courts has a state  
 1643 identification number broken down by judicial district to the Commission on Criminal and  
 1644 Juvenile Justice before July 1 of each year:
- 1645           (a) for the preceding calendar year:
- 1646           (i) the number of individuals charged with a criminal offense who failed to appear at a  
 1647 required court preceding while on pretrial release~~[, in accordance with Section 77-20-1,]~~ under  
 1648 each of the following categories of release:
- 1649           (A) the individual's own recognizance;
- 1650           (B) a financial condition; and
- 1651           (C) a release condition other than a financial condition;
- 1652           (ii) the number of offenses that carry a potential penalty of incarceration an individual  
 1653 committed while on pretrial release~~[, in accordance with Section 77-20-1,]~~ under each of the

1654 following categories of release:

1655 (A) the individual's own recognizance;

1656 (B) a financial condition; and

1657 (C) a release condition other than a financial condition; and

1658 (iii) the total amount of fees and fines, including bond forfeiture, collected by the court

1659 from an individual for the individual's failure to comply with a condition of release under each

1660 of the following categories of release:

1661 (A) an individual's own recognizance;

1662 (B) a financial condition; and

1663 (C) a release condition other than a financial condition; and

1664 (b) at the end of the preceding calendar year:

1665 (i) the total number of outstanding warrants of arrest for individuals who were released

1666 from law enforcement custody~~[, in accordance with Section 77-20-1,]~~ on pretrial release under

1667 each of the following categories of release:

1668 (A) the individual's own recognizance;

1669 (B) a financial condition; and

1670 (C) a release condition other than a financial condition;

1671 (ii) for each of the categories described in Subsection (1)(b)(i), the average length of

1672 time that the outstanding warrants had been outstanding; and

1673 (iii) for each of the categories described in Subsection (1)(b)(i), the number of

1674 outstanding warrants for arrest for crimes of each of the following categories:

1675 (A) a first degree felony;

1676 (B) a second degree felony;

1677 (C) a third degree felony;

1678 (D) a class A misdemeanor;

1679 (E) a class B misdemeanor; and

1680 (F) a class C misdemeanor.

1681 (2) Each county jail shall submit the following data, based on the preceding calendar

1682 year, to the Commission of Criminal and Juvenile Justice before July 1 of each year:

1683 (a) the number of individuals released upon payment of monetary bail before appearing  
1684 before a court;

1685 (b) the number of individuals released on the individual's own recognizance before  
1686 appearing before a court; and

1687 (c) the amount of monetary bail, any fees, and any other money paid by or on behalf of  
1688 individuals collected by the county jail.

1689 (3) The Commission on Criminal and Juvenile Justice shall compile the data collected  
1690 under this section and shall submit the compiled data in an electronic report to the Law  
1691 Enforcement and Criminal Justice Interim Committee before November 1 of each year.

1692 Section 12. Section **77-20-201** is enacted to read:

1693 **Part 2. Preconviction Bail**

1694 **77-20-201. Right to bail -- Capital felony.**

1695 (1) An individual charged with, or arrested for, a criminal offense shall be admitted to  
1696 bail as a matter of right, except if the individual is charged with:

1697 (a) a capital felony when the court finds there is substantial evidence to support the  
1698 charge;

1699 (b) a felony committed while on parole or on probation for a felony conviction, or  
1700 while free on bail awaiting trial on a previous felony charge, when the court finds there is  
1701 substantial evidence to support the current felony charge;

1702 (c) a felony when there is substantial evidence to support the charge and the court  
1703 finds, by clear and convincing evidence, that the individual would constitute a substantial  
1704 danger to any other individual or to the community, or is likely to flee the jurisdiction of the  
1705 court, if released on bail;

1706 (d) a felony when the court finds there is substantial evidence to support the charge and  
1707 the court finds, by clear and convincing evidence, that the individual violated a material  
1708 condition of release while previously on bail;

1709 (e) a domestic violence offense if the court finds:

1710 (i) that there is substantial evidence to support the charge; and  
1711 (ii) by clear and convincing evidence, that the individual would constitute a substantial  
1712 danger to an alleged victim of domestic violence if released on bail;  
1713 (f) the offense of driving under the influence or driving with a measurable controlled  
1714 substance in the body if:  
1715 (i) the offense results in death or serious bodily injury to an individual; and  
1716 (ii) the court finds:  
1717 (A) that there is substantial evidence to support the charge; and  
1718 (B) by clear and convincing evidence, that the person would constitute a substantial  
1719 danger to the community if released on bail; or  
1720 (g) a felony violation of Section [76-9-101](#) if there is substantial evidence to support the  
1721 charge and the court finds, by clear and convincing evidence, that the individual is not likely to  
1722 appear for a subsequent court appearance.  
1723 (2) Notwithstanding any other provision of this section, there is a rebuttable  
1724 presumption that an individual is a substantial danger to the community under Subsection  
1725 (1)(f)(ii)(B):  
1726 (a) as long as the individual has a blood or breath alcohol concentration of .05 grams or  
1727 greater if the individual is arrested for, or charged with, the offense of driving under the  
1728 influence and the offense resulted in death or serious bodily injury to an individual; or  
1729 (b) if the individual has a measurable amount of controlled substance in the  
1730 individual's body, the individual is arrested for, or charged with, the offense of driving with a  
1731 measurable controlled substance in the body and the offense resulted in death or serious bodily  
1732 injury to an individual.  
1733 (3) For purposes of Subsection (1)(a), any arrest or charge for a violation of Section  
1734 [76-5-202](#), aggravated murder, is a capital felony unless:  
1735 (a) the prosecuting attorney files a notice of intent to not seek the death penalty; or  
1736 (b) the time for filing a notice to seek the death penalty has expired and the prosecuting  
1737 attorney has not filed a notice to seek the death penalty.

1738 Section 13. Section **77-20-202** is enacted to read:

1739 **77-20-202. Collection of pretrial information.**

1740 (1) On or after May 4, 2022, when an individual is arrested without a warrant for an  
1741 offense and booked at a jail facility, an employee at the jail facility, or an employee of a pretrial  
1742 services program, shall submit the following information to the court with the probable cause  
1743 statement to the extent that the information is reasonably available to the employee:

1744 (a) identification information for the individual, including:

1745 (i) the individual's legal name and any known aliases;

1746 (ii) the individual's date of birth;

1747 (iii) the individual's state identification number;

1748 (iv) the individual's mobile phone number; and

1749 (v) the individual's email address;

1750 (b) the individual's residential address;

1751 (c) any pending criminal charge or warrant for the individual, including the offense  
1752 tracking number of the current offense for which the individual is booked;

1753 (d) the individual's probation or parole supervision status;

1754 (e) whether the individual was on pretrial release for another criminal offense prior to  
1755 the booking of the individual for the current criminal offense;

1756 (f) the individual's financial circumstances to the best of the individual's knowledge at  
1757 the time of booking, including:

1758 (i) the individual's current employer;

1759 (ii) the individual's monthly income, including any alimony or child support that  
1760 contributes to the individual's monthly income;

1761 (iii) the individual's monthly expenses, including any alimony or child support  
1762 obligation that the individual is responsible for paying;

1763 (iv) the individual's ownership of, or any interest in, personal or real property,  
1764 including any savings or checking accounts or cash;

1765 (v) the number, ages, and relationships of any dependents;

1766 (vi) any financial support or benefit that the individual receives from a state or federal  
1767 government; and

1768 (vii) any other information about the individual's financial circumstances that may be  
1769 relevant; and

1770 (g) any ties the individual has to the community, including:

1771 (i) the length of time that the individual has been at the individual's residential address;

1772 (ii) any enrollment in a local college, university, or trade school; and

1773 (iii) the name and contact information for any family member or friend that the  
1774 individual believes would be willing to provide supervision of the individual.

1775 (2) Upon request, the jail facility, or the pretrial services program, shall provide the  
1776 information described in Subsection (1) to the individual, the individual's attorney, or the  
1777 prosecuting attorney.

1778 (3) Any information collected from an individual under Subsection (1) is inadmissible  
1779 in any court proceeding other than:

1780 (a) a criminal proceeding addressing the individual's pretrial release or indigency for  
1781 the offense, or offenses, for which the individual was arrested or charged with; or

1782 (b) another criminal proceeding regarding prosecution for providing a false statement  
1783 under Subsection (1).

1784 (4) Nothing in this section prohibits a court and a county from entering into an  
1785 agreement regarding information to be submitted to the court with a probable cause statement.

1786 Section 14. Section ~~77-20-203~~, which is renumbered from Section 77-20-3.2 is  
1787 renumbered and amended to read:

1788 ~~[77-20-3.2].~~ **77-20-203. Sheriff and bail commissioner authority to release an**  
1789 **individual from jail on own recognizance.**

1790 (1) As used in this section:

1791 ~~[(a) "County bail commissioner" means a bail commissioner appointed in accordance~~  
1792 ~~with Section 17-32-1.]~~

1793 ~~[(b)]~~ (a) "Qualifying offense" means the same as that term is defined in Section



1794 78B-7-801.

1795 ~~[(e)]~~ (b) "Violent felony" means the same as that term is defined in Subsection

1796 76-3-203.5(1)(c)(i).

1797 (2) A county sheriff or a ~~[county]~~ bail commissioner may release an individual from a  
1798 jail facility on the individual's own recognizance if:

1799 (a) the individual was arrested without a warrant;

1800 (b) the individual was not arrested for:

1801 (i) a violent felony;

1802 (ii) a qualifying offense;

1803 (iii) the offense of driving under the influence or driving with a measurable controlled  
1804 substance in the body if the offense results in death or serious bodily injury to an individual; or

1805 (iv) an offense described in Subsection 76-9-101(4);

1806 (c) law enforcement has not submitted a probable cause statement to a court or  
1807 magistrate;

1808 (d) the individual agrees in writing to appear for ~~[pending criminal charges]~~ any future  
1809 criminal proceedings related to the arrest; and

1810 (e) the individual qualifies for release under the written policy described in Subsection  
1811 (3) for the county.

1812 (3) (a) A county sheriff shall create and approve a written policy for the county that  
1813 governs the release of an individual on the individual's own recognizance.

1814 (b) The written policy shall describe the criteria an individual shall meet to be released  
1815 on the individual's own recognizance.

1816 (c) A county sheriff may include in the written policy the criteria for release relating to:

1817 (i) criminal history;

1818 (ii) prior instances of failing to appear for a mandatory court appearance;

1819 (iii) current employment;

1820 (iv) residency;

1821 (v) ties to the community;

- 1822 (vi) an offense for which the individual was arrested;
  - 1823 (vii) any potential criminal charges that have not yet been filed;
  - 1824 (viii) the individual's health condition;
  - 1825 (ix) any potential risks to a victim, a witness, or the public; and
  - 1826 (x) any other similar factor a sheriff determines is relevant.
- 1827 (4) Nothing in this section prohibits a [~~district~~] court and a county from entering into  
1828 an agreement regarding release.

1829 Section 15. Section **77-20-204** is enacted to read:

1830 **77-20-204. Bail commissioner authority to release an individual from jail on**  
1831 **monetary bail.**

1832 (1) As used in this section, "eligible felony offense" means a third degree felony  
1833 violation under:

- 1834 (a) Section 23-19-15;
- 1835 (b) Section 23-20-4;
- 1836 (c) Section 23-20-4.7;
- 1837 (d) Title 76, Chapter 6, Part 4, Theft;
- 1838 (e) Title 76, Chapter 6, Part 5, Fraud;
- 1839 (f) Title 76, Chapter 6, Part 6, Retail Theft;
- 1840 (g) Title 76, Chapter 6, Part 7, Utah Computer Crimes Act;
- 1841 (h) Title 76, Chapter 6, Part 8, Library Theft;
- 1842 (i) Title 76, Chapter 6, Part 9, Cultural Sites Protection;
- 1843 (j) Title 76, Chapter 6, Part 10, Mail Box Damage and Mail Theft;
- 1844 (k) Title 76, Chapter 6, Part 11, Identity Fraud Act;
- 1845 (l) Title 76, Chapter 6, Part 12, Utah Mortgage Fraud Act;
- 1846 (m) Title 76, Chapter 6, Part 13, Utah Automated Sales Suppression Device Act;
- 1847 (n) Title 76, Chapter 6, Part 14, Regulation of Metal Dealers;
- 1848 (o) Title 76, Chapter 6a, Pyramid Scheme Act;
- 1849 (p) Title 76, Chapter 7, Offenses Against the Family;

- 1850 (q) Title 76, Chapter 7a, Abortion Prohibition;
- 1851 (r) Title 76, Chapter 9, Part 2, Electronic Communication and Telephone Abuse;
- 1852 (s) Title 76, Chapter 9, Part 3, Cruelty to Animals;
- 1853 (t) Title 76, Chapter 9, Part 4, Offenses Against Privacy;
- 1854 (u) Title 76, Chapter 9, Part 5, Libel; or
- 1855 (v) Title 76, Chapter 9, Part 6, Offenses Against the Flag.
- 1856 (2) Except as provided in Subsection (7)(a), a bail commissioner may fix a financial
- 1857 condition for an individual if:
- 1858 (a) (i) the individual is ineligible to be released on the individual's own recognizance
- 1859 under Section [77-20-203](#);
- 1860 (ii) the individual is arrested for, or charged with:
- 1861 (A) a misdemeanor offense under state law; or
- 1862 (B) a violation of a city or county ordinance that is classified as a class B or C
- 1863 misdemeanor offense;
- 1864 (iii) the individual agrees in writing to appear for any future criminal proceedings
- 1865 related to the arrest; and
- 1866 (iv) law enforcement has not submitted a probable cause statement to a magistrate; or
- 1867 (b) (i) the individual is arrested for, or charged with, an eligible felony offense;
- 1868 (ii) the individual is not on pretrial release for a separate criminal offense;
- 1869 (iii) the individual is not on probation or parole;
- 1870 (iv) the primary risk posed by the individual is the risk of failure to appear;
- 1871 (v) the individual agrees in writing to appear for any future criminal proceedings
- 1872 related to the arrest; and
- 1873 (vi) law enforcement has not submitted a probable cause statement to a magistrate.
- 1874 (3) A bail commissioner may not fix a financial condition at a monetary amount that
- 1875 exceeds:
- 1876 (a) \$5,000 for an eligible felony offense;
- 1877 (b) \$1,950 for a class A misdemeanor offense;

- 1878           (c) \$680 for a class B misdemeanor offense;  
1879           (d) \$340 for a class C misdemeanor offense;  
1880           (e) \$150 for a violation of a city or county ordinance that is classified as a class B  
1881 misdemeanor; or  
1882           (f) \$80 for a violation of a city or county ordinance that is classified as a class C  
1883 misdemeanor.  
1884           (4) If an individual is arrested for more than one offense, and the bail commissioner  
1885 fixes a financial condition for release:  
1886           (a) the bail commissioner shall fix the financial condition at a single monetary amount;  
1887 and  
1888           (b) the single monetary amount may not exceed the monetary amount under Subsection  
1889 (3) for the highest level of offense for which the individual is arrested.  
1890           (5) Except as provided in Subsection (7)(b), an individual shall be released if the  
1891 individual posts a financial condition fixed by a bail commissioner in accordance with this  
1892 section.  
1893           (6) If a bail commissioner fixes a financial condition for an individual, law  
1894 enforcement shall submit a probable cause statement in accordance with Rule 9 of the Utah  
1895 Rules of Criminal Procedure after the bail commissioner fixes the financial condition.  
1896           (7) Once a magistrate begins a review of an individual's case under Rule 9 of the Utah  
1897 Rules of Criminal Procedure:  
1898           (a) a bail commissioner may not fix or modify a financial condition for an individual;  
1899 and  
1900           (b) if a bail commissioner fixed a financial condition for the individual before the  
1901 magistrate's review, the individual may no longer be released on the financial condition.  
1902           (8) Nothing in this section prohibits a court and a county from entering into an  
1903 agreement regarding release.  
1904           Section 16. Section **77-20-205** is enacted to read:  
1905           **77-20-205. Pretrial release by a magistrate or judge.**

1906           (1) (a) At the time that a magistrate issues a warrant of arrest, or finds there is probable  
1907 cause to support the individual's arrest under Rule 9 of the Utah Rules of Criminal Procedure,  
1908 the magistrate shall issue a temporary pretrial status order that:

1909           (i) releases the individual on the individual's own recognizance during the time the  
1910 individual awaits trial or other resolution of criminal charges;

1911           (ii) designates a condition, or a combination of conditions, to be imposed upon the  
1912 individual's release during the time the individual awaits trial or other resolution of criminal  
1913 charges; or

1914           (iii) orders the individual be detained during the time the individual awaits trial or  
1915 other resolution of criminal charges.

1916           (b) At the time that a magistrate issues a summons, the magistrate may issue a  
1917 temporary pretrial status order that:

1918           (i) releases the individual on the individual's own recognizance during the time the  
1919 individual awaits trial or other resolution of criminal charges; or

1920           (ii) designates a condition, or a combination of conditions, to be imposed upon the  
1921 individual's release during the time the individual awaits trial or other resolution of criminal  
1922 charges.

1923           (2) (a) Except as provided in Subsection (2)(c), at an individual's first appearance  
1924 before the court, the magistrate or judge shall issue a pretrial status order that:

1925           (i) releases the individual on the individual's own recognizance during the time the  
1926 individual awaits trial or other resolution of criminal charges;

1927           (ii) designates a condition, or a combination of conditions, to be imposed upon the  
1928 individual's release during the time the individual awaits trial or other resolution of criminal  
1929 charges; or

1930           (iii) orders the individual be detained during the time the individual awaits trial or  
1931 other resolution of criminal charges.

1932           (b) In making a determination under Subsection (2)(a), the magistrate or judge may not  
1933 give any deference to a magistrate's decision in a temporary pretrial status order.

1934           (c) The magistrate or judge shall delay the issuance of a pretrial status order described  
1935 in Subsection (2)(a):  
1936           (i) until a pretrial detention hearing is held if a prosecuting attorney makes a motion for  
1937 pretrial detention as described in Section 77-20-206;  
1938           (ii) if a party requests a delay; or  
1939           (iii) if there is good cause to delay the issuance.  
1940           (d) If a magistrate or judge delays the issuance of a pretrial status order under  
1941 Subsection (2)(c), the magistrate or judge shall extend the temporary pretrial status order until  
1942 the issuance of a pretrial status order.  
1943           (3) In making a determination about pretrial release under Subsection (1) or (2), a  
1944 magistrate or judge shall impose only conditions of release that are reasonably available and  
1945 necessary to reasonably ensure:  
1946           (a) the individual's appearance in court when required;  
1947           (b) the safety of any witnesses or victims of the offense allegedly committed by the  
1948 individual;  
1949           (c) the safety and welfare of the public; and  
1950           (d) that the individual will not obstruct, or attempt to obstruct, the criminal justice  
1951 process.  
1952           (4) Except as provided in Subsection (5), a magistrate or judge may impose a  
1953 condition, or combination of conditions, under Subsection (1) or (2) that requires an individual  
1954 to:  
1955           (a) not commit a federal, state, or local offense during the period of pretrial release;  
1956           (b) avoid contact with a victim of the alleged offense;  
1957           (c) avoid contact with a witness who:  
1958           (i) may testify concerning the alleged offense; and  
1959           (ii) is named in the pretrial status order;  
1960           (d) not consume alcohol or any narcotic drug or other controlled substance unless  
1961 prescribed by a licensed medical practitioner;

- 1962           (e) submit to drug or alcohol testing;
- 1963           (f) complete a substance abuse evaluation and comply with any recommended
- 1964 treatment or release program;
- 1965           (g) submit to electronic monitoring or location device tracking;
- 1966           (h) participate in inpatient or outpatient medical, behavioral, psychological, or
- 1967 psychiatric treatment;
- 1968           (i) maintain employment or actively seek employment if unemployed;
- 1969           (j) maintain or commence an education program;
- 1970           (k) comply with limitations on where the individual is allowed to be located or the
- 1971 times that the individual shall be, or may not be, at a specified location;
- 1972           (l) comply with specified restrictions on personal associations, place of residence, or
- 1973 travel;
- 1974           (m) report to a law enforcement agency, pretrial services program, or other designated
- 1975 agency at a specified frequency or on specified dates;
- 1976           (n) comply with a specified curfew;
- 1977           (o) forfeit or refrain from possession of a firearm or other dangerous weapon;
- 1978           (p) if the individual is charged with an offense against a child, limit or prohibit access
- 1979 to any location or occupation where children are located, including any residence where
- 1980 children are on the premises, activities where children are involved, locations where children
- 1981 congregate, or where a reasonable person would know that children congregate;
- 1982           (q) comply with requirements for house arrest;
- 1983           (r) return to custody for a specified period of time following release for employment,
- 1984 schooling, or other limited purposes;
- 1985           (s) remain in custody of one or more designated individuals who agree to:
- 1986           (i) supervise and report on the behavior and activities of the individual; and
- 1987           (ii) encourage compliance with all court orders and attendance at all required court
- 1988 proceedings;
- 1989           (t) comply with a financial condition; or

1990 (u) comply with any other condition that is reasonably available and necessary to  
1991 ensure compliance with Subsection (3).

1992 (5) (a) If a county or municipality has established a pretrial services program, the  
1993 magistrate or judge shall consider the services that the county or municipality has identified as  
1994 available in determining what conditions of release to impose.

1995 (b) The magistrate or judge may not order conditions of release that would require the  
1996 county or municipality to provide services that are not currently available from the county or  
1997 municipality.

1998 (c) Notwithstanding Subsection (5)(a), the magistrate or judge may impose conditions  
1999 of release not identified by the county or municipality so long as the condition does not require  
2000 assistance or resources from the county or municipality.

2001 (6) (a) If the magistrate or judge determines that a financial condition, other than an  
2002 unsecured bond, is necessary to impose as a condition of release, the magistrate or judge shall  
2003 consider the individual's ability to pay when determining the amount of the financial condition.

2004 (b) If the magistrate or judge determines that a financial condition is necessary to  
2005 impose as a condition of release, and a bail commissioner fixed a financial condition for the  
2006 individual under Section [77-20-204](#), the magistrate or judge may not give any deference to:

2007 (i) the bail commissioner's action to fix a financial condition; or

2008 (ii) the amount of the financial condition that the individual was required to pay for  
2009 pretrial release.

2010 (c) If a magistrate or judge orders a financial condition as a condition of release, the  
2011 judge or magistrate shall set the financial condition at a single amount per case.

2012 (7) In making a determination about pretrial release under this section, the magistrate  
2013 or judge may:

2014 (a) rely upon information contained in:

2015 (i) the indictment or information;

2016 (ii) any sworn or probable cause statement or other information provided by law  
2017 enforcement;



- 2018 (iii) a pretrial risk assessment;
- 2019 (iv) an affidavit of indigency described in Section [78B-22-201.5](#);
- 2020 (v) witness statements or testimony; or
- 2021 (vi) any other reliable record or source, including proffered evidence; and
- 2022 (b) consider:
- 2023 (i) the nature and circumstances of the offense, or offenses, that the individual was
- 2024 arrested for, or charged with, including:
- 2025 (A) whether the offense is a violent offense; and
- 2026 (B) the vulnerability of a witness or alleged victim;
- 2027 (ii) the nature and circumstances of the individual, including the individual's:
- 2028 (A) character;
- 2029 (B) physical and mental health;
- 2030 (C) family and community ties;
- 2031 (D) employment status or history;
- 2032 (E) financial resources;
- 2033 (F) past criminal conduct;
- 2034 (G) history of drug or alcohol abuse; and
- 2035 (H) history of timely appearances at required court proceedings;
- 2036 (iii) the potential danger to another individual, or individuals, posed by the release of
- 2037 the individual;
- 2038 (iv) whether the individual was on probation, parole, or release pending an upcoming
- 2039 court proceeding at the time the individual allegedly committed the offense or offenses;
- 2040 (v) the availability of:
- 2041 (A) other individuals who agree to assist the individual in attending court when
- 2042 required; or
- 2043 (B) supervision of the individual in the individual's community;
- 2044 (vi) the eligibility and willingness of the individual to participate in various treatment
- 2045 programs, including drug treatment; or

2046 (vii) other evidence relevant to the individual's likelihood of fleeing or violating the  
2047 law if released.

2048 (8) An individual arrested for violation of a jail release agreement, or a jail release  
2049 court order, issued in accordance with Section [78B-7-802](#):

2050 (a) may not be released before the individual's first appearance before a magistrate or  
2051 judge; and

2052 (b) may be denied pretrial release by the magistrate or judge under Subsection (2).

2053 Section 17. Section **77-20-206** is enacted to read:

2054 **77-20-206. Motion for pretrial detention -- Pretrial detention hearing.**

2055 (1) (a) If the criminal charges filed against an individual include one or more offenses  
2056 eligible for detention under Subsection [77-20-201](#)(1) or Utah Constitution, Article I, Section 8,  
2057 the prosecuting attorney may make a motion for pretrial detention.

2058 (b) Upon receiving a motion for pretrial detention under Subsection (1)(a), the judge  
2059 shall set a pretrial detention hearing in accordance with Subsection (2).

2060 (2) If a pretrial status order is not issued at an individual's first appearance and the  
2061 individual remains detained, a pretrial detention hearing shall be held at the next available  
2062 court hearing that is:

2063 (a) no sooner than seven days from the day on which the defendant was arrested; and

2064 (b) no later than fourteen days from the day on which the defendant was arrested.

2065 (3) (a) An individual, who is the subject of a pretrial detention hearing, has the right to  
2066 be represented by counsel at the pretrial detention hearing.

2067 (b) If a judge finds the individual is indigent under Section [78B-22-202](#), the judge shall  
2068 appoint counsel to represent the individual in accordance with Section [78B-22-203](#).

2069 (4) At the pretrial detention hearing:

2070 (a) the judge shall give both parties the opportunity to make arguments and to present  
2071 relevant evidence or information;

2072 (b) the prosecuting attorney and the defendant have a right to subpoena witnesses to  
2073 testify; and

2074 (c) the judge shall issue a pretrial status order in accordance with Subsection (5) and  
2075 Section 77-20-205.

2076 (5) After hearing evidence on a motion for pretrial detention, and based on the totality  
2077 of the circumstances, a judge may order detention if:

2078 (a) the individual is accused of committing an offense that qualifies for detention of the  
2079 individual under Subsection 77-20-201(1) or Utah Constitution, Article I, Section 8; and

2080 (b) the prosecuting attorney demonstrates substantial evidence to support the charge,  
2081 and meets all additional evidentiary burdens required under Subsection 77-20-201(1) or Utah  
2082 Constitution, Article I, Section 8.

2083 (6) An alleged victim has the right to be heard at a pretrial detention hearing on a  
2084 motion for pretrial detention.

2085 (7) If a defendant seeks to subpoena an alleged victim who did not willingly testify at  
2086 the pretrial detention hearing, a defendant may issue a subpoena, at the conclusion of the  
2087 pretrial detention hearing, compelling the alleged victim to testify at a subsequent hearing only  
2088 if the judge finds that the testimony sought by the subpoena:

2089 (a) is material to the substantial evidence or clear and convincing evidence  
2090 determinations described in Section 77-20-201 in light of all information presented to the  
2091 court; and

2092 (b) would not unnecessarily intrude on the rights of the victim or place an undue  
2093 burden on the victim.

2094 Section 18. Section 77-20-207 is enacted to read:

2095 **77-20-207. Modification of pretrial status order.**

2096 (1) A motion to modify a pretrial status order may be made:

2097 (a) by a party at any time after a pretrial status order is issued; and

2098 (b) only upon a showing that there has been a material change in circumstances.

2099 (2) (a) If a party makes a motion to modify the pretrial status order, the party shall  
2100 provide notice to the opposing party sufficient to permit the opposing party to prepare for a  
2101 hearing and to permit each alleged victim to be notified and be present.

2102 (b) A hearing on a motion to modify a pretrial status order may be held in conjunction  
2103 with a preliminary hearing or any other pretrial hearing.

2104 (3) In ruling upon a motion to modify a pretrial status order, the judge may:

2105 (a) rely on information as provided in Subsection [77-20-205\(7\)](#);

2106 (b) base the judge's ruling on evidence provided at the hearing so long as each party is  
2107 provided an opportunity to present additional evidence or information relevant to pretrial  
2108 release; and

2109 (c) modify the pretrial status order, including the conditions of release, upon a finding  
2110 that there has been a material change in circumstances.

2111 Section 19. Section **77-20-208** is enacted to read:

2112 **77-20-208. Release from conditions when charges not filed in specified time**  
2113 **period.**

2114 (1) If a prosecuting attorney does not file an information, indictment, or a request to  
2115 extend time under Subsection (2), within 120 days after the day on which a bail commissioner  
2116 released the individual on a financial condition under Section [77-20-203](#) or within 120 days  
2117 after the day on which a temporary pretrial status order was issued for the individual:

2118 (a) the individual shall be relieved from any condition of pretrial release;

2119 (b) the court shall refund any monetary bail in accordance with Subsection  
2120 [77-20-402\(5\)](#); and

2121 (c) if a bail bond was used to post monetary bail, the bail bond shall be exonerated  
2122 without further order of the court.

2123 (2) A request to extend time shall:

2124 (a) be served on:

2125 (i) the individual and the individual's attorney; and

2126 (ii) if a bail bond was used to post monetary bail, the surety; and

2127 (b) except as provided in Subsection (3), be granted for a period of up to 60 days.

2128 (3) The magistrate may grant a request to extend time for a period of up to 120 days  
2129 upon a showing of good cause.

2130 (4) Nothing in this section prohibits the filing of charges against an individual at any  
2131 time.

2132 Section 20. Section **77-20-301**, which is renumbered from Section 77-20-8 is  
2133 renumbered and amended to read:

2134 **Part 3. Postconviction Bail**

2135 ~~[77-20-8].~~ **77-20-301. Grounds for detaining or releasing defendant on**  
2136 **conviction and prior to sentence.**

2137 (1) Upon conviction, by plea or trial, the court shall order that the convicted defendant  
2138 who is waiting imposition or execution of sentence be detained, unless the court finds, by clear  
2139 and convincing evidence, presented by the defendant that the defendant:

2140 (a) is not likely to flee the jurisdiction of the court[;] if released; and

2141 (b) will not pose a danger to the physical, psychological, or financial and economic  
2142 safety or well-being of any other person or the community if released.

2143 (2) If the court finds the defendant does not need to be detained, the court shall order  
2144 the release of the defendant on suitable conditions, [~~which may include the conditions under~~  
2145 ~~Subsection 77-20-10(2)] including conditions of release described in Subsection 77-20-205(4).~~

2146 Section 21. Section **77-20-302**, which is renumbered from Section 77-20-10 is  
2147 renumbered and amended to read:

2148 ~~[77-20-10].~~ **77-20-302. Grounds for detaining defendant while appealing the**  
2149 **defendant's conviction -- Conditions for release while on appeal.**

2150 (1) The court shall order that a defendant who has been found guilty of an offense in a  
2151 court of record and sentenced to a term of imprisonment in jail or prison, and who has filed an  
2152 appeal or a petition for a writ of certiorari, be detained, unless the court finds:

2153 (a) the appeal raises a substantial question of law or fact likely to result in:

2154 (i) reversal;

2155 (ii) an order for a new trial; or

2156 (iii) a sentence that does not include a term of imprisonment in jail or prison;

2157 (b) the appeal is not for the purpose of delay; and

2158 (c) by clear and convincing evidence presented by the defendant, that the defendant:

2159 (i) is not likely to flee the jurisdiction of the court[;] if released; and

2160 (ii) will not pose a danger to the physical, psychological, or financial and economic  
2161 safety or well-being of any other person or the community if released.

2162 (2) (a) If the court makes a finding under Subsection (1) that justifies not detaining the  
2163 defendant, the court shall order the release of the defendant, subject to only conditions [~~that~~  
2164 ~~result in the least restrictive condition or combination of conditions that the court determines~~  
2165 ~~will~~] of release that are reasonably available and necessary to reasonably ensure the appearance  
2166 of the defendant as required and the safety of any other individual, property, and the  
2167 community. [~~The conditions may include that the defendant:~~]

2168 [(a) ~~post appropriate bail;~~]

2169 [(b) ~~execute a bail bond with a surety under Title 31A, Chapter 35, Bail Bond Act, in~~  
2170 ~~an amount necessary to ensure the appearance of the defendant as required;~~]

2171 [(c) (i) ~~execute a written agreement to forfeit, upon failing to appear as required,~~  
2172 ~~designated property, including money, as is reasonably necessary to ensure the appearance of~~  
2173 ~~the defendant; and~~]

2174 [(ii) ~~post with the court indicia of ownership of the property or a percentage of the~~  
2175 ~~money as the court may specify;~~]

2176 [(d) ~~not commit a federal, state, or local crime during the period of release;~~]

2177 [(e) ~~remain in the custody of a designated person who agrees to assume supervision of~~  
2178 ~~the defendant and who agrees to report any violation of a release condition to the court, if the~~  
2179 ~~designated person is reasonably able to assure the court that the defendant will appear as~~  
2180 ~~required and will not pose a danger to the safety of any other person or the community;~~]

2181 [(f) ~~maintain employment, or if unemployed, actively seek employment;~~]

2182 [(g) ~~maintain or commence an educational program;~~]

2183 [(h) ~~abide by specified restrictions on personal associations, place of abode, or travel;~~]

2184 [(i) ~~avoid all contact with the victims of the offense and with any witnesses who~~  
2185 ~~testified against the defendant or potential witnesses who may testify concerning the offense if~~

2186 the appeal results in a reversal or an order for a new trial;]

2187        ~~[(j) report on a regular basis to a designated law enforcement agency, pretrial services~~  
2188 ~~agency, or other designated agency;]~~

2189        ~~[(k) comply with a specified curfew;]~~

2190        ~~[(l) not possess a firearm, destructive device, or other dangerous weapon;]~~

2191        ~~[(m) not use alcohol, or any narcotic drug or other controlled substance except as~~  
2192 ~~prescribed by a licensed medical practitioner;]~~

2193        ~~[(n) undergo available medical, psychological, or psychiatric treatment, including~~  
2194 ~~treatment for drug or alcohol dependency, and remain under the supervision of or in a specified~~  
2195 ~~institution if required for that purpose;]~~

2196        ~~[(o) return to custody for specified hours following release for employment, schooling,~~  
2197 ~~or other limited purposes;]~~

2198        ~~[(p) satisfy any other condition that is reasonably necessary to ensure the appearance of~~  
2199 ~~the defendant as required and to ensure the safety of any other person and the community; and]~~

2200        ~~[(q) if convicted of committing a sexual offense or an assault or other offense~~  
2201 ~~involving violence against a child 17 years old or younger, is limited or denied access to any~~  
2202 ~~location or occupation where children are, including:]~~

2203        ~~[(i) any residence where children are on the premises;]~~

2204        ~~[(ii) activities, including organized activities, in which children are involved; and]~~

2205        ~~[(iii) locations where children congregate, or where a reasonable person should know~~  
2206 ~~that children congregate.]~~

2207        (b) The conditions under Subsection (2)(a) may include conditions described in  
2208 Subsection [77-20-205\(4\)](#).

2209        ~~[(3)]~~ (c) The court may, in ~~[its]~~ the court's discretion, amend an order granting release  
2210 to impose additional or different conditions of release.

2211        ~~[(4)]~~ (3) If the defendant is found guilty of an offense in a court not of record and files  
2212 a timely notice of appeal ~~[pursuant to]~~ in accordance with Subsection [78A-7-118\(1\)](#) for a trial  
2213 de novo, the court shall stay all terms of a sentence, unless at the time of sentencing the judge

2214 finds by a preponderance of the evidence that the defendant poses a danger to another person or  
2215 the community.

2216 ~~[(5)]~~ (4) If a stay is ordered, the court may order ~~[post-conviction]~~ postconviction  
2217 restrictions on the defendant's conduct as appropriate, including:

- 2218 (a) continuation of any ~~[pre-trial]~~ pretrial restrictions or orders;
- 2219 (b) sentencing protective orders under Section 78B-7-804;
- 2220 (c) drug and alcohol use;
- 2221 (d) use of an ignition interlock; and
- 2222 (e) posting appropriate monetary bail.

2223 ~~[(6)]~~ (5) The provisions of Subsections ~~[(4) and (5)]~~ (3) and (4) do not apply to  
2224 convictions for an offense under Title 41, Chapter 6a, Part 5, Driving Under the Influence and  
2225 Reckless Driving.

2226 ~~[(7)]~~ (6) Any stay authorized by Subsection ~~[(4)]~~ (3) is lifted upon the dismissal of the  
2227 appeal by the district court.

2228 Section 22. Section **77-20-401** is enacted to read:

2229 **Part 4. Monetary Bail**

2230 **77-20-401. Payment of monetary bail to sheriff or bail commissioner -- Specific**  
2231 **payment methods.**

2232 (1) Subject to Subsection 77-20-402(2), if an individual has been required by a bail  
2233 commissioner, or ordered by a magistrate or judge, to post monetary bail as a condition of  
2234 pretrial release, the individual may post the amount of monetary bail with the bail  
2235 commissioner:

2236 (a) in money, by cash, certified or cashier's check, personal check with check guarantee  
2237 card, money order, or credit card, if the bail commissioner has chosen to establish any of those  
2238 options; or

2239 (b) by a bail bond issued by a surety.

2240 (2) A bail commissioner shall deliver any monetary bail received under Subsection (1)  
2241 to the appropriate court within three days after the day on which the monetary bail is received



2242 by the bail commissioner.

2243 Section 23. Section **77-20-402**, which is renumbered from Section 77-20-4 is  
2244 renumbered and amended to read:

2245 ~~[77-20-4].~~ **77-20-402. Payment of monetary bail to court -- Specific payment**  
2246 **methods -- Refund of monetary bail.**

2247 ~~[(1) (a) Except as provided in Subsection (2), the judge or magistrate shall set bail at a~~  
2248 ~~single amount per case or charge.]~~

2249 ~~[(b)]~~ (1) Subject to Subsection (2), a defendant may choose to post the amount  
2250 ~~[described in Subsection (1)(a)]~~ of monetary bail imposed by a judge or magistrate by any of  
2251 the following methods:

2252 (i) in cash;

2253 (ii) by ~~[written undertaking with sureties]~~ a bail bond with a surety;

2254 (iii) by ~~[written undertaking without sureties]~~ an unsecured bond, at the discretion of  
2255 the judge or magistrate; or

2256 (iv) by credit or debit card, at the discretion of the ~~[judge or bail commissioner]~~ judge  
2257 or magistrate.

2258 (2) A judge or magistrate may limit a defendant to a specific method of posting  
2259 monetary bail described in Subsection (1)~~[(b)(i), (ii), (iii), or (iv)]~~:

2260 (a) if, after charges are filed, the defendant fails to appear in the case on a bail bond  
2261 and the case involves a violent offense;

2262 (b) in order to allow the defendant to voluntarily remit the fine in accordance with  
2263 Section **77-7-21** and the offense with which the defendant is charged is listed in the shared  
2264 master offense table as one for which an appearance is not mandatory;

2265 (c) if the defendant has failed to respond to a citation or summons and the offense with  
2266 which the defendant is charged is listed in the shared master offense table as one for which an  
2267 appearance is not mandatory;

2268 (d) if a warrant is issued for the defendant solely for failure to pay a criminal accounts  
2269 receivable, as defined in Section **77-32b-102**, and the defendant's monetary bail is limited to

2270 the amount owed; or

2271 (e) if a court has entered a judgment of bail bond forfeiture under Section ~~[77-20b-104]~~  
2272 77-20-505 in any case involving the defendant.

2273 (3) ~~[Bail]~~ Monetary bail may not be accepted without receiving in writing at the time  
2274 the bail is posted the current mailing address, telephone number, and email address of the  
2275 surety.

2276 (4) ~~[Bail]~~ Monetary bail posted by debit or credit card, less the fee charged by the  
2277 financial institution, shall be tendered to the courts.

2278 (5) (a) ~~[Bail]~~ Monetary bail refunded by the court may be refunded by credit to the  
2279 debit or credit card~~[-]~~ or in cash.

2280 (b) The amount refunded shall be the full amount received by the court under  
2281 Subsection (4), which may be less than the full amount of the monetary bail set by the ~~[court]~~  
2282 judge or magistrate.

2283 ~~[(6)]~~ (c) Before refunding monetary bail that is posted by the defendant in cash, by  
2284 credit card, or by debit card, the court may apply the amount posted toward a criminal accounts  
2285 receivable, as defined in Section ~~77-32b-102~~, that is owed by the defendant in the priority set  
2286 forth in Section ~~77-38b-304~~.

2287 Section 24. Section ~~77-20-404~~, which is renumbered from Section 77-20-9 is  
2288 renumbered and amended to read:

2289 ~~[77-20-9]~~. 77-20-404. Disposition of forfeited monetary bail.

2290 If ~~[by reason of the neglect of the defendant to appear,]~~ money deposited as a financial  
2291 condition or money paid by ~~[sureties on bond]~~ a surety on a bail bond is forfeited and the  
2292 forfeiture is not discharged or remitted, the clerk with whom ~~[it]~~ the money is deposited or paid  
2293 shall, immediately after final adjournment of the court, pay over the money forfeited as  
2294 follows:

2295 (1) the forfeited amount in cases in precinct justice courts or in municipal justice courts  
2296 shall be distributed as provided in Sections ~~78A-7-120~~ and ~~78A-7-121~~; and

2297 (2) in all other cases:

- 2298 (a) where the financial condition was paid by a surety:
- 2299 (i) 60% of the forfeited amount shall be paid to the Pretrial Release Programs Special
- 2300 Revenue Fund established in Section ~~63M-7-215~~;
- 2301 (ii) 20% of the forfeited amount shall be paid to the General Fund; and
- 2302 (iii) 20% of the forfeited amount shall be paid to the prosecuting agency that brings an
- 2303 action to collect under Section ~~[77-20b-104]~~ 77-20-505; and
- 2304 (b) where the financial condition was paid without the assistance of a surety:
- 2305 (i) 75% of the forfeited amount shall be paid to the Pretrial Release Programs Special
- 2306 Revenue Fund established in Section ~~63M-7-215~~; and
- 2307 (ii) 25% of the forfeited amount shall be paid to the General Fund.

2308 Section 25. Section ~~77-20-501~~, which is renumbered from Section 77-20b-101 is

2309 renumbered and amended to read:

2310 **Part 5. Bail Surety**

2311 ~~[77-20b-101]~~. 77-20-501. Liability on a bail bond -- Failure to appear --

2312 Notice to surety.

2313 (1) (a) Unless exonerated under Subsection ~~77-20-504~~(5), the principal and the surety

2314 on a bail bond are liable on the bail bond during all proceedings and for all court appearances

2315 required of the defendant up to and including the surrender of the defendant for sentencing,

2316 regardless of any contrary provision in the bail bond agreement.

2317 (b) Any failure of the defendant to appear when required is a breach of the conditions

2318 of the bail bond and subjects the bail bond to forfeiture regardless of whether notice of the

2319 required appearance was given to the surety.

2320 ~~[(+)]~~ (2) (a) If a defendant, who has posted ~~[bail]~~ monetary bail by a bail bond, fails to

2321 appear before the appropriate court as required, the court shall[;]:

2322 (i) within ~~[30]~~ 28 days after the day on which the defendant fails to appear, issue a

2323 bench warrant that includes the original case number[. ~~The court shall also direct that the~~

2324 surety be given notice of the nonappearance.]; and

2325 (ii) direct the clerk of the court to notify the surety of the defendant's failure to appear.

2326           (b) The clerk of the court shall:

2327           ~~[(a)]~~ (i) email notice of ~~[nonappearance]~~ the defendant's failure to appear to the surety

2328 at the email address provided on the bond;

2329           ~~[(b)]~~ (ii) notify the surety as listed on the bail bond of the name, address, and telephone

2330 number of the ~~[prosecutor]~~ prosecuting attorney;

2331           ~~[(c)]~~ (iii) email a copy of the notice sent under Subsection ~~[(1)(a)]~~ (2)(b)(i) to the

2332 ~~[prosecutor's]~~ prosecuting attorney's office at the same time notice is sent under Subsection

2333 ~~[(1)(a)]~~ (2)(b)(i); and

2334           ~~[(d)]~~ (iv) ensure that the name, address, business email address, and telephone number

2335 of the surety or the surety's agent as listed on the bail bond is stated on the bench warrant.

2336           ~~[(2)]~~ (3) The ~~[prosecutor]~~ prosecuting attorney may email notice of ~~[nonappearance]~~

2337 the defendant's failure to appear to the address of the surety as listed on the bail bond within

2338 ~~[37]~~ 35 days after the ~~[date of the defendant's failure to appear]~~ day on which the defendant

2339 fails to appear.

2340           ~~[(3) If notice of nonappearance is not emailed to a surety as listed on the bail bond,~~

2341 ~~other than the defendant, in accordance with Subsection (1) or (2), the surety and the surety's~~

2342 ~~bail bond producer are relieved of further obligation under the bail bond if the surety's current~~

2343 ~~name and address or the current name and address of the bail bond agency are on the bail bond~~

2344 ~~in the court's file.]~~

2345           (4) (a) (i) If a defendant appears in court within seven days after a missed, scheduled

2346 court appearance, the court may reinstate the bail bond without further notice to the surety.

2347           (ii) If the defendant, while in custody, appears on the case for which the bail bond was

2348 posted, the court may not reinstate the bail bond without the consent of the bail bond company.

2349           (b) If a defendant fails to appear within seven days after a scheduled court appearance,

2350 the court may not reinstate the bail bond without the consent of the surety.

2351           ~~[(c) If the defendant is arrested and booked into a county jail booking facility pursuant~~

2352 ~~to a warrant for failure to appear on the original charges and the court is notified of the arrest,~~

2353 ~~or the court recalls the warrant due to the defendant's having paid the fine and prior to entry of~~

2354 judgment of forfeiture, the court shall exonerate the bail bond.]

2355       ~~[(d) Unless the court makes a finding of good cause why the bond should not be~~  
2356 ~~exonerated, the court shall exonerate the bail bond if:]~~

2357       ~~[(i) the surety has delivered the defendant to the county jail booking facility in the~~  
2358 ~~county where the original charge or charges are pending;]~~

2359       ~~[(ii) the defendant has been released on a bond secured from a subsequent surety for~~  
2360 ~~the original charge and the failure to appear;]~~

2361       ~~[(iii) after an arrest, the defendant has escaped from jail or has been released on the~~  
2362 ~~defendant's own recognizance, pursuant to a pretrial release, under a court order regulating jail~~  
2363 ~~capacity, or by a sheriff's release under Section 17-22-5.5;]~~

2364       ~~[(iv) the surety has transported or agreed to pay for the transportation of the defendant~~  
2365 ~~from a location outside of the county back to the county where the original charge is pending,~~  
2366 ~~and the payment is in an amount equal to the cost of government transportation under Section~~  
2367 ~~76-3-201; or]~~

2368       ~~[(v) the surety demonstrates by a preponderance of the evidence that:]~~

2369       ~~[(A) at the time the surety issued the bail bond, it had made reasonable efforts to~~  
2370 ~~determine that the defendant was legally present in the United States;]~~

2371       ~~[(B) a reasonable person would have concluded, based on the surety's determination,~~  
2372 ~~that the defendant was legally present in the United States; and]~~

2373       ~~[(C) the surety has failed to bring the defendant before the court because the defendant~~  
2374 ~~is in federal custody or has been deported.]]~~

2375       ~~[(e) Under circumstances not otherwise provided for in this section, the court may~~  
2376 ~~exonerate the bail bond if it finds that the prosecutor has been given reasonable notice of a~~  
2377 ~~surety's motion and there is good cause for the bail bond to be exonerated.]]~~

2378       ~~[(f) If a surety's bail bond has been exonerated under this section and the surety~~  
2379 ~~remains liable for the cost of transportation of the defendant, the surety may take custody of the~~  
2380 ~~defendant for the purpose of transporting the defendant to the jurisdiction where the charge is~~  
2381 ~~pending.]]~~

2382 Section 26. Section ~~77-20-502~~, which is renumbered from Section 77-20b-102 is  
2383 renumbered and amended to read:

2384 ~~[77-20b-102]~~. 77-20-502. Time for bringing defendant to court --  
2385 Defendant in custody in another jurisdiction -- Notice to prosecuting attorney.

2386 (1) (a) If notice of [~~nonappearance~~] a defendant's failure to appear is emailed to a  
2387 surety under Section [~~77-20b-101~~] 77-20-501, the surety may bring the defendant before the  
2388 court, or surrender the defendant into the custody of a county sheriff within the state, within  
2389 [~~six months after the date of nonappearance, during which time a forfeiture action on the bail~~  
2390 ~~bond may not be brought~~] 180 days after the day on which the defendant failed to appear in  
2391 court as required.

2392 (b) A forfeiture action may not be brought during the 180-day time period described in  
2393 Subsection (1)(a).

2394 (2) A surety may request an extension of the [~~six-month~~] 180-day time period in  
2395 Subsection (1)[;] if the surety within that time:

2396 (a) files a motion for extension with the court; and

2397 (b) mails the motion for extension and a notice of hearing on the motion to the  
2398 [~~prosecutor~~] prosecuting attorney.

2399 (3) The court may extend the [~~six-month time in Subsection (1) for not more than 60~~  
2400 ~~days, if~~] 180-day time period in Subsection (1) for no more than 30 days if:

2401 (a) the surety has complied with Subsection (2); and

2402 (b) the court finds good cause.

2403 (4) If a surety is unable to bring a defendant to the court because the defendant is and  
2404 will be in the custody of authorities of another jurisdiction, the surety shall:

2405 (a) notify the court and the prosecuting attorney; and

2406 (b) provide the name, address, and telephone number of the custodial authority.

2407 Section 27. Section ~~77-20-503~~, which is renumbered from Section 77-20-8.5 is  
2408 renumbered and amended to read:

2409 ~~[77-20-8.5]~~. 77-20-503. Surrender of defendant by surety -- Arrest of defendant.

2410 (1) (a) (i) ~~[Sureties]~~ A surety may at any time prior to a defendant's failure to appear,  
2411 surrender the defendant and obtain ~~[exoneration of bail;]~~ an exoneration of the bail bond by  
2412 notifying the clerk of the court in which the bail bond was posted of the defendant's surrender  
2413 and requesting exoneration.

2414 (ii) Notification shall be made immediately following the surrender by ~~[surface mail,~~  
2415 electronic] mail, email, or fax.

2416 (b) To effect surrender of the defendant, a certified copy of the surety's ~~[undertaking]~~  
2417 bail bond from the court in which ~~[it]~~ the bail bond was posted or a copy of the bail bond  
2418 agreement with the defendant shall be delivered to the on-duty jailer, who shall:

2419 (i) detain the defendant in the on-duty jailer's custody as upon a commitment~~[;]~~; and  
2420 ~~[shall]~~

2421 (ii) in writing acknowledge the surrender upon the copy of the ~~[undertaking or bail]~~  
2422 bail bond or bail bond agreement.

2423 (c) The certified copy of the ~~[undertaking]~~ bail bond or copy of the bail bond  
2424 agreement upon which the acknowledgment of surrender is endorsed shall be filed with the  
2425 court. ~~[The court may then, upon proper application, order the undertaking exonerated and~~  
2426 may order]

2427 (d) Upon a filing described in Subsection (1)(c), the court, upon proper application,  
2428 may:

2429 (i) exonerate the bail bond; and

2430 (ii) order a refund of any paid premium, or part of a premium, as ~~[it]~~ the court finds  
2431 just.

2432 (2) For the purpose of surrendering the defendant, the ~~[sureties]~~ surety may:

2433 (a) arrest the defendant:

2434 (i) at any time before the defendant is finally exonerated; and

2435 (ii) at any place within the state; and

2436 (b) surrender the defendant to any county jail booking facility in Utah.

2437 (3) An arrest under this section is not a basis for exoneration of the bail bond under

2438 Section ~~[77-20b-101]~~ 77-20-504.

2439 (4) A surety acting under this section is subject to Title 53, Chapter 11, Bail Bond  
2440 Recovery Act.

2441 Section 28. Section **77-20-504** is enacted to read:

2442 **77-20-504. Exoneration of a bail bond.**

2443 (1) The court shall exonerate a bail bond if:

2444 (a) (i) a defendant, who has posted monetary bail by a bail bond, fails to appear before  
2445 the appropriate court as required;

2446 (ii) notice of the defendant's failure to appear is not emailed to the surety as listed on  
2447 the bail bond as described in Subsection 77-20-501(2) or (3); and

2448 (iii) the surety's current name and email address, or the bail bond agency's current name  
2449 and email address, are listed on the bail bond in the court's file;

2450 (b) the defendant is arrested and booked into a county jail booking facility pursuant to a  
2451 warrant for failure to appear on the original charges for which the bail bond was issued and the  
2452 surety provides written proof of the arrest and booking to the court and the prosecuting  
2453 attorney;

2454 (c) the court recalls a warrant for failure to appear due to the defendant's having paid  
2455 the fine and before entry of a judgment of forfeiture of the bail bond;

2456 (d) the surety provides written proof to the court and the prosecuting attorney that the  
2457 defendant is in custody and the surety has served the defendant's bail bond revocation on the  
2458 custodial authority; or

2459 (e) unless the court makes a finding of good cause why the bail bond should not be  
2460 exonerated:

2461 (i) the surety has delivered the defendant to the county jail booking facility in the  
2462 county where the original charge or charges are pending;

2463 (ii) the defendant has been released on a bail bond secured from a subsequent surety for  
2464 the original charge and the failure to appear;

2465 (iii) after an arrest, the defendant has escaped from jail or has been released on the



2466 defendant's own recognizance under a court order regulating jail capacity or by a sheriff's  
2467 release under Section 17-22-5.5;

2468 (iv) the surety has transported or agreed to pay for the transportation of the defendant  
2469 from a location outside of the county back to the county where the original charge is pending  
2470 and the payment is in an amount equal to the cost of government transportation under Section  
2471 76-3-201; or

2472 (v) the surety demonstrates, by a preponderance of the evidence, that:

2473 (A) at the time the surety issued the bail bond, the surety made reasonable efforts to  
2474 determine that the defendant was legally present in the United States;

2475 (B) a reasonable person would have concluded, based on the surety's determination,  
2476 that the defendant was legally present in the United States; and

2477 (C) the surety has failed to bring the defendant before the court because the defendant  
2478 is in federal custody or has been deported.

2479 (2) Under circumstances not otherwise provided for in Subsection (1), the court may  
2480 exonerate the bail bond if the court finds:

2481 (a) that the prosecuting attorney has been given reasonable notice of a surety's motion  
2482 to exonerate the bail bond; and

2483 (b) there is good cause for the bail bond to be exonerated.

2484 (3) If a surety's bail bond has been exonerated under Subsection (1) or (2) and the  
2485 surety remains liable for the cost of transportation of the defendant, the surety may take custody  
2486 of the defendant for the purpose of transporting the defendant to the jurisdiction where the  
2487 charge is pending.

2488 (4) If the defendant is subject to extradition or other means by which the state can  
2489 return the defendant to law enforcement custody within the court's jurisdiction, and the surety  
2490 gives notice under Subsection 77-20-502(4)(a), the surety's bail bond shall be exonerated:

2491 (a) if the prosecuting attorney elects in writing not to extradite the defendant  
2492 immediately; and

2493 (b) if the prosecuting attorney elects in writing to extradite the defendant, to the extent

2494 the bail bond exceeds the reasonable, actual, or estimated costs to extradite and return the  
2495 defendant to law enforcement custody within the court's jurisdiction, upon the occurrence of  
2496 the earlier of:

2497 (i) the prosecuting attorney's lodging a detainer on the defendant; or  
2498 (ii) 60 days after the day on which the surety gives notice to the prosecuting attorney  
2499 under Subsection 77-20-502(4)(a) if the defendant remains in custody of the same authority  
2500 during that 60-day time period.

2501 (5) (a) Except as provided in Subsection (6), the court shall exonerate the bail bond,  
2502 without motion, upon sentencing the defendant.

2503 (b) If the defendant's sentence includes commitment to a jail or prison, the court shall  
2504 exonerate the bail bond when the defendant appears at the appropriate jail or prison, unless the  
2505 judge does not require the defendant to begin the commitment within seven days, in which case  
2506 the bail bond is exonerated upon sentencing.

2507 (c) For purposes of this Subsection (5), an order of the court accepting a plea in  
2508 abeyance agreement and holding that plea in abeyance in accordance with Title 77, Chapter 2a,  
2509 Pleas in Abeyance, is considered to be the same as a sentencing upon a guilty plea.

2510 (d) Any suspended or deferred sentencing is not the responsibility of the surety and the  
2511 bail bond is exonerated without any motion, upon acceptance of the court and the defendant of  
2512 a plea in abeyance, probation, fine payments, post sentencing reviews, or any other deferred  
2513 sentencing reviews or any other deferred sentencing agreement.

2514 (6) If a surety issues a bail bond after sentencing, the surety is liable on the bail bond  
2515 during all proceedings and for all court appearances required of the defendant up to and  
2516 including the defendant's appearance to commence serving the sentence imposed under  
2517 Subsection (5).

2518 Section 29. Section 77-20-505, which is renumbered from Section 77-20b-104 is  
2519 renumbered and amended to read:

2520 ~~[77-20b-104].~~ 77-20-505. Forfeiture of a bail bond.

2521 (1) If a surety fails to bring the defendant before the court within ~~[the time provided in~~

2522 ~~Section 77-20b-102;~~ the time period described in Section 77-20-502, the prosecuting attorney  
2523 may request the forfeiture of the bail bond by:

2524 (a) filing a motion for bail bond forfeiture with the court, supported by proof of notice  
2525 to the surety of the defendant's [~~nonappearance~~] failure to appear; and

2526 (b) emailing a copy of the motion to the surety.

2527 (2) A court shall enter judgment of bail bond forfeiture without further notice if the  
2528 court finds, by a preponderance of the evidence:

2529 (a) the defendant failed to appear as required;

2530 (b) the surety was given notice of the defendant's [~~nonappearance~~] failure to appear in  
2531 accordance with Section [~~77-20b-101~~] 77-20-501;

2532 (c) the surety failed to bring the defendant to the court within the [~~six-month~~] 180-day  
2533 time period under Section [~~77-20b-102~~] 77-20-502; and

2534 (d) the [~~prosecutor~~] prosecuting attorney has complied with the notice requirements  
2535 under Subsection (1).

2536 (3) If the surety shows, by a preponderance of the evidence, that [~~it~~] the surety has  
2537 failed to bring the defendant before the court because the defendant is deceased through no act  
2538 of the surety, the court may not enter judgment of bail bond forfeiture and the bail bond is  
2539 exonerated.

2540 (4) (a) The amount of bail forfeited is the face amount of the bail bond, but if the  
2541 defendant is in the custody of another jurisdiction and the state extradites or intends to extradite  
2542 the defendant, the court may reduce the amount forfeited to the actual or estimated costs of  
2543 returning the defendant to the court's jurisdiction.

2544 (b) A judgment under Subsection (5) shall:

2545 [~~(a)~~] (i) identify the surety against whom judgment is granted;

2546 [~~(b)~~] (ii) specify the amount of monetary bail forfeited;

2547 [~~(c)~~] (iii) grant the forfeiture of the bail bond; and

2548 [~~(d)~~] (iv) be docketed by the clerk of the court in the civil judgment docket.

2549 (5) A [~~prosecutor~~] prosecuting attorney may immediately commence collection

2550 proceedings to execute a judgment of bail bond forfeiture against the assets of the surety.

2551 Section 30. Section **78A-2-220** is amended to read:

2552 **78A-2-220. Authority of magistrate.**

2553 (1) Except as otherwise provided by law, a magistrate as defined in Section [77-1-3](#)

2554 shall have the authority to:

2555 (a) commit a person to incarceration prior to trial;

2556 (b) set or deny bail under Section [~~77-20-1~~] [77-20-205](#) and release upon the payment of

2557 monetary bail, as defined in Section [77-20-102](#), and satisfaction of any other conditions of

2558 release;

2559 (c) issue to any place in the state summonses and warrants of search and arrest and

2560 authorize administrative traffic checkpoints under Section [77-23-104](#);

2561 (d) conduct an initial appearance;

2562 (e) conduct arraignments;

2563 (f) conduct a preliminary examination to determine probable cause;

2564 (g) appoint attorneys and order recoupment of attorney fees;

2565 (h) order the preparation of presentence investigations and reports;

2566 (i) issue temporary orders as provided by rule of the Judicial Council; and

2567 (j) perform any other act or function authorized by statute.

2568 (2) A judge of the justice court may exercise the authority of a magistrate specified in

2569 Subsection (1) with the following limitations:

2570 (a) a judge of the justice court may conduct an initial appearance, preliminary

2571 examination, or arraignment as provided by rule of the Judicial Council; and

2572 (b) a judge of the justice court may not [~~set bail in a capital felony nor deny bail in any~~

2573 ~~case]~~ perform any act or function in a capital felony case.

2574 Section 31. Section **78A-7-118** is amended to read:

2575 **78A-7-118. Appeals from justice court -- Trial or hearing de novo in district**

2576 **court.**

2577 (1) In a criminal case, a defendant is entitled to a trial de novo in the district court only

2578 if the defendant files a notice of appeal within 28 days of:

2579 (a) sentencing, except as provided in Subsection (4)(b); or

2580 (b) a plea of guilty or no contest in the justice court that is held in abeyance.

2581 (2) Upon filing a proper notice of appeal, any term of a sentence imposed by the justice  
2582 court shall be stayed as provided for in Section [~~77-20-10~~] [77-20-302](#) and the Rules of  
2583 Criminal Procedure.

2584 (3) If an appeal under Subsection (1) is of a plea entered pursuant to negotiation with  
2585 the prosecutor, and the defendant did not reserve the right to appeal as part of the plea  
2586 negotiation, the negotiation is voided by the appeal.

2587 (4) A defendant convicted and sentenced in justice court is entitled to a hearing de  
2588 novo in the district court on the following matters, if the defendant files a notice of appeal  
2589 within 28 days of:

2590 (a) an order revoking probation;

2591 (b) imposition of a sentence, following a determination that a defendant failed to fulfill  
2592 the terms of a plea in abeyance agreement;

2593 (c) an order denying a motion to withdraw a plea, if the plea is being held in abeyance  
2594 and the motion to withdraw the plea is filed within 28 days of the entry of the plea;

2595 (d) a postsentence order fixing total or court ordered restitution; or

2596 (e) an order denying expungement.

2597 (5) The prosecutor is entitled to a hearing de novo in the district court if an appeal is  
2598 filed within 28 days of the court entering:

2599 (a) a final judgment of dismissal;

2600 (b) an order arresting judgment;

2601 (c) an order terminating the prosecution because of a finding of double jeopardy or  
2602 denial of a speedy trial;

2603 (d) a judgment holding invalid any part of a statute or ordinance;

2604 (e) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of  
2605 that evidence prevents continued prosecution of an infraction or class C misdemeanor;

2606 (f) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of  
2607 that evidence impairs continued prosecution of a class B misdemeanor;

2608 (g) an order granting a motion to withdraw a plea of guilty or no contest;

2609 (h) an order fixing total restitution at an amount less than requested by a crime victim;

2610 or

2611 (i) an order granting an expungement, if the expungement was opposed by the  
2612 prosecution or a victim before the order was entered.

2613 (6) Upon entering a decision in a hearing de novo, the district court shall remand the  
2614 case to the justice court unless:

2615 (a) the decision results in immediate dismissal of the case; or

2616 (b) the hearing de novo was on a pretrial order and the parties and the district court  
2617 agree to have the district court retain jurisdiction.

2618 (7) The district court shall retain jurisdiction over the case on trial de novo.

2619 (8) The decision of the district court is final and may not be appealed unless the district  
2620 court rules on the constitutionality of a statute or ordinance.

2621 Section 32. Section **78B-7-802** is amended to read:

2622 **78B-7-802. Conditions for release after arrest for domestic violence and other**  
2623 **offenses -- Jail release agreements -- Jail release court orders.**

2624 (1) Upon arrest or issuance of a citation for a qualifying offense and before the  
2625 individual is released [~~on bail, recognizance, or otherwise~~] under Section [77-20-204](#) or  
2626 [77-20-205](#), the individual may not telephone, contact, or otherwise communicate with the  
2627 alleged victim, directly or indirectly.

2628 (2) (a) After an individual is arrested or issued a citation for a qualifying offense, the  
2629 individual may not be released before:

2630 (i) the matter is submitted to a magistrate in accordance with Section [77-7-23](#); or

2631 (ii) the individual signs a jail release agreement.

2632 (b) If an arrested individual is booked into jail, the arresting officer shall ensure that the  
2633 information presented to the magistrate includes whether the alleged victim has made a waiver

2634 described in Subsection (5)(a).

2635 (c) ~~[(†)]~~ If the magistrate determines there is probable cause to support the charge or  
2636 charges of one or more qualifying offenses, the magistrate shall ~~[determine whether the~~  
2637 ~~arrested individual may be held without bail, in accordance with Section 77-20-1]~~ issue a  
2638 temporary pretrial status order, as defined in Section 77-20-102, in accordance with Section  
2639 77-20-205.

2640 ~~[(ii) If the magistrate determines that the arrested individual has the right to be~~  
2641 ~~admitted to bail, the magistrate shall determine:]~~

2642 ~~[(A) whether any release conditions, including electronic monitoring, are necessary to~~  
2643 ~~protect the alleged victim; and]~~

2644 ~~[(B) any bail that is required to guarantee the arrested individual's subsequent~~  
2645 ~~appearance in court.]~~

2646 (d) The magistrate may not release an individual arrested for a qualifying offense  
2647 unless the magistrate issues a jail release court order or the arrested individual signs a jail  
2648 release agreement.

2649 (3) (a) If an individual charged with a qualifying offense fails to either schedule an  
2650 initial appearance or to appear at the time scheduled by the magistrate within 96 hours after the  
2651 time of arrest, the individual shall comply with the release conditions of a jail release  
2652 agreement or jail release court order until the individual makes an initial appearance.

2653 (b) If the prosecutor has not filed charges against an individual who was arrested for a  
2654 qualifying offense and who appears in court at the time scheduled by the magistrate under  
2655 Subsection (2), or by the court under Subsection (3)(b)(ii), the court:

2656 (i) may, upon the motion of the prosecutor and after allowing the individual an  
2657 opportunity to be heard on the motion, extend the release conditions described in the jail  
2658 release court order or the jail release agreement by no more than three court days; and

2659 (ii) if the court grants the motion described in Subsection (3)(b)(i), shall order the  
2660 arrested individual to appear at a time scheduled before the end of the granted extension.

2661 (c) (i) If the prosecutor determines that there is insufficient evidence to file charges

2662 before an initial appearance scheduled under Subsection (3)(a), the prosecutor shall transmit a  
2663 notice of declination to either the magistrate who signed the jail release court order or, if the  
2664 releasing agency obtains a jail release agreement from the released arrestee, to the statewide  
2665 domestic violence network described in Section 78B-7-113.

2666 (ii) A prosecutor's notice of declination transmitted under this Subsection (3)(c) is  
2667 considered a motion to dismiss a jail release court order and a notice of expiration of a jail  
2668 release agreement.

2669 (4) Except as provided in Subsections (3) and (11) or otherwise ordered by a court, a  
2670 jail release agreement or jail release court order expires at midnight after the earlier of:

2671 (a) the arrested or cited individual's initial scheduled court appearance described in  
2672 Subsection (3)(a);

2673 (b) the day on which the prosecutor transmits the notice of the declination under  
2674 Subsection (3)(c); or

2675 (c) 30 days after the day on which the individual is arrested or issued a citation.

2676 (5) (a) (i) After an individual is arrested or issued a citation for a qualifying offense, an  
2677 alleged victim who is not a minor may waive in writing any condition of a jail release  
2678 agreement by:

2679 (A) appearing in person to the law enforcement agency that arrested the individual or  
2680 issued the citation to the individual for the qualifying offense;

2681 (B) appearing in person to the jail or correctional facility that released the arrested  
2682 individual from custody; or

2683 (C) appearing in person to the clerk at the court of the jurisdiction where the charges  
2684 are filed.

2685 (ii) An alleged victim who is not a minor may waive in writing the release conditions  
2686 prohibiting:

2687 (A) telephoning, contacting, or otherwise communicating with the alleged victim,  
2688 directly or indirectly; or

2689 (B) knowingly entering on the premises of the alleged victim's residence or on



2690 premises temporarily occupied by the alleged victim.

2691 (iii) Except as provided in Subsection (5)(a)(iv), a parent or guardian may waive any  
2692 condition of a jail release agreement on behalf of an alleged victim who is a minor in the  
2693 manner described in Subsections (5)(a)(i) and (ii).

2694 (iv) A parent or guardian may not, without the approval of the court, waive the release  
2695 conditions described in Subsection (5)(a)(ii) on behalf of an alleged victim who is a minor, if  
2696 the alleged victim who is a minor:

2697 (A) allegedly suffers bodily injury as a result of the qualifying offense;

2698 (B) summons or attempts to summon emergency aid for the qualifying offense; or

2699 (C) after the time at which the qualifying offense is allegedly committed and before the  
2700 time at which the arrested or cited individual signs the jail release agreement, discloses to a law  
2701 enforcement officer that the arrested or cited individual threatened the alleged victim who is a  
2702 minor with bodily injury.

2703 (v) Upon waiver, the release conditions described in Subsection (5)(a)(ii) do not apply  
2704 to the arrested or cited individual.

2705 (b) A court or magistrate may modify a jail release agreement or a jail release court  
2706 order in writing or on the record, and only for good cause shown.

2707 (6) (a) When an individual is arrested or issued a citation and subsequently released in  
2708 accordance with Subsection (2), the releasing agency shall:

2709 (i) notify the arresting law enforcement agency of the release, conditions of release, and  
2710 any available information concerning the location of the alleged victim;

2711 (ii) make a reasonable effort to notify the alleged victim of the release; and

2712 (iii) before releasing the individual who is arrested or issued a citation, give the  
2713 arrested or cited individual a copy of the jail release agreement or the jail release court order.

2714 (b) (i) When an individual arrested or issued a citation for domestic violence is  
2715 released under this section based on a jail release agreement, the releasing agency shall transmit  
2716 that information to the statewide domestic violence network described in Section [78B-7-113](#).

2717 (ii) When an individual arrested or issued a citation for domestic violence is released

2718 under this section based upon a jail release court order or if a jail release agreement is modified  
2719 under Subsection (5)(b), the court shall transmit that order to the statewide domestic violence  
2720 network described in Section 78B-7-113.

2721 (c) This Subsection (6) does not create or increase liability of a law enforcement officer  
2722 or agency, and the good faith immunity provided by Section 77-36-8 is applicable.

2723 (7) An individual who is arrested for a qualifying offense that is a felony and released  
2724 in accordance with this section may subsequently be held without bail if there is substantial  
2725 evidence to support a new felony charge against the individual.

2726 (8) At the time an arrest is made or a citation is issued for a qualifying offense, the  
2727 arresting officer shall provide the alleged victim with written notice containing:

2728 (a) the release conditions described in this section, and notice that the alleged  
2729 perpetrator will not be released, before appearing before the court with jurisdiction over the  
2730 offense for which the alleged perpetrator was arrested, unless:

2731 (i) the alleged perpetrator enters into a jail release agreement to comply with the release  
2732 conditions; or

2733 (ii) the magistrate issues a jail release order that specifies the release conditions;

2734 (b) notification of the penalties for violation of any jail release agreement or jail release  
2735 court order;

2736 (c) the address of the appropriate court in the district or county in which the alleged  
2737 victim resides;

2738 (d) the availability and effect of any waiver of the release conditions; and

2739 (e) information regarding the availability of and procedures for obtaining civil and  
2740 criminal protective orders with or without the assistance of an attorney.

2741 (9) At the time an arrest is made or a citation is issued for a qualifying offense, the  
2742 arresting officer shall provide the alleged perpetrator with written notice containing:

2743 (a) notification that the alleged perpetrator may not contact the alleged victim before  
2744 being released, including telephoning, contacting, or otherwise communicating with the alleged  
2745 victim, directly or indirectly;

2746 (b) the release conditions described in this section and notice that the alleged  
2747 perpetrator will not be released, before appearing before the court with jurisdiction over the  
2748 offense for which the alleged perpetrator was arrested, unless:

2749 (i) the alleged perpetrator enters into a jail release agreement to comply with the release  
2750 conditions; or

2751 (ii) the magistrate issues a jail release court order;

2752 (c) notification of the penalties for violation of any jail release agreement or jail release  
2753 court order; and

2754 (d) notification that the alleged perpetrator is to personally appear in court on the next  
2755 day the court is open for business after the day of the arrest.

2756 (10) (a) A pretrial or sentencing protective order issued under this part supersedes a jail  
2757 release agreement or jail release court order.

2758 (b) If a court dismisses the charges for the qualifying offense that gave rise to a jail  
2759 release agreement or jail release court order, the court shall dismiss the jail release agreement  
2760 or jail release court order.

2761 (11) (a) This section does not apply if the individual arrested for the qualifying offense  
2762 is a minor who is under 18 years old, unless the qualifying offense is domestic violence.

2763 (b) A jail release agreement signed by, or a jail release court order issued against, a  
2764 minor expires on the earlier of:

2765 (i) the day of the minor's initial court appearance described in Subsection (3)(a);

2766 (ii) the day on which the prosecutor transmits the notice of declination under  
2767 Subsection (3)(c);

2768 (iii) 30 days after the day on which the minor is arrested or issued a citation; or

2769 (iv) the day on which the juvenile court terminates jurisdiction.

2770 Section 33. Section **78B-9-108** is amended to read:

2771 **78B-9-108. Effect of granting relief -- Notice.**

2772 (1) If the court grants the petitioner's request for relief, except requests for relief under  
2773 Subsection **78B-9-104(1)(g)**, [it] the court shall either:

2774 (a) modify the original conviction or sentence; or  
2775 (b) vacate the original conviction or sentence and order a new trial or sentencing  
2776 proceeding as appropriate.

2777 (2) If the court grants the petitioner's request for relief under Subsection  
2778 [78B-9-104\(1\)\(g\)](#), the court shall:

2779 (a) vacate the original conviction and sentence; and

2780 (b) order the petitioner's records expunged pursuant to Section [77-40-108.5](#).

2781 (3) (a) If the petitioner is serving a felony sentence, the order shall be stayed for five  
2782 days. Within the stay period, the respondent shall give written notice to the court and the  
2783 petitioner that the respondent will pursue a new trial or sentencing proceedings, appeal the  
2784 order, or take no action.

2785 (b) If the respondent fails to provide notice or gives notice at any time during the stay  
2786 period that it intends to take no action, the court shall lift the stay and deliver the order to the  
2787 custodian of the petitioner.

2788 (c) If the respondent gives notice of intent to appeal the court's decision, the stay  
2789 provided for by Subsection (3)(a) shall remain in effect until the appeal concludes, including  
2790 any petitions for rehearing or for discretionary review by a higher court. The court may lift the  
2791 stay if the petitioner can make the showing required for a certificate of probable cause under  
2792 Section [~~77-20-10 and URCP 27~~] [77-20-302](#) and Utah Rules of Criminal Procedure, Rule 27.

2793 (d) If the respondent gives notice that it intends to retry or resentence the petitioner, the  
2794 trial court may order any supplementary orders as to arraignment, trial, sentencing, custody,  
2795 bail, discharge, or other matters that may be necessary.

2796 Section 34. Section **78B-22-201.5** is enacted to read:

2797 **78B-22-201.5. Affidavit of indigency.**

2798 (1) Except as provided in Subsection (5), on or after January 1, 2022, an individual,  
2799 who is seeking appointment of an indigent defense service provider, shall submit an affidavit  
2800 of indigency described in Subsection (2) to the court.

2801 (2) An affidavit of indigency shall include the following information:

- 2802 (a) the individual's identifying information, including:  
2803 (i) the individual's legal name and any known aliases;  
2804 (ii) the individual's mobile or residential phone number;  
2805 (iii) the individual's residential address; and  
2806 (iv) the individual's date of birth; and  
2807 (b) the individual's financial information, including:  
2808 (i) any financial support or benefit that the individual receives from a state or federal  
2809 government;  
2810 (ii) the individual's monthly income, including any alimony or child support that  
2811 contributes to the individual's monthly income;  
2812 (iii) the individual's monthly expenses, including any alimony or child support  
2813 obligation that the individual is responsible for paying;  
2814 (iv) the individual's ownership of, or any interest in, personal or real property,  
2815 including any savings or checking accounts or cash;  
2816 (v) the number, ages, and relationships of any dependents; and  
2817 (vi) any extraordinary financial conditions that would prevent the individual from  
2818 retaining private counsel.  
2819 (3) The affidavit of indigency shall:  
2820 (a) require the signature of the individual; and  
2821 (b) include a statement that:  
2822 (i) by signing the affidavit the individual confirms that, to the best of the individual's  
2823 knowledge, the information in the affidavit is true;  
2824 (ii) the individual may be subject to a criminal penalty for a written false statement  
2825 under Section [76-8-504](#);  
2826 (iii) the individual authorizes an indigent defense system to contact or request  
2827 information from the individual or a third party to verify whether an individual is indigent; and  
2828 (iv) the individual may be ordered to pay the cost of the individual's indigent defense  
2829 services if a court determines that the individual is not indigent.

2830           (4) The Judicial Council or Supreme Court shall adopt an affidavit of indigency form  
2831 described in Subsection (2) to be distributed to an individual seeking the appointment of an  
2832 indigent defense service provider.

2833           (5) This section does not apply to a minor, who is appointed an indigent defense  
2834 service provider, or the minor's parent or legal guardian.

2835           Section 35. Section **78B-22-202** is amended to read:

2836           **78B-22-202. Determining indigency.**

2837           (1) A court shall find an individual indigent if the individual:

2838           (a) has an income level at or below 150% of the United States poverty level as defined  
2839 by the most recent poverty income guidelines published by the United States Department of  
2840 Health and Human Services; or

2841           (b) has insufficient income or other means to pay for legal counsel and the necessary  
2842 expenses of representation without depriving the individual or the individual's family of food,  
2843 shelter, clothing, or other necessities, considering:

2844           (i) the individual's ownership of, or any interest in, personal or real property;

2845           (ii) the amount of debt owed by the individual or that might reasonably be incurred by  
2846 the individual because of illness or other needs within the individual's family;

2847           (iii) the number, ages, and relationships of any dependents;

2848           (iv) the probable expense and burden of defending the case;

2849           (v) the reasonableness of fees and expenses charged by an attorney and the scope of  
2850 representation undertaken when represented by privately retained defense counsel; and

2851           (vi) any other factor the court considers relevant.

2852           (2) Notwithstanding Subsection (1), a court may not find an individual indigent if the  
2853 individual transferred or otherwise disposed of assets since the commission of the offense with  
2854 the intent of becoming eligible to receive indigent defense services.

2855           (3) (a) The court may:

2856           (i) make a finding of indigency at any time[-]; and

2857           (ii) rely on information contained in an affidavit of indigency described in Section

2858 78B-22-201.5 in making a finding about whether an individual is an indigent individual.

2859 (b) An individual's inability to submit, or to provide the information required in, an  
2860 affidavit of indigency under Section 78B-22-201.5 does not preclude a court from:

2861 (i) making a finding about whether an individual is an indigent individual under this  
2862 section; or

2863 (ii) appointing an indigent defense service provider under Section 78B-22-203.

2864 Section 36. Section **78B-22-1001** is enacted to read:

2865 **Part 10. Indigency Verification**

2866 **78B-22-1001. Verification of indigency -- Pilot program.**

2867 (1) Beginning on July 1, 2022, and ending on June 30, 2025, an indigent defense  
2868 system in Cache County, Davis County, Duchesne County, and San Juan County shall conduct  
2869 a pilot program to verify the indigency of individuals who were provided indigent defense  
2870 services by the indigent defense system, except as provided in Subsection (5).

2871 (2) Under the pilot program described in Subsection (1), the indigent defense system  
2872 shall review and verify financial information in a statistically significant sample of cases for  
2873 each calendar year where, except as provided in Subsection (5):

2874 (a) an individual was found to be indigent by a court; and

2875 (b) the indigent defense system provided indigent defense services to the individual.

2876 (3) To verify financial information under Subsection (2), the indigent defense system  
2877 may require an individual to provide financial documentation or proof demonstrating that the  
2878 individual qualifies as indigent under Section 78B-22-202.

2879 (4) An indigent defense system described in Subsection (1) shall report to the Judiciary  
2880 Interim Committee and the Law Enforcement and Criminal Justice Interim Committee,  
2881 concerning the results of the pilot program described in this section, on or before November 1  
2882 of each year of the three-year pilot program.

2883 (5) This section does not apply to a minor, who is appointed an indigent defense  
2884 service provider, or the minor's parent or legal guardian.

2885 Section 37. Section **78B-22-1002** is enacted to read:

2886 **78B-22-1002. Recovery of costs for indigent defense services.**

2887 (1) Except as provided in Subsection (2), a court shall order an individual to pay the  
2888 indigent defense system for the cost of indigent defense services in accordance with Subsection  
2889 76-3-201(4)(e) and Section 77-32b-104 if:

2890 (a) the individual was provided indigent defense services by the indigent defense  
2891 system; and

2892 (b) the indigent defense system provides financial documentation or proof to the court  
2893 that demonstrates that the individual is not indigent under Section 78B-22-202.

2894 (2) This section does not apply to a minor, who is appointed an indigent defense  
2895 service provider, or the minor's parent or legal guardian.

2896 Section 38. **Repealer.**

2897 This bill repeals:

2898 Section **10-3-920, Bail commissioner -- Powers and duties.**

2899 Section **77-20-1, Right to bail -- Pretrial status order -- Denial of bail -- Detention**  
2900 **hearing -- Motion to modify.**

2901 Section **77-20-3.1, Release on own recognizance -- Changing amount of bail or**  
2902 **conditions of release.**

2903 Section **77-20-7, Duration of liability on undertaking -- Notices to sureties --**  
2904 **Exoneration if charges not filed.**

2905 Section **77-20b-100, Definitions.**

2906 Section **77-20b-103, Defendant in custody -- Notice to prosecutor.**

2907 Section **77-20b-105, Revocation of bail bond.**

2908 Section 39. **Effective date.**

2909 If approved by two-thirds of all the members elected to each house, this bill takes effect  
2910 upon approval by the governor, or the day following the constitutional time limit of Utah  
2911 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,  
2912 the date of veto override.