

HB0317S02 compared with HB0317

~~{deleted text}~~ shows text that was in HB0317 but was deleted in HB0317S02.

inserted text shows text that was not in HB0317 but was inserted into HB0317S02.

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Representative Ryan D. Wilcox proposes the following substitute bill:

PRETRIAL RELEASE MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Katy Hall

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to pretrial release.

Highlighted Provisions:

This bill:

- ▶ repeals statutes related to bail commissioners;
- ▶ defines terms related to bail and pretrial release;
- ▶ addresses the right to bail;
- ▶ amends provisions regarding pretrial release by a county sheriff or the county sheriff's designee;

~~{~~ → amends provisions regarding the written policy by a county sheriff for releasing an individual on the individual's own recognizance;

‡ ▶ amends provisions regarding pretrial release by a judge or magistrate;

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- ▶ provides that a magistrate or judge may not base a determination about pretrial release solely on the ~~{nature}~~seriousness of the offense~~{that}~~, or the type of offense, for which an individual ~~{was}~~is arrested ~~{for}~~ or charged~~{with}~~;
- ▶ addresses the modification of a pretrial status order when a defendant fails to appear at a required court appearance or when a defendant has not paid the amount of a financial condition within a certain period of time;
- ▶ grants an expedited right of appeal to a defendant who is ordered to be detained pretrial; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17-22-32, as last amended by Laws of Utah 2022, Chapter 187

77-20-102, as enacted by Laws of Utah 2021, Second Special Session, Chapter 4

77-20-201, as enacted by Laws of Utah 2021, Second Special Session, Chapter 4

77-20-203, as renumbered and amended by Laws of Utah 2021, Second Special Session, Chapter 4

77-20-204, as enacted by Laws of Utah 2021, Second Special Session, Chapter 4

77-20-205, as enacted by Laws of Utah 2021, Second Special Session, Chapter 4

77-20-207, as enacted by Laws of Utah 2021, Second Special Session, Chapter 4

77-20-208, as enacted by Laws of Utah 2021, Second Special Session, Chapter 4

77-20-301, as renumbered and amended by Laws of Utah 2021, Second Special Session, Chapter 4

77-20-302, as renumbered and amended by Laws of Utah 2021, Second Special Session, Chapter 4

77-20-401, as enacted by Laws of Utah 2021, Second Special Session, Chapter 4

ENACTS:

77-20-209, Utah Code Annotated 1953

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REPEALS:

10-3-921, as last amended by Laws of Utah 1990, Chapter 283

10-3-922, as last amended by Laws of Utah 1990, Chapter 283

17-32-1, as last amended by Laws of Utah 2021, Second Special Session, Chapter 4

17-32-2, as last amended by Laws of Utah 2021, Second Special Session, Chapter 4

17-32-3, as last amended by Laws of Utah 1990, Chapter 283

17-32-4, as last amended by Laws of Utah 1990, Chapter 283

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

Section 1. Section **17-22-32** is amended to read:

17-22-32. County jail reporting requirements.

(1) As used in this section:

(a) "Commission" means the State Commission on Criminal and Juvenile Justice created in Section 63M-7-201.

(b) (i) "In-custody death" means an inmate death that occurs while the inmate is in the custody of a county jail.

(ii) "In-custody death" includes an inmate death that occurs while the inmate is:

(A) being transported for medical care; or

(B) receiving medical care outside of a county jail.

(c) "Inmate" means an individual who is processed or booked into custody or housed in a county jail in the state.

(d) "Opiate" means the same as that term is defined in Section 58-37-2.

(2) Each county jail shall submit a report to the commission before June 15 of each year that includes, for the preceding calendar year:

(a) the average daily inmate population each month;

(b) the number of inmates in the county jail on the last day of each month who identify as each race or ethnicity included in the Standards for Transmitting Race and Ethnicity published by the United States Federal Bureau of Investigation;

(c) the number of inmates booked into the county jail;

(d) the number of inmates held in the county jail each month on behalf of each of the following entities:

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- (i) the Bureau of Indian Affairs;
 - (ii) a state prison;
 - (iii) a federal prison;
 - (iv) the United States Immigration and Customs Enforcement;
 - (v) any other entity with which a county jail has entered a contract to house inmates on the entity's behalf;
- (e) the number of inmates that are denied pretrial release and held in the custody of the county jail while the inmate awaited final disposition of the inmate's criminal charges;
- (f) for each inmate booked into the county jail:
- (i) the name of the agency that arrested the inmate;
 - (ii) the date and time the inmate was booked into and released from the custody of the county jail;
 - (iii) if the inmate was released from the custody of the county jail, the reason the inmate was released from the custody of the county jail;
 - (iv) if the inmate was released from the custody of the county jail on a financial condition, whether the financial condition was set by a [~~bail commissioner~~] county sheriff or a court;
 - (v) the number of days the inmate was held in the custody of the county jail before disposition of the inmate's criminal charges;
 - (vi) whether the inmate was released from the custody of the county jail before final disposition of the inmate's criminal charges; and
 - (vii) the state identification number of the inmate;
- (g) the number of in-custody deaths that occurred at the county jail;
- (h) for each in-custody death;
- (i) the name, gender, race, ethnicity, age, and known or suspected medical diagnosis or disability, if any, of the deceased;
 - (ii) the date, time, and location of death;
 - (iii) the law enforcement agency that detained, arrested, or was in the process of arresting the deceased; and
 - (iv) a brief description of the circumstances surrounding the death;
 - (i) the known, or discoverable on reasonable inquiry, causes and contributing factors of

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each of the in-custody deaths described in Subsection (2)(g);

(j) the county jail's policy for notifying an inmate's next of kin after the inmate's in-custody death;

(k) the county jail policies, procedures, and protocols:

(i) for treatment of an inmate experiencing withdrawal from alcohol or substance use, including use of opiates;

(ii) that relate to the county jail's provision, or lack of provision, of medications used to treat, mitigate, or address an inmate's symptoms of withdrawal, including methadone and all forms of buprenorphine and naltrexone; and

(iii) that relate to screening, assessment, and treatment of an inmate for a substance use or mental health disorder; and

(l) any report the county jail provides or is required to provide under federal law or regulation relating to inmate deaths.

(3) (a) Subsection (2) does not apply to a county jail if the county jail:

(i) collects and stores the data described in Subsection (2); and

(ii) enters into a memorandum of understanding with the commission that allows the commission to access the data described in Subsection (2).

(b) The memorandum of understanding described in Subsection (3)(a)(ii) shall include a provision to protect any information related to an ongoing investigation and comply with all applicable federal and state laws.

(c) If the commission accesses data from a county jail in accordance with Subsection (3)(a), the commission may not release a report prepared from that data, unless:

(i) the commission provides the report for review to:

(A) the county jail; and

(B) any arresting agency that is named in the report; and

(ii) (A) the county jail approves the report for release;

(B) the county jail reviews the report and prepares a response to the report to be published with the report; or

(C) the county jail fails to provide a response to the report within four weeks after the day on which the commission provides the report to the county jail.

(4) The commission shall:

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- (a) compile the information from the reports described in Subsection (2);
 - (b) omit or redact any identifying information of an inmate in the compilation to the extent omission or redaction is necessary to comply with state and federal law;
 - (c) submit the compilation to the Law Enforcement and Criminal Justice Interim Committee and the Utah Substance Use and Mental Health Advisory Council before November 1 of each year; and
 - (d) submit the compilation to the protection and advocacy agency designated by the governor before November 1 of each year.
- (5) The commission may not provide access to or use a county jail's policies, procedures, or protocols submitted under this section in a manner or for a purpose not described in this section.
- (6) A report including only the names and causes of death of deceased inmates and the facility in which they were being held in custody shall be made available to the public.

Section 2. Section **77-20-102** is amended to read:

77-20-102. Definitions.

As used in this chapter:

- (1) "Bail" means pretrial release.
- (2) "Bail bond" means the same as that term is defined in Section 31A-35-102.
- ~~[(2)]~~ (3) "Bail bond agency" means the same as that term is defined in Section 31A-35-102.
- ~~[(3)]~~ (4) "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) "County jail official" means a county sheriff or the county sheriff's designee.
- ~~[(5)]~~ (6) "Exonerate" means to release and discharge a surety, or a surety's bail bond producer, from liability for a bail bond.
- ~~[(6)]~~ (7) "Financial condition" [~~or "monetary bail"~~] means any monetary condition that is imposed to secure an individual's pretrial release.
- ~~[(7)]~~ (8) "Forfeiture" means:
 - (a) to divest an individual or surety from a right to the repayment of monetary bail; or

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(b) to enforce a pledge of assets or real or personal property from an individual or surety used to secure an individual's pretrial release.

~~[(8)]~~ (9) "Magistrate" means the same as that term is defined in Section 77-1-3.

~~(10) (a) (i) "Material change in circumstances" means an occurrence that would have persuaded the magistrate or judge to decide differently if the occurrence had been known to the magistrate or judge at the time of the pretrial status order.~~

~~— (b) "Material change in circumstances" includes:~~

~~(i) an unreasonable delay in prosecution;~~

~~— (ii) that is not attributable to the defendant;~~

~~(ii) a material change in the risk that an individual poses to a victim, a witness, or the public if released due to the passage of time;~~

~~— (iii) a reduction in the risk that the individual poses if released; or~~

~~— (iv) a change in, or any other relevant factor;~~

~~(iii) a material change in the conditions of release or the services that ~~the county or municipality has available to supervise individuals on pretrial release~~ are reasonably available to the defendant if released;~~

~~(iv) a willful or repeated failure by the defendant to appear at required court appearances; or~~

~~(v) any other material change related to the defendant's risk of flight or danger to any other individual or to the community if released.~~

~~(b) "Material change in circumstances" does not include any fact or consideration that is known at the time that the pretrial status order is issued.~~

(11) "Monetary bail" means a financial condition.

~~[(9)]~~ (12) "Own recognizance" means the release of an individual without any condition of release other than the individual's promise to:

(a) appear for all required court proceedings; and

(b) not commit any criminal offense.

~~[(10)]~~ (13) "Pretrial detention hearing" means a hearing described in Section 77-20-206.

~~[(11)]~~ (14) "Pretrial release" ~~[or "bail"]~~ means the release of an individual from law enforcement custody during the time the individual awaits trial or other resolution of criminal

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charges.

~~[(12)]~~ (15) "Pretrial risk assessment" means an objective, research-based, validated assessment tool that measures an individual's risk of flight and risk of anticipated criminal conduct while on pretrial release.

~~[(13)]~~ (16) "Pretrial services program" means a program that is established to:

- (a) gather information on individuals booked into a jail facility;
- (b) conduct pretrial risk assessments; and
- (c) supervise individuals granted pretrial release.

~~[(14)]~~ (17) "Pretrial status order" means an order issued by a magistrate or judge that:

- (a) releases the individual on the individual's own recognizance while the individual awaits trial or other resolution of criminal charges;
- (b) sets the terms and conditions of the individual's pretrial release while the individual awaits trial or other resolution of criminal charges; or
- (c) denies pretrial release and orders that the individual be detained while the individual awaits trial or other resolution of criminal charges.

~~[(15)]~~ (18) "Principal" means the same as that term is defined in Section 31A-35-102.

~~[(16)]~~ (19) "Surety" means a surety insurer or a bail bond agency.

~~[(17)]~~ (20) "Surety insurer" means the same as that term is defined in Section 31A-35-102.

~~[(18)]~~ (21) "Temporary pretrial status order" means an order issued by a magistrate that:

- (a) releases the individual on the individual's own recognizance until a pretrial status order is issued;
- (b) sets the terms and conditions of the individual's pretrial release until a pretrial status order is issued; or
- (c) denies pretrial release and orders that the individual be detained until a pretrial status order is issued.

~~[(19)]~~ (22) "Unsecured bond" means an individual's promise to pay a financial condition if the individual fails to appear for any required court appearance.

Section 3. Section **77-20-201** is amended to read:

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

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

(a) a capital felony when ~~[the court finds]~~ there is substantial evidence to support the charge;

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

(c) a felony when there is substantial evidence to support the charge and the court finds, by clear and convincing evidence, that:

(i) the individual would constitute a substantial danger to any other individual or to the community~~[-or]~~ after considering ~~{all}~~ available conditions of release that the court may impose if the individual is released on bail; or

(ii) the individual is likely to flee the jurisdiction of the court~~[-]~~ if the individual is released on bail;

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

(e) a domestic violence offense if ~~[the court finds]~~:

(i) ~~[that]~~ there is substantial evidence to support the charge; and

(ii) the court finds, by clear and convincing evidence, that the individual would constitute a substantial danger to an alleged victim of domestic violence ~~[if released on bail]~~ after considering ~~{all}~~ available conditions of release that the court may impose if the individual is released on bail;

(f) the offense of driving under the influence or driving with a measurable controlled substance in the body if:

(i) the offense results in death or serious bodily injury to an individual; ~~[and]~~

~~[(ii) the court finds:]~~

~~[(A) (ii) [that]~~ there is substantial evidence to support the charge; and

~~[(B) (iii) the court finds,~~ by clear and convincing evidence, that the ~~[person]~~ individual would constitute a substantial danger to the community ~~[if released on bail]~~ after considering ~~{all}~~ available conditions of release that the court may impose if the individual is released on

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bail; or

(g) a felony violation of Section 76-9-101 if:

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

(ii) the court finds, by clear and convincing evidence, that the individual is not likely to appear for a subsequent court appearance.

(2) Notwithstanding any other provision of this section, there is a rebuttable presumption that an individual is a substantial danger to the community under Subsection ~~[(1)(f)(ii)(B)]~~ (1)(f)(iii):

(a) as long as the individual has a blood or breath alcohol concentration of .05 grams or greater if the individual is arrested for, or charged with, the offense of driving under the influence and the offense resulted in death or serious bodily injury to an individual; or

(b) if the individual has a measurable amount of controlled substance in the individual's body, the individual is arrested for, or charged with, the offense of driving with a measurable controlled substance in the body and the offense resulted in death or serious bodily injury to an individual.

(3) For purposes of Subsection (1)(a), any arrest or charge for a violation of Section 76-5-202, aggravated murder, is a capital felony unless:

(a) the prosecuting attorney files a notice of intent to not seek the death penalty; or

(b) the time for filing a notice to seek the death penalty has expired and the prosecuting attorney has not filed a notice to seek the death penalty.

Section 4. Section **77-20-203** is amended to read:

77-20-203. County sheriff authority to release an individual from jail on own recognizance.

(1) As used in this section:

(a) "Qualifying offense" means the same as that term is defined in Section 78B-7-801.

(b) "Violent felony" means the same as that term is defined in Subsection 76-3-203.5(1)(c)(i).

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

(a) the individual was arrested without a warrant;

(b) the individual was not arrested for:

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- (i) a violent felony;
- (ii) a qualifying offense;
- (iii) the offense of driving under the influence or driving with a measurable controlled substance in the body if the offense results in death or serious bodily injury to an individual; or
- (iv) an offense described in Subsection 76-9-101(4);
- (c) law enforcement has not submitted a probable cause statement to a court or magistrate;
- (d) the individual agrees in writing to appear for any future criminal proceedings related to the arrest; and
- (e) the individual qualifies for release under the written policy described in Subsection (3) for the county.

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

~~[(b)]~~ ~~[(4)]~~ ~~[(a)]~~ The written policy shall ~~[(A written policy under Subsection (3) shall: (a)]~~ describe the criteria an individual shall meet to be released on the individual's own recognizance ~~[(.); and~~

~~[(b) include a presumption that an individual who has a recent history of failing to appear for a mandatory court appearance:~~

~~[(i) is unlikely to appear for any future criminal proceedings related to the arrest;~~

~~[(ii) is unlikely to be eligible for release on the individual's own recognizance under this section; and~~

~~[(iii) be released on a financial condition that is a bail bond under Section 77-20-204 if the individual is eligible for release on a financial condition under Subsection 77-20-204(2).]~~

~~[(c)] (5);~~

(c) A county sheriff may include in the written policy ~~[(under Subsection (3))]~~ the criteria for release relating to:

~~[(i)]~~ ~~[(a)]~~ criminal history;

~~[(ii)]~~ ~~[(b)]~~ prior instances of failing to appear for a mandatory court appearance;

~~[(iii)]~~ ~~[(c)]~~ current employment;

~~[(iv)]~~ ~~[(d)]~~ residency;

~~[(v)]~~ ~~[(e)]~~ ties to the community;

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~~(vi)~~ ~~(f)~~ an offense for which the individual was arrested;

~~(vii)~~ ~~(g)~~ any potential criminal charges that have not yet been filed;

~~(viii)~~ ~~(h)~~ the individual's health condition;

~~(ix)~~ ~~(i)~~ any potential risks to a victim, a witness, or the public; and

~~(x)~~ ~~(j)~~ any other similar factor a sheriff determines is relevant.

~~(4)~~ ~~(6)~~ Nothing in this section prohibits a court and a county from entering into an agreement regarding release.

Section 5. Section **77-20-204** is amended to read:

77-20-204. County sheriff authority to release an individual from jail on monetary bail.

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

- (a) Section 23-19-15;
- (b) Section 23-20-4;
- (c) Section 23-20-4.7;
- (d) Title 76, Chapter 6, Part 4, Theft;
- (e) Title 76, Chapter 6, Part 5, Fraud;
- (f) Title 76, Chapter 6, Part 6, Retail Theft;
- (g) Title 76, Chapter 6, Part 7, Utah Computer Crimes Act;
- (h) Title 76, Chapter 6, Part 8, Library Theft;
- (i) Title 76, Chapter 6, Part 9, Cultural Sites Protection;
- (j) Title 76, Chapter 6, Part 10, Mail Box Damage and Mail Theft;
- (k) Title 76, Chapter 6, Part 11, Identity Fraud Act;
- (l) Title 76, Chapter 6, Part 12, Utah Mortgage Fraud Act;
- (m) Title 76, Chapter 6, Part 13, Utah Automated Sales Suppression Device Act;
- (n) Title 76, Chapter 6, Part 14, Regulation of Metal Dealers;
- (o) Title 76, Chapter 6a, Pyramid Scheme Act;
- (p) Title 76, Chapter 7, Offenses Against the Family;
- (q) Title 76, Chapter 7a, Abortion Prohibition;
- (r) Title 76, Chapter 9, Part 2, Electronic Communication and Telephone Abuse;
- (s) Title 76, Chapter 9, Part 3, Cruelty to Animals;

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- (t) Title 76, Chapter 9, Part 4, Offenses Against Privacy;
- (u) Title 76, Chapter 9, Part 5, Libel; or
- (v) Title 76, Chapter 9, Part 6, Offenses Against the Flag.

(2) Except as provided in Subsection (7)(a), [~~a bail commissioner~~] a county jail official may fix a financial condition for an individual if:

(a) (i) the individual is ineligible to be released on the individual's own recognizance under Section 77-20-203;

(ii) the individual is arrested for, or charged with:

(A) a misdemeanor offense under state law; or

(B) a violation of a city or county ordinance that is classified as a class B or C misdemeanor offense;

(iii) the individual agrees in writing to appear for any future criminal proceedings related to the arrest; and

(iv) law enforcement has not submitted a probable cause statement to a magistrate; or

(b) (i) the individual is arrested for, or charged with, an eligible felony offense;

(ii) the individual is not on pretrial release for a separate criminal offense;

(iii) the individual is not on probation or parole;

(iv) the primary risk posed by the individual is the risk of failure to appear;

(v) the individual agrees in writing to appear for any future criminal proceedings related to the arrest; and

(vi) law enforcement has not submitted a probable cause statement to a magistrate ~~§§. §§~~

~~§§~~(3) [~~A bail commissioner~~] A county jail official may not fix a financial condition at a monetary amount that exceeds:

~~§§~~(a) ~~§§~~(A) \$5,000 for an eligible felony offense;

~~§§~~(b) ~~§§~~(B) \$1,950 for a class A misdemeanor offense;

~~§§~~(c) ~~§§~~(C) \$680 for a class B misdemeanor offense;

~~§§~~(d) ~~§§~~(D) \$340 for a class C misdemeanor offense;

~~§§~~(e) ~~§§~~(E) \$150 for a violation of a city or county ordinance that is classified as a class B misdemeanor; or

~~§§~~(f) ~~§§~~(F) \$80 for a violation of a city or county ordinance that is classified as a

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class C misdemeanor.

~~§(4)~~~~§(3)~~ If an individual is arrested for more than one offense, and the ~~[bail commissioner]~~ county jail official fixes a financial condition for release:

(a) ~~[the bail commissioner]~~ the county jail official shall fix the financial condition at a single monetary amount; and

(b) the single monetary amount may not exceed the monetary amount under Subsection (3) for the highest level of offense for which the individual is arrested.

~~§(5)~~~~§(4)~~ Except as provided in Subsection (7)(b), an individual shall be released if the individual posts a financial condition fixed by a ~~[bail commissioner]~~ county jail official in accordance with this section.

~~§(6)~~~~§(5)~~ ~~[If a bail commissioner]~~ If a county jail official fixes a financial condition for an individual, law enforcement shall submit a probable cause statement in accordance with Rule 9 of the Utah Rules of Criminal Procedure after the ~~[bail commissioner]~~ county jail official fixes the financial condition.

~~§(7)~~~~§(6)~~ Once a magistrate begins a review of an individual's case under Rule 9 of the Utah Rules of Criminal Procedure:

(a) ~~[a bail commissioner]~~ a county jail official may not fix or modify a financial condition for an individual; and

(b) ~~[if a bail commissioner]~~ if a county jail official fixed a financial condition for the individual before the magistrate's review, the individual may no longer be released on the financial condition.

~~§(8)~~~~§(7)~~ Nothing in this section prohibits a court and a county from entering into an agreement regarding release.

Section 6. Section **77-20-205** is amended to read:

77-20-205. Pretrial release by a magistrate or judge.

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

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

(ii) designates a condition, or a combination of conditions, to be imposed upon the

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individual's release during the time the individual awaits trial or other resolution of criminal charges; or

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

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

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

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

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

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

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

~~[(iii) orders the individual be detained during the time the individual awaits trial or other resolution of criminal charges.]~~

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

~~[(c)] (2) (a) Except as provided in Subsection (2)(b), the magistrate or judge shall issue a pretrial status order at an individual's first appearance before the court.~~

(b) The magistrate or judge ~~[shall]~~ may delay the issuance of a pretrial status order ~~[described in Subsection (2)(a)]~~ at an individual's first appearance before the court:

(i) until a pretrial detention hearing is held if a prosecuting attorney makes a motion for pretrial detention as described in Section 77-20-206;

(ii) if a party requests a delay; or

(iii) if there is good cause to delay the issuance.

~~[(d)]~~ (c) If a magistrate or judge delays the issuance of a pretrial status order under

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Subsection ~~[(2)(c)]~~ (2)(b), the magistrate or judge shall extend the temporary pretrial status order until the issuance of a pretrial status order.

(3) (a) When a magistrate or judge issues a pretrial status order, the pretrial status order shall:

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

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

(iii) order the individual to be detained during the time that individual awaits trial or other resolution of criminal charges.

(b) In making a determination about pretrial release in a pretrial status order, the magistrate or judge may not give any deference to a magistrate's decision in a temporary pretrial status order.

~~[(3)]~~ (4) In making a determination about pretrial release ~~[under Subsection (1) or (2)]~~ for a temporary pretrial status order or a pretrial status order, a magistrate or judge shall impose only conditions of release that are reasonably available and necessary to reasonably ensure:

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

(b) the safety of any witnesses or victims of the offense allegedly committed by the individual;

(c) the safety and welfare of the public; and

(d) that the individual will not obstruct, or attempt to obstruct, the criminal justice process.

~~[(4)]~~ (5) Except as provided in Subsection ~~[(5)]~~ (6), a magistrate or judge may impose a condition, or combination of conditions, ~~[under Subsection (1) or (2)]~~ in a temporary for pretrial ~~status order or a pretrial status order~~ release that requires an individual to:

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

(b) avoid contact with a victim of the alleged offense;

(c) avoid contact with a witness who:

(i) may testify concerning the alleged offense; and

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- (ii) is named in the pretrial status order;
- (d) not consume alcohol or any narcotic drug or other controlled substance unless prescribed by a licensed medical practitioner;
- (e) submit to drug or alcohol testing;
- (f) complete a substance abuse evaluation and comply with any recommended treatment or release program;
- (g) submit to electronic monitoring or location device tracking;
- (h) participate in inpatient or outpatient medical, behavioral, psychological, or psychiatric treatment;
- (i) maintain employment or actively seek employment if unemployed;
- (j) maintain or commence an education program;
- (k) comply with limitations on where the individual is allowed to be located or the times that the individual shall be, or may not be, at a specified location;
- (l) comply with specified restrictions on personal associations, place of residence, or travel;
- (m) report to a law enforcement agency, pretrial services program, or other designated agency at a specified frequency or on specified dates;
- (n) comply with a specified curfew;
- (o) forfeit or refrain from possession of a firearm or other dangerous weapon;
- (p) if the individual is charged with an offense against a child, limit or prohibit access to any location or occupation where children are located, including any residence where children are on the premises, activities where children are involved, locations where children congregate, or where a reasonable person would know that children congregate;
- (q) comply with requirements for house arrest;
- (r) return to custody for a specified period of time following release for employment, schooling, or other limited purposes;
- (s) remain in custody of one or more designated individuals who agree to:
 - (i) supervise and report on the behavior and activities of the individual; and
 - (ii) encourage compliance with all court orders and attendance at all required court proceedings;
- (t) comply with a financial condition; or

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(u) comply with any other condition that is reasonably available and necessary to ensure compliance with Subsection [(3)] (4).

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

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

(c) Notwithstanding Subsection [(5)(a)] (6)(a), the magistrate or judge may impose conditions of release not identified by the county or municipality so long as the condition does not require assistance or resources from the county or municipality.

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

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

(i) [~~the bail commissioner's~~] the county jail official's action to fix a financial condition;
or

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

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

[(7)] (8) In making a determination about pretrial release [~~under this section~~] { for a temporary pretrial status order or a pretrial status order }, the magistrate or judge may:

(a) rely upon information contained in:
(i) the indictment or information;
(ii) any sworn or probable cause statement or other information provided by law enforcement;

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- (iii) a pretrial risk assessment;
 - (iv) an affidavit of indigency described in Section 78B-22-201.5;
 - (v) witness statements or testimony; or
 - (vi) any other reliable record or source, including proffered evidence; and
 - (b) consider:
 - (i) the nature and circumstances of the offense, or offenses, that the individual was arrested for, or charged with, including:
 - (A) whether the offense is a violent offense; and
 - (B) the vulnerability of a witness or alleged victim;
 - (ii) the nature and circumstances of the individual, including the individual's:
 - (A) character;
 - (B) physical and mental health;
 - (C) family and community ties;
 - (D) employment status or history;
 - (E) financial resources;
 - (F) past criminal conduct;
 - (G) history of drug or alcohol abuse; and
 - (H) history of timely appearances at required court proceedings;
 - (iii) the potential danger to another individual, or individuals, posed by the release of the individual;
 - (iv) whether the individual was on probation, parole, or release pending an upcoming court proceeding at the time the individual allegedly committed the offense or offenses;
 - (v) the availability of:
 - (A) other individuals who agree to assist the individual in attending court when required; or
 - (B) supervision of the individual in the individual's community;
 - (vi) the eligibility and willingness of the individual to participate in various treatment programs, including drug treatment; or
 - (vii) other evidence relevant to the individual's likelihood of fleeing or violating the law if released.
- (9) ~~{A}~~The magistrate or judge may not base a determination about pretrial release

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~~{for a temporary pretrial status order or a pretrial status order }~~solely on the ~~{nature}~~seriousness or type of ~~{the}~~ offense that the individual ~~{was}~~is arrested for or charged with, unless the individual is arrested for or charged with a capital felony.

~~[(8)]~~ (10) An individual arrested for violation of a jail release agreement, or a jail release court order, issued in accordance with Section 78B-7-802:

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

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

Section 7. Section ~~77-20-207~~ is amended to read:

77-20-207. Modification of pretrial status order -- Failure to appear.

(1) [~~A motion~~] A party may move to modify a pretrial status order [~~may be made~~]:

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

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

(2) (a) Notwithstanding Subsection (1), a defendant may move to modify a pretrial status order if:

(i) the magistrate or judge imposed a financial condition as a condition of release in the pretrial status order; and

(ii) the defendant is unable to pay the financial condition within seven days after the day on which the pretrial status order is issued.

(b) For a motion under Subsection (2)(a), there is a rebuttable presumption that the defendant does not have the ability to pay the financial condition.

~~[(2)]~~ (3) (a) If a party makes a motion to modify the pretrial status order, the party shall provide notice to the opposing party sufficient to permit the opposing party to prepare for a hearing and to permit each alleged victim to be notified and be present.

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

~~[(3)]~~ (4) In ruling upon a motion to modify a pretrial status order, the judge may:

(a) rely on information as provided in Subsection [~~77-20-205(7)~~] 77-20-205(8);

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

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(c) (i) for a motion to modify a pretrial status order under Subsection (1), modify the pretrial status order, including the conditions of release, upon a finding that there has been a material change in circumstances[-]; or

(ii) for a motion to modify a pretrial status order under Subsection (2), modify the pretrial status order by reducing the amount of the financial condition or imposing nonfinancial conditions of release upon a finding that the defendant is unable to pay the amount of the financial condition in the pretrial status order.

(5) In modifying a pretrial status order upon a motion by a party~~;~~ or on the court's own motion, ~~there is a rebuttable presumption that~~ the court shall consider whether imposing a bail bond ~~be imposed~~ as a condition of release in a modified pretrial status order ~~if~~ will increase the likelihood of the defendant's appearance when:

(a) the defendant was ~~previously~~ released on the ~~individual's~~ defendant's own recognizance or on nonfinancial conditions;

(b) the defendant willfully failed to appear at a required court appearance or has failed to appear at a required court appearance more than once; and

(c) a bench warrant was issued.

(6) Subsections 77-20-205(3) through (10) apply to a determination about pretrial release in a modified pretrial status order.

Section 8. Section **77-20-208** is amended to read:

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

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

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

(b) the court shall refund any monetary bail in accordance with Subsection 77-20-402(5); and

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

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(2) A request to extend time shall:

(a) be served on:

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

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

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

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

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

Section 9. Section **77-20-209** is enacted to read:

77-20-209. Right to expedited appeal of pretrial detention.

~~{(1)}~~ If a magistrate or judge issues a pretrial status order that orders the individual be detained during the time the individual awaits trial or other resolution of criminal charges, the individual has the right to an expedited appeal of the pretrial status order.

~~{ (2) An individual has a right to an expedited appeal under Subsection (1) even if:~~

~~— (a) the individual is no longer detained;~~

~~— (b) the individual is sentenced; or~~

~~— (c) the individual entered into a plea agreement with the prosecution.~~

~~‡~~ Section 10. Section **77-20-301** is amended to read:

77-20-301. Grounds for detaining or releasing defendant on conviction and prior to sentence.

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

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

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

(2) If the court finds the defendant does not need to be detained, the court shall order the release of the defendant on suitable conditions, including conditions of release described in Subsection ~~[77-20-205(4)]~~ 77-20-205(5).

Section 11. Section **77-20-302** is amended to read:

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77-20-302. Grounds for detaining defendant while appealing the defendant's conviction -- Conditions for release while on appeal.

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

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

(i) reversal;

(ii) an order for a new trial; or

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

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

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

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

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

(2) (a) If the court makes a finding under Subsection (1) that justifies not detaining the defendant, the court shall order the release of the defendant, subject to only conditions of release that are reasonably available and necessary to reasonably ensure the appearance of the defendant as required and the safety of any other individual, property, and the community.

(b) The conditions under Subsection (2)(a) may include conditions described in Subsection [~~77-20-205(4)~~] 77-20-205(5).

(c) The court may, in the court's discretion, amend an order granting release to impose additional or different conditions of release.

(3) If the defendant is found guilty of an offense in a court not of record and files a timely notice of appeal in accordance with Subsection 78A-7-118(1) for a trial de novo, the court shall stay all terms of a sentence, unless at the time of sentencing the judge finds by a preponderance of the evidence that the defendant poses a danger to another person or the community.

(4) If a stay is ordered, the court may order postconviction restrictions on the defendant's conduct as appropriate, including:

(a) continuation of any pretrial restrictions or orders;

(b) sentencing protective orders under Section 78B-7-804;

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- (c) drug and alcohol use;
- (d) use of an ignition interlock; and
- (e) posting appropriate monetary bail.

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

(6) Any stay authorized by Subsection (3) is lifted upon the dismissal of the appeal by the district court.

Section 12. Section **77-20-401** is amended to read:

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

(1) Subject to Subsection 77-20-402(2), if an individual has been required by a [~~bail commissioner~~] county jail official, or ordered by a magistrate or judge, to post monetary bail as a condition of pretrial release, the individual may post the amount of monetary bail with the [~~bail commissioner~~] county jail official:

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

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

(2) [~~A bail commissioner~~] A county jail official shall deliver any monetary bail received under Subsection (1) to the appropriate court within three days after the day on which the monetary bail is received by the [~~bail commissioner~~] county jail official.

Section 13. **Repealer.**

This bill repeals:

Section **10-3-921, Fines -- Collection by bail commissioner -- Disposition.**

Section **10-3-922, Term of bail commissioners -- Salary -- Bond and oath.**

Section **17-32-1, Appointment of bail commissioners.**

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

Section **17-32-3, Term of bail commissioners -- No additional compensation -- Bond and oath.**

Section **17-32-4, Oaths and bonds to be filed.**