

PRETRIAL RELEASE MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Katy Hall

Senate Sponsor: Kirk A. Cullimore

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 pretrial release by a judge or magistrate;
- ▶ provides that a magistrate or judge may not base a determination about pretrial release solely on the seriousness of the offense, or the type of offense, for which an individual is arrested or charged;
- ▶ 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:

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 17-22-32, as last amended by Laws of Utah 2022, Chapter 187

34 77-20-102, as enacted by Laws of Utah 2021, Second Special Session, Chapter 4

35 77-20-201, as enacted by Laws of Utah 2021, Second Special Session, Chapter 4

36 77-20-203, as renumbered and amended by Laws of Utah 2021, Second Special

37 Session, Chapter 4

38 77-20-204, as enacted by Laws of Utah 2021, Second Special Session, Chapter 4

39 77-20-205, as enacted by Laws of Utah 2021, Second Special Session, Chapter 4

40 77-20-207, as enacted by Laws of Utah 2021, Second Special Session, Chapter 4

41 77-20-208, as enacted by Laws of Utah 2021, Second Special Session, Chapter 4

42 77-20-301, as renumbered and amended by Laws of Utah 2021, Second Special

43 Session, Chapter 4

44 77-20-302, as renumbered and amended by Laws of Utah 2021, Second Special

45 Session, Chapter 4

46 77-20-401, as enacted by Laws of Utah 2021, Second Special Session, Chapter 4

47 ENACTS:

48 77-20-209, Utah Code Annotated 1953

49 REPEALS:

50 10-3-921, as last amended by Laws of Utah 1990, Chapter 283

51 10-3-922, as last amended by Laws of Utah 1990, Chapter 283

52 17-32-1, as last amended by Laws of Utah 2021, Second Special Session, Chapter 4

53 17-32-2, as last amended by Laws of Utah 2021, Second Special Session, Chapter 4

54 17-32-3, as last amended by Laws of Utah 1990, Chapter 283

55 17-32-4, as last amended by Laws of Utah 1990, Chapter 283

56

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

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

59 **17-22-32. County jail reporting requirements.**

60 (1) As used in this section:

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

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

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

66 (A) being transported for medical care; or

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

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

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

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

73 (a) the average daily inmate population each month;

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

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

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

80 (i) the Bureau of Indian Affairs;

81 (ii) a state prison;

82 (iii) a federal prison;

83 (iv) the United States Immigration and Customs Enforcement;

84 (v) any other entity with which a county jail has entered a contract to house inmates on
85 the entity's behalf;

86 (e) the number of inmates that are denied pretrial release and held in the custody of the
87 county jail while the inmate awaited final disposition of the inmate's criminal charges;

88 (f) for each inmate booked into the county jail:

89 (i) the name of the agency that arrested the inmate;

90 (ii) the date and time the inmate was booked into and released from the custody of the
91 county jail;

92 (iii) if the inmate was released from the custody of the county jail, the reason the
93 inmate was released from the custody of the county jail;

94 (iv) if the inmate was released from the custody of the county jail on a financial
95 condition, whether the financial condition was set by a ~~[bail commissioner]~~ county sheriff or a
96 court;

97 (v) the number of days the inmate was held in the custody of the county jail before
98 disposition of the inmate's criminal charges;

99 (vi) whether the inmate was released from the custody of the county jail before final
100 disposition of the inmate's criminal charges; and

101 (vii) the state identification number of the inmate;

102 (g) the number of in-custody deaths that occurred at the county jail;

103 (h) for each in-custody death;

104 (i) the name, gender, race, ethnicity, age, and known or suspected medical diagnosis or
105 disability, if any, of the deceased;

106 (ii) the date, time, and location of death;

107 (iii) the law enforcement agency that detained, arrested, or was in the process of
108 arresting the deceased; and

109 (iv) a brief description of the circumstances surrounding the death;

110 (i) the known, or discoverable on reasonable inquiry, causes and contributing factors of
111 each of the in-custody deaths described in Subsection (2)(g);

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

- 114 (k) the county jail policies, procedures, and protocols:
- 115 (i) for treatment of an inmate experiencing withdrawal from alcohol or substance use,
- 116 including use of opiates;
- 117 (ii) that relate to the county jail's provision, or lack of provision, of medications used to
- 118 treat, mitigate, or address an inmate's symptoms of withdrawal, including methadone and all
- 119 forms of buprenorphine and naltrexone; and
- 120 (iii) that relate to screening, assessment, and treatment of an inmate for a substance use
- 121 or mental health disorder; and
- 122 (l) any report the county jail provides or is required to provide under federal law or
- 123 regulation relating to inmate deaths.
- 124 (3) (a) Subsection (2) does not apply to a county jail if the county jail:
- 125 (i) collects and stores the data described in Subsection (2); and
- 126 (ii) enters into a memorandum of understanding with the commission that allows the
- 127 commission to access the data described in Subsection (2).
- 128 (b) The memorandum of understanding described in Subsection (3)(a)(ii) shall include
- 129 a provision to protect any information related to an ongoing investigation and comply with all
- 130 applicable federal and state laws.
- 131 (c) If the commission accesses data from a county jail in accordance with Subsection
- 132 (3)(a), the commission may not release a report prepared from that data, unless:
- 133 (i) the commission provides the report for review to:
- 134 (A) the county jail; and
- 135 (B) any arresting agency that is named in the report; and
- 136 (ii) (A) the county jail approves the report for release;
- 137 (B) the county jail reviews the report and prepares a response to the report to be
- 138 published with the report; or
- 139 (C) the county jail fails to provide a response to the report within four weeks after the
- 140 day on which the commission provides the report to the county jail.
- 141 (4) The commission shall:

- 142 (a) compile the information from the reports described in Subsection (2);
- 143 (b) omit or redact any identifying information of an inmate in the compilation to the
- 144 extent omission or redaction is necessary to comply with state and federal law;
- 145 (c) submit the compilation to the Law Enforcement and Criminal Justice Interim
- 146 Committee and the Utah Substance Use and Mental Health Advisory Council before November
- 147 1 of each year; and
- 148 (d) submit the compilation to the protection and advocacy agency designated by the
- 149 governor before November 1 of each year.
- 150 (5) The commission may not provide access to or use a county jail's policies,
- 151 procedures, or protocols submitted under this section in a manner or for a purpose not
- 152 described in this section.
- 153 (6) A report including only the names and causes of death of deceased inmates and the
- 154 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:

- 158 (1) "Bail" means pretrial release.
- 159 (2) "Bail bond" means the same as that term is defined in Section 31A-35-102.
- 160 ~~[(2)]~~ (3) "Bail bond agency" means the same as that term is defined in Section
- 161 31A-35-102.
- 162 ~~[(3)]~~ (4) "Bail bond producer" means the same as that term is defined in Section
- 163 31A-35-102.
- 164 ~~[(4) "Bail commissioner" means a bail commissioner appointed in accordance with~~
- 165 ~~Section 17-32-1.]~~
- 166 (5) "County jail official" means a county sheriff or the county sheriff's designee.
- 167 ~~[(5)]~~ (6) "Exonerate" means to release and discharge a surety, or a surety's bail bond
- 168 producer, from liability for a bail bond.
- 169 ~~[(6)]~~ (7) "Financial condition" ~~[or "monetary bail"]~~ means any monetary condition that

170 is imposed to secure an individual's pretrial release.

171 ~~[(7)]~~ (8) "Forfeiture" means:

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

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

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

175 ~~[(8)]~~ (9) "Magistrate" means the same as that term is defined in Section 77-1-3.

176 (10) (a) "Material change in circumstances" includes:

177 (i) an unreasonable delay in prosecution that is not attributable to the defendant;

178 (ii) a material change in the risk that an individual poses to a victim, a witness, or the

179 public if released due to the passage of time or any other relevant factor;

180 (iii) a material change in the conditions of release or the services that are reasonably

181 available to the defendant if released;

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

183 appearances; or

184 (v) any other material change related to the defendant's risk of flight or danger to any

185 other individual or to the community if released.

186 (b) "Material change in circumstances" does not include any fact or consideration that

187 is known at the time that the pretrial status order is issued.

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

189 ~~[(9)]~~ (12) "Own recognizance" means the release of an individual without any

190 condition of release other than the individual's promise to:

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

192 (b) not commit any criminal offense.

193 ~~[(10)]~~ (13) "Pretrial detention hearing" means a hearing described in Section

194 77-20-206.

195 ~~[(11)]~~ (14) "Pretrial release" ~~[or "bail"]~~ means the release of an individual from law

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

197 charges.

198 ~~[(12)]~~ (15) "Pretrial risk assessment" means an objective, research-based, validated
199 assessment tool that measures an individual's risk of flight and risk of anticipated criminal
200 conduct while on pretrial release.

201 ~~[(13)]~~ (16) "Pretrial services program" means a program that is established to:

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

203 (b) conduct pretrial risk assessments; and

204 (c) supervise individuals granted pretrial release.

205 ~~[(14)]~~ (17) "Pretrial status order" means an order issued by a magistrate or judge that:

206 (a) releases the individual on the individual's own recognizance while the individual
207 awaits trial or other resolution of criminal charges;

208 (b) sets the terms and conditions of the individual's pretrial release while the individual
209 awaits trial or other resolution of criminal charges; or

210 (c) denies pretrial release and orders that the individual be detained while the
211 individual awaits trial or other resolution of criminal charges.

212 ~~[(15)]~~ (18) "Principal" means the same as that term is defined in Section [31A-35-102](#).

213 ~~[(16)]~~ (19) "Surety" means a surety insurer or a bail bond agency.

214 ~~[(17)]~~ (20) "Surety insurer" means the same as that term is defined in Section
215 [31A-35-102](#).

216 ~~[(18)]~~ (21) "Temporary pretrial status order" means an order issued by a magistrate
217 that:

218 (a) releases the individual on the individual's own recognizance until a pretrial status
219 order is issued;

220 (b) sets the terms and conditions of the individual's pretrial release until a pretrial status
221 order is issued; or

222 (c) denies pretrial release and orders that the individual be detained until a pretrial
223 status order is issued.

224 ~~[(19)]~~ (22) "Unsecured bond" means an individual's promise to pay a financial
225 condition if the individual fails to appear for any required court appearance.

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

227 **77-20-201. Right to bail -- Capital felony.**

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

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

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

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

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

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

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

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

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

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

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

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

254 ~~[(ii) the court finds:]~~
255 ~~[(A)]~~ (ii) ~~[that]~~ there is substantial evidence to support the charge; and
256 ~~[(B)]~~ (iii) the court finds, by clear and convincing evidence, that the ~~[person]~~ individual
257 would constitute a substantial danger to the community ~~[if released on bail]~~ after considering
258 available conditions of release that the court may impose if the individual is released on bail; or

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

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

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

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

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

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

273 (3) For purposes of Subsection (1)(a), any arrest or charge for a violation of Section
274 76-5-202, aggravated murder, is a capital felony unless:

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

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

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

279 **77-20-203. County sheriff authority to release an individual from jail on own**
280 **recognizance.**

281 (1) As used in this section:

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

283 (b) "Violent felony" means the same as that term is defined in Subsection
284 76-3-203.5(1)(c)(i).

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

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

288 (b) the individual was not arrested for:

289 (i) a violent felony;

290 (ii) a qualifying offense;

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

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

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

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

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

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

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

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

305 (i) criminal history;

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

307 (iii) current employment;

308 (iv) residency;

309 (v) ties to the community;

- 310 (vi) an offense for which the individual was arrested;
 - 311 (vii) any potential criminal charges that have not yet been filed;
 - 312 (viii) the individual's health condition;
 - 313 (ix) any potential risks to a victim, a witness, or the public; and
 - 314 (x) any other similar factor a sheriff determines is relevant.
- 315 (4) Nothing in this section prohibits a court and a county from entering into an
316 agreement regarding release.

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

318 **77-20-204. County sheriff authority to release an individual from jail on**
319 **monetary bail.**

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

- 322 (a) Section [23-19-15](#);
- 323 (b) Section [23-20-4](#);
- 324 (c) Section [23-20-4.7](#);
- 325 (d) Title 76, Chapter 6, Part 4, Theft;
- 326 (e) Title 76, Chapter 6, Part 5, Fraud;
- 327 (f) Title 76, Chapter 6, Part 6, Retail Theft;
- 328 (g) Title 76, Chapter 6, Part 7, Utah Computer Crimes Act;
- 329 (h) Title 76, Chapter 6, Part 8, Library Theft;
- 330 (i) Title 76, Chapter 6, Part 9, Cultural Sites Protection;
- 331 (j) Title 76, Chapter 6, Part 10, Mail Box Damage and Mail Theft;
- 332 (k) Title 76, Chapter 6, Part 11, Identity Fraud Act;
- 333 (l) Title 76, Chapter 6, Part 12, Utah Mortgage Fraud Act;
- 334 (m) Title 76, Chapter 6, Part 13, Utah Automated Sales Suppression Device Act;
- 335 (n) Title 76, Chapter 6, Part 14, Regulation of Metal Dealers;
- 336 (o) Title 76, Chapter 6a, Pyramid Scheme Act;
- 337 (p) Title 76, Chapter 7, Offenses Against the Family;

- 338 (q) Title 76, Chapter 7a, Abortion Prohibition;
- 339 (r) Title 76, Chapter 9, Part 2, Electronic Communication and Telephone Abuse;
- 340 (s) Title 76, Chapter 9, Part 3, Cruelty to Animals;
- 341 (t) Title 76, Chapter 9, Part 4, Offenses Against Privacy;
- 342 (u) Title 76, Chapter 9, Part 5, Libel; or
- 343 (v) Title 76, Chapter 9, Part 6, Offenses Against the Flag.
- 344 (2) Except as provided in Subsection (7)(a), [~~a bail commissioner~~] a county jail official
- 345 may fix a financial condition for an individual if:
 - 346 (a) (i) the individual is ineligible to be released on the individual's own recognizance
 - 347 under Section [77-20-203](#);
 - 348 (ii) the individual is arrested for, or charged with:
 - 349 (A) a misdemeanor offense under state law; or
 - 350 (B) a violation of a city or county ordinance that is classified as a class B or C
 - 351 misdemeanor offense;
 - 352 (iii) the individual agrees in writing to appear for any future criminal proceedings
 - 353 related to the arrest; and
 - 354 (iv) law enforcement has not submitted a probable cause statement to a magistrate; or
 - 355 (b) (i) the individual is arrested for, or charged with, an eligible felony offense;
 - 356 (ii) the individual is not on pretrial release for a separate criminal offense;
 - 357 (iii) the individual is not on probation or parole;
 - 358 (iv) the primary risk posed by the individual is the risk of failure to appear;
 - 359 (v) the individual agrees in writing to appear for any future criminal proceedings
 - 360 related to the arrest; and
 - 361 (vi) law enforcement has not submitted a probable cause statement to a magistrate.
- 362 (3) [~~A bail commissioner~~] A county jail official may not fix a financial condition at a
- 363 monetary amount that exceeds:
 - 364 (a) \$5,000 for an eligible felony offense;
 - 365 (b) \$1,950 for a class A misdemeanor offense;

366 (c) \$680 for a class B misdemeanor offense;
367 (d) \$340 for a class C misdemeanor offense;
368 (e) \$150 for a violation of a city or county ordinance that is classified as a class B
369 misdemeanor; or

370 (f) \$80 for a violation of a city or county ordinance that is classified as a class C
371 misdemeanor.

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

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

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

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

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

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

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

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

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

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

395 **77-20-205. Pretrial release by a magistrate or judge.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

430 (ii) if a party requests a delay; or

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

432 ~~[(d)] (c) If a magistrate or judge delays the issuance of a pretrial status order under~~
433 ~~Subsection [(2)(c)] (2)(b), the magistrate or judge shall extend the temporary pretrial status~~
434 ~~order until the issuance of a pretrial status order.~~

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

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

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

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

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

447 ~~[(3)] (4) In making a determination about pretrial release [under Subsection (1) or (2)],~~
448 ~~a magistrate or judge shall impose only conditions of release that are reasonably available and~~
449 ~~necessary to reasonably ensure:~~

- 450 (a) the individual's appearance in court when required;
- 451 (b) the safety of any witnesses or victims of the offense allegedly committed by the
- 452 individual;
- 453 (c) the safety and welfare of the public; and
- 454 (d) that the individual will not obstruct, or attempt to obstruct, the criminal justice
- 455 process.

456 ~~[(4)]~~ (5) Except as provided in Subsection ~~[(5)]~~ (6), a magistrate or judge may impose

457 a condition, or combination of conditions, ~~[under Subsection (1) or (2)]~~ for pretrial release that

458 requires an individual to:

- 459 (a) not commit a federal, state, or local offense during the period of pretrial release;
- 460 (b) avoid contact with a victim of the alleged offense;
- 461 (c) avoid contact with a witness who:
 - 462 (i) may testify concerning the alleged offense; and
 - 463 (ii) is named in the pretrial status order;
- 464 (d) not consume alcohol or any narcotic drug or other controlled substance unless
- 465 prescribed by a licensed medical practitioner;
- 466 (e) submit to drug or alcohol testing;
- 467 (f) complete a substance abuse evaluation and comply with any recommended
- 468 treatment or release program;
- 469 (g) submit to electronic monitoring or location device tracking;
- 470 (h) participate in inpatient or outpatient medical, behavioral, psychological, or
- 471 psychiatric treatment;
 - 472 (i) maintain employment or actively seek employment if unemployed;
 - 473 (j) maintain or commence an education program;
 - 474 (k) comply with limitations on where the individual is allowed to be located or the
 - 475 times that the individual shall be, or may not be, at a specified location;
 - 476 (l) comply with specified restrictions on personal associations, place of residence, or
 - 477 travel;

478 (m) report to a law enforcement agency, pretrial services program, or other designated
479 agency at a specified frequency or on specified dates;

480 (n) comply with a specified curfew;

481 (o) forfeit or refrain from possession of a firearm or other dangerous weapon;

482 (p) if the individual is charged with an offense against a child, limit or prohibit access
483 to any location or occupation where children are located, including any residence where
484 children are on the premises, activities where children are involved, locations where children
485 congregate, or where a reasonable person would know that children congregate;

486 (q) comply with requirements for house arrest;

487 (r) return to custody for a specified period of time following release for employment,
488 schooling, or other limited purposes;

489 (s) remain in custody of one or more designated individuals who agree to:

490 (i) supervise and report on the behavior and activities of the individual; and

491 (ii) encourage compliance with all court orders and attendance at all required court
492 proceedings;

493 (t) comply with a financial condition; or

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

496 [~~(5)~~] (6) (a) If a county or municipality has established a pretrial services program, the
497 magistrate or judge shall consider the services that the county or municipality has identified as
498 available in determining what conditions of release to impose.

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

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

505 [~~(6)~~] (7) (a) If the magistrate or judge determines that a financial condition, other than

506 an unsecured bond, is necessary to impose as a condition of release, the magistrate or judge
507 shall consider the individual's ability to pay when determining the amount of the financial
508 condition.

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

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

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

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

519 [~~(7)~~] (8) In making a determination about pretrial release [~~under this section~~], the
520 magistrate or judge may:

521 (a) rely upon information contained in:

522 (i) the indictment or information;

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

525 (iii) a pretrial risk assessment;

526 (iv) an affidavit of indigency described in Section 78B-22-201.5;

527 (v) witness statements or testimony; or

528 (vi) any other reliable record or source, including proffered evidence; and

529 (b) consider:

530 (i) the nature and circumstances of the offense, or offenses, that the individual was
531 arrested for, or charged with, including:

532 (A) whether the offense is a violent offense; and

533 (B) the vulnerability of a witness or alleged victim;

- 534 (ii) the nature and circumstances of the individual, including the individual's:
535 (A) character;
536 (B) physical and mental health;
537 (C) family and community ties;
538 (D) employment status or history;
539 (E) financial resources;
540 (F) past criminal conduct;
541 (G) history of drug or alcohol abuse; and
542 (H) history of timely appearances at required court proceedings;
543 (iii) the potential danger to another individual, or individuals, posed by the release of
544 the individual;
545 (iv) whether the individual was on probation, parole, or release pending an upcoming
546 court proceeding at the time the individual allegedly committed the offense or offenses;
547 (v) the availability of:
548 (A) other individuals who agree to assist the individual in attending court when
549 required; or
550 (B) supervision of the individual in the individual's community;
551 (vi) the eligibility and willingness of the individual to participate in various treatment
552 programs, including drug treatment; or
553 (vii) other evidence relevant to the individual's likelihood of fleeing or violating the
554 law if released.
555 (9) The magistrate or judge may not base a determination about pretrial release solely
556 on the seriousness or type of offense that the individual is arrested for or charged with, unless
557 the individual is arrested for or charged with a capital felony.
558 ~~(8)~~ (10) An individual arrested for violation of a jail release agreement, or a jail
559 release court order, issued in accordance with Section 78B-7-802:
560 (a) may not be released before the individual's first appearance before a magistrate or
561 judge; and

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

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

564 **77-20-207. Modification of pretrial status order -- Failure to appear.**

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

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

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

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

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

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

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

576 [~~(2)~~] (3) (a) If a party makes a motion to modify the pretrial status order, the party shall
577 provide notice to the opposing party sufficient to permit the opposing party to prepare for a
578 hearing and to permit each alleged victim to be notified and be present.

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

581 [~~(3)~~] (4) In ruling upon a motion to modify a pretrial status order, the judge may:

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

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

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

589 (ii) for a motion to modify a pretrial status order under Subsection (2), modify the

590 pretrial status order by reducing the amount of the financial condition or imposing nonfinancial
591 conditions of release upon a finding that the defendant is unable to pay the amount of the
592 financial condition in the pretrial status order.

593 (5) In modifying a pretrial status order upon a motion by a party or on the court's own
594 motion, the court shall consider whether imposing a bail bond as a condition of release in a
595 modified pretrial status order will increase the likelihood of the defendant's appearance when:

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

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

600 (c) a bench warrant was issued.

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

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

604 **77-20-208. Release from conditions when charges not filed in specified time**
605 **period.**

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

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

612 (b) the court shall refund any monetary bail in accordance with Subsection
613 77-20-402(5); and

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

616 (2) A request to extend time shall:

617 (a) be served on:

- 618 (i) the individual and the individual's attorney; and
- 619 (ii) if a bail bond was used to post monetary bail, the surety; and
- 620 (b) except as provided in Subsection (3), be granted for a period of up to 60 days.
- 621 (3) The magistrate may grant a request to extend time for a period of up to 120 days
- 622 upon a showing of good cause.

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

624 time.

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

626 **77-20-209. Right to expedited appeal of pretrial detention.**

627 If a magistrate or judge issues a pretrial status order that orders the individual be

628 detained during the time the individual awaits trial or other resolution of criminal charges, the

629 individual has the right to an expedited appeal of the pretrial status order.

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

631 **77-20-301. Grounds for detaining or releasing defendant on conviction and prior**

632 **to sentence.**

633 (1) Upon conviction, by plea or trial, the court shall order that the convicted defendant

634 who is waiting imposition or execution of sentence be detained, unless the court finds, by clear

635 and convincing evidence, presented by the defendant that the defendant:

- 636 (a) is not likely to flee the jurisdiction of the court if released; and
- 637 (b) will not pose a danger to the physical, psychological, or financial and economic
- 638 safety or well-being of any other person or the community if released.

639 (2) If the court finds the defendant does not need to be detained, the court shall order

640 the release of the defendant on suitable conditions, including conditions of release described in

641 Subsection [~~77-20-205(4)~~] 77-20-205(5).

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

643 **77-20-302. Grounds for detaining defendant while appealing the defendant's**

644 **conviction -- Conditions for release while on appeal.**

645 (1) The court shall order that a defendant who has been found guilty of an offense in a

646 court of record and sentenced to a term of imprisonment in jail or prison, and who has filed an
647 appeal or a petition for a writ of certiorari, be detained, unless the court finds:

- 648 (a) the appeal raises a substantial question of law or fact likely to result in:
649 (i) reversal;
650 (ii) an order for a new trial; or
651 (iii) a sentence that does not include a term of imprisonment in jail or prison;
652 (b) the appeal is not for the purpose of delay; and
653 (c) by clear and convincing evidence presented by the defendant, that the defendant:
654 (i) is not likely to flee the jurisdiction of the court if released; and
655 (ii) will not pose a danger to the physical, psychological, or financial and economic
656 safety or well-being of any other person or the community if released.

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

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

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

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

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

- 672 (a) continuation of any pretrial restrictions or orders;
673 (b) sentencing protective orders under Section 78B-7-804;

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

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

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

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

682 **77-20-401. Payment of monetary bail to sheriff -- Specific payment methods.**

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

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

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

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

694 Section 13. **Repealer.**

695 This bill repeals:

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

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

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

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

700 Section **17-32-3, Term of bail commissioners -- No additional compensation --**

701 **Bond and oath.**

702

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