

Agenda
Pretrial Release & Supervision Committee Meeting
 May 7, 2020
 12:00 – 1:00 p.m.

Meeting held via WEBEX

12:00	Welcome and Approval of Minutes <ul style="list-style-type: none"> • February 6, 2019 	Action	Tab 1	Judge George Harmond
12:05	HB 206 (<i>effective October 1, 2020</i>) <ul style="list-style-type: none"> • Pretrial Release Decision Process • Financial Declaration • Unsecured Bond 	Discussion	Tab 2	Keisa Williams
12:35	Pretrial Practices during COVID	Discussion	Tab 3	Keisa Williams
12:55	Cancel or Reschedule July 2 nd meeting due to 4 th of July holiday	Action		Judge George Harmond
1:00	Adjourn	Action		Judge George Harmond

Committee Web Page: <https://www.utcourts.gov/utc/pretrial-release/>

2020 Meeting Schedule:

June 4, 2020	October 1, 2020
July 2, 2020	November 5, 2020
August 6, 2020	December 3, 2020
September 3, 2020	

Tab 1

**UTAH JUDICIAL COUNCIL
STANDING COMMITTEE ON PRETRIAL RELEASE AND SUPERVISION
MEETING MINUTES**

Conference Rooms B & C, Matheson Courthouse
450 South State Street, Salt Lake City, Utah 84114
February 6, 2020 – 12 p.m. (noon) to 1 p.m.

DRAFT

MEMBERS:	PRESENT	EXCUSED	GUESTS:
Judge George Harmond <i>Chair</i>	x		Tony Choate, Second Chance Bail Bonds
Wayne Carlos	x		Kele Griffone, SLCo Criminal Justice Services
Kimberly Crandall	x		Brent Packer, Legislative Auditor
Judge Keith Eddington – by phone	x		August Lehman, Legislative Auditor
Rep. Eric Hutchings	x		
Brent Johnson	x		
Comm. Lorene Kamalu	x		STAFF:
Judge William Kendall	x		Keisa Williams
Lt. Corey Kiddle	x		Minhvan Brimhall (recording secretary)
Andrea Jacobsen (for Pat Kimball)	x		
Richard Mauro	x		
Judge Brendan McCullagh	x		
Judge Jeanne Robison	x		
Reed Stringham	x		
Cara Tangaro	x		
Joanna Landau (for Marshall Thompson)	x		

Welcome and Approval of Minutes (Judge Harmond):

Judge Harmond welcomed committee members and guests to the meeting. The committee considered the minutes from the October 3, 2019 meeting. With no objections or further discussion, Cara Tangaro moved to approve the minutes. Judge Robison seconded the motion. The minutes were unanimously approved.

Pretrial Reform Subcommittee:

Given the urgency of emerging pretrial caselaw, the Judicial Council created a pretrial reform subcommittee of this Standing Committee and charged the subcommittee with:

- conducting research into other states and identifying best practices nationally,
- starting from scratch on all pretrial laws and procedures, and identifying the “perfect” pretrial model,
- determining how Utah’s current processes differ from the “perfect” model,
- developing the perfect model for Utah,
- setting a goal for achieving the Utah model,
- identifying incremental milestones,
- identifying challenges to achieving the milestones (statutory amendments, funding, pretrial supervision resources, technology, etc.),
- recommending solutions to each challenge, and
- developing a plan of action.

The subcommittee will report its findings and recommendations to this Standing Committee on Pretrial Release and Supervision for review. The Standing Committee will make any necessary changes and present recommendations to the Judicial Council for consideration. The subcommittee members are:

- Judge Todd Shaughnessy (Chair) – 3rd District Court Judge, Judicial Council member
- Keisa Williams – AOC, Associate General Counsel
- Heidi Anderson – AOC, IT Director
- Doug Thompson – Utah County Public Defender, Chair of Supreme Court’s Advisory Committee on the Rules of Criminal Procedure
- Chris Allred – Weber County Attorney
- Sheriff Brian Nielson – Sanpete County Sheriff (Sheriff’s Association representative)

The subcommittee will be traveling to New Jersey in March to meet with the NJ judiciary, AOC staff, Pretrial Supervision Office, Public Defender, District Attorney, and others to study their pretrial reform efforts. Ms. Williams will provide an update from that visit at the next meeting. The subcommittee also hopes to visit or meet remotely with several other states engaging in widescale reform. The Judicial Council has asked the subcommittee to complete its work as quickly as possible.

Ms. Williams has been traveling around the state talking to judges, law enforcement, public defenders, and prosecutors about emerging pretrial caselaw and the Committee’s work. Ms. Williams has distributed memorandums to each stakeholder group and encouraged them to provide feedback as reform efforts progress. The most pressing and most challenging issues likely to come out of a case in Utah or the 10th Circuit is the need to provide judges with financial information at the time of arrest so that an individual’s ability-to-pay can be determined, and the infrastructure required to hold full due process hearings within 48 hours of arrest for individuals still in custody. The subcommittee will also be focusing on identifying technological solutions.

Committee members provided recommendations and ideas for consideration by the subcommittee in developing a proposal:

- The Utah League of Cities and Towns should be included
- Accessibility of clients and information is critical, especially PSAs and criminal histories
- Attorneys need the ability to communicate privately with clients prior to hearings, with sufficient time to adequately prepare
- Drill down into how information can be exchanged expeditiously, including communication with pretrial supervision staff
- Technical solutions should be used as much as possible

Technical Updates to PC System/PSA:

Decision-Making Framework

Counties with pretrial supervision programs have different supervision options available at each supervision level (PRL 1-5). Currently, PSAs statewide only list “generic” conditions with a “where available” caveat to account for counties without pretrial services. Counties fortunate enough to have pretrial services must refer to a different, paper-version of their custom supervision conditions. In addition, the screens in Judicial Workspace do not provide a list of conditions so judges have to type in each condition separately.

In March, programming to customize each county’s unique supervision conditions on the decision-making framework page of the PSA will be complete, and judges’ screens in Judicial Workspace will list each condition separately so that judges can simply check the appropriate boxes. The programming also allows conditions to be edited on a county-by-county basis at any time if/when new programs are created or supervision conditions change. Ms. Williams provided a demonstration of the technical changes, screens viewed by judges, and changes to the DMF page of the PSA.

National Criminal History Information

When the court’s system queries the national criminal history database, the information that comes back from other states is indeterminable by a computer. When that happens, a PSA is not auto-generated, resulting in the loss of about 30% of PSAs statewide in any given week. The Judicial Council allocated approximately \$400,000 to fix the issue and that programming is underway with a completion date of no later than June 30, 2020. Once completed, the system will send PSAs with national criminal history “hits” to a queue. Humans will have to review the out-of-state criminal history information and re-calculate PSAs on a 24/7/365 basis. The re-calculated PSAs will be auto-generated and sent to judges in real time. Salt Lake County Pretrial Services has agreed to contract with the AOC to conduct the reviews/re-calculations. The Council will be reviewing budget allocations to account for those ongoing costs.

Ms. Williams met with Lincoln Shurtz at the Utah Association of Counties about getting on the next UAC conference agenda to discuss pretrial caselaw and reform efforts, but has not yet received a date/time. Commissioner Kamalu will work with Ms. Williams to secure a spot at the next conference.

Committee meeting schedule:

The Committee discussed meeting schedules and decided to:

- Cancel the March 5th meeting
- Change the meeting schedule to every other month starting April 2nd
- After the subcommittee has completed its work, the Committee will reassess the schedule to determine whether monthly meetings are needed
- All currently scheduled meetings will remain on the calendar as placeholders in case a meeting is necessary, with every other month canceled as the date approaches

Adjourn:

There being no further business, the meeting adjourned at 12:40 pm. The next meeting is scheduled for April 2, 2020 at 12 pm (noon) in the Judicial Council room.

Tab 2

BAIL AND PRETRIAL RELEASE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Pitcher

Senate Sponsor: Todd Weiler

Eric K. Hutchings

LONG TITLE

General Description:

This bill makes changes to provisions relating to bail.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides procedural changes related to law enforcement issued citations;
- ▶ creates a presumption of release for individuals arrested for certain criminal offenses while the individual awaits trial;
- ▶ provides that a person who is eligible for pretrial release shall be released under the least restrictive reasonably available conditions to ensure the appearance of the accused and the safety to the public;
- ▶ provides standards and guidance for imposition of pretrial release conditions and pretrial detention;
- ▶ creates a presumption of pretrial detention for certain criminal offenses;
- ▶ specifies the conditions under which a defendant may be denied pretrial release;
- ▶ specifies pretrial release conditions that may be ordered by the court;
- ▶ provides reporting requirements related to individuals released from law enforcement custody on various conditions;
- ▶ reduces the time allowance for bond forfeiture;
- ▶ creates a special revenue fund to fund pretrial services programs with money

29 obtained from bond forfeiture proceedings; and
30 ▶ makes technical and conforming changes.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 This bill provides a special effective date.

35 **Utah Code Sections Affected:**

36 AMENDS:

- 37 77-7-19, as last amended by Laws of Utah 2009, Chapter 292
- 38 77-7-20, as last amended by Laws of Utah 2018, Chapter 309
- 39 77-7-21, as last amended by Laws of Utah 2009, Chapter 292
- 40 77-17-8, as last amended by Laws of Utah 1988, Second Special Session, Chapter 4
- 41 77-18a-1, as last amended by Laws of Utah 2016, Chapter 234
- 42 77-20-1, as last amended by Laws of Utah 2019, Chapters 184 and 397
- 43 77-20-4, as last amended by Laws of Utah 2019, Chapter 397
- 44 77-20-7, as last amended by Laws of Utah 2016, Chapter 234
- 45 77-20-8, as last amended by Laws of Utah 1988, Chapter 160
- 46 77-20-8.5, as last amended by Laws of Utah 2016, Chapter 234
- 47 77-20-9, as last amended by Laws of Utah 2018, Chapter 281
- 48 77-20-10, as last amended by Laws of Utah 2016, Chapter 234
- 49 77-20b-101, as last amended by Laws of Utah 2016, Chapter 234
- 50 77-20b-102, as last amended by Laws of Utah 2016, Chapter 234
- 51 77-20b-104, as last amended by Laws of Utah 2016, Chapter 234
- 52 78A-2-220, as last amended by Laws of Utah 2013, Chapter 245

53 ENACTS:

- 54 63M-7-213, Utah Code Annotated 1953
- 55 77-20-1.1, Utah Code Annotated 1953

56 REPEALS:

57 [77-20-3](#), as last amended by Laws of Utah 2016, Chapter 234

58

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

60 Section 1. Section **63M-7-213** is enacted to read:

61 **63M-7-213. Pretrial release programs special revenue fund -- Funding -- Uses.**

62 (1) As used in this section:

63 (a) "Commission" means the Commission on Criminal and Juvenile Justice created in

64 Section [63M-7-201](#).

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

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

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

70 (4) The fund shall consist of:

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

72 (b) appropriations from the Legislature;

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

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

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

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

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

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

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

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

89 (a) the requirements to complete the grant application;

90 (b) requirements for receiving funding;

91 (c) criteria for the approval of a grant application; and

92 (d) support offered by the commission to complete a grant application.

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

94 (a) review the grant application for completeness;

95 (b) make a determination regarding the grant application;

96 (c) inform the grant applicant of the commission's determination regarding the grant
97 application; and

98 (d) if approved, award grants from the fund to the grant applicant.

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

102 Section 2. Section 77-7-19 is amended to read:

103 **77-7-19. Appearance required by citation -- Arrest for failure to appear --**

104 **Transfer of cases -- Disposition of fines and costs.**

105 (1) ~~[A person]~~ An individual receiving a citation issued pursuant to Section 77-7-18
106 shall appear ~~[before the magistrate]~~ in the court designated in the citation on or before the time
107 and date specified in the citation unless ~~[the uniform bail schedule adopted by the Judicial~~
108 ~~Council or Subsection 77-7-21(1) permits forfeiture of bail for the offense charged.];~~

109 (a) the citation states that the court will, within five to 14 days, notify the individual of
110 when to appear; or

111 (b) the individual is permitted to remit the fine and other penalties without a personal
112 appearance in accordance with a uniform fine schedule adopted by the Judicial Council or by

113 court order under Section 77-7-21.

114 (2) A citation may not require ~~[a person]~~ an individual to appear or contact the court
115 sooner than five days or later than 14 days following its issuance.

116 ~~[(3) (a) A person who receives a citation and who fails to comply with Section 77-7-21~~
117 ~~on or before the time and date and at the court specified is subject to arrest.]~~

118 ~~[(b) The magistrate may issue a warrant of arrest based upon a citation that was served~~
119 ~~and filed in accordance with Section 77-7-20.]~~

120 ~~[(4) Except where otherwise provided by law, a citation or information issued for~~
121 ~~violations of Title 41, Motor Vehicles, shall state that the person receiving the citation or~~
122 ~~information shall appear before the magistrate who has jurisdiction over the offense charged.]~~

123 ~~[(5) Any justice court judge may, upon the motion of either the defense attorney or~~
124 ~~prosecuting attorney, based on a lack of territorial jurisdiction or the disqualification of the~~
125 ~~judge, transfer cases to a justice court with territorial jurisdiction or the district court within the~~
126 ~~county.]~~

127 (3) If the individual cited does not appear before the court as directed by the citation or
128 the court, or pay the fine as allowed by Section 77-7-21, the court may issue a bench warrant
129 for the individual's arrest.

130 ~~[(6) (4) (a) Clerks and other administrative personnel serving the courts shall [ensure~~
131 ~~that all citations for violation of Title 41, Motor Vehicles, are filed in a court with jurisdiction~~
132 ~~and venue and shall refuse to receive citations that should be filed in another court] identify for~~
133 the judge any citations over which the court may lack jurisdiction.

134 ~~[(b) Fines, fees, costs, and forfeitures imposed or collected for violations of Title 41,~~
135 ~~Motor Vehicles, which are filed contrary to this section shall be paid to the entitled~~
136 ~~municipality or county by the state, county, or municipal treasurer who has received the fines,~~
137 ~~fees, costs, or forfeitures from the court which collected them.]~~

138 ~~[(c) The accounting and remitting of sums due shall be at the close of the fiscal year of~~
139 ~~the municipality or county which has received fines, fees, costs, or forfeitures as a result of any~~
140 ~~improperly filed citations.]~~

141 (b) Upon determining that the court lacks jurisdiction over a citation, the court shall:

142 (i) transfer the case to a court with jurisdiction;

143 (ii) if the court cannot readily identify a court with jurisdiction, dismiss the charges
144 contained in the citation; and

145 (iii) notify the prosecutor of the transfer or dismissal.

146 (c) Any fine, fee, or forfeiture collected by a court that lacks jurisdiction shall be:

147 (i) transferred to the court receiving the case; or

148 (ii) if the case is dismissed, returned to the defendant.

149 Section 3. Section 77-7-20 is amended to read:

150 **77-7-20. Service of citation on defendant -- Filing in court -- Electronic filing --**

151 **Contents of citations.**

152 (1) Except as provided in Subsection (4), a peace officer or ~~[public]~~ other authorized
153 official who issues a citation pursuant to Section 77-7-18 shall give the citation to the
154 individual cited and shall, within five business days, electronically file the data from
155 Subsections (2)(a) through (2)(~~g~~)(h) with the court specified in the citation. The data
156 transmission shall use the court's electronic filing interface. A nonconforming filing is not
157 effective.

158 (2) The citation issued under authority of this chapter shall contain the following data:

159 (a) the name, address, and phone number of the court before which the individual is to
160 appear;

161 (b) the name and date of birth of the individual cited;

162 (c) a brief description of the offense charged;

163 (d) the date, time, and place at which the offense is alleged to have occurred;

164 (e) the date on which the citation was issued;

165 (f) the name of the peace officer or ~~[public]~~ official who issued the citation, and the
166 name of the arresting individual if ~~[an arrest was made by a private party]~~ a private party made
167 the arrest and the citation was issued in lieu of taking the arrested individual before a
168 magistrate;

169 (g) the ~~[time and]~~ date on or ~~[before and after]~~ date range during which the individual
 170 is to appear or a statement that the court will notify the individual of the time to appear;
 171 ~~[(h) the address of the court in which the individual is to appear;]~~
 172 ~~[(i)]~~ (h) whether the offense is a domestic violence offense; and
 173 ~~[(j)]~~ (i) a notice containing substantially the following language:

174 READ CAREFULLY

175 This citation is not an information and will not be used as an information without your
 176 consent. If an information is filed you will be provided a copy by the court. You MUST
 177 appear in court on or before the time set in this citation or as directed by the court. IF YOU
 178 FAIL TO APPEAR, THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST.

179 (3) By electronically filing the data with the court, the peace officer or ~~[public]~~ official
 180 ~~[certifies]~~ affirms to the court that:

181 (a) the citation or information, including the summons and complaint, was ~~[served~~
 182 ~~upon]~~ delivered to the defendant [in accordance with the law];

183 (b) the defendant committed the offense set forth in the ~~[served documents]~~ citation;
 184 and

185 (c) the court to which the defendant was directed to appear ~~[is the proper court pursuant~~
 186 ~~to Section 77-7-21]~~ has jurisdiction over the offense charged.

187 (4) (a) If a citing law enforcement officer is not reasonably able to access the e-filing
 188 system, the citation need not be filed electronically if being filed with a justice court.

189 (b) The court may accept an electronic filing received after five business days if:

190 (i) the defendant consents to the filing; and

191 (ii) the court finds the interests of justice would be best served by accepting the filing.

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

193 **77-7-21. Proceeding on citation -- Voluntary forfeiture of bail -- Parent signature**
 194 **required -- Information, when required.**

195 (1) (a) ~~[A copy of the citation issued under Section 77-7-18 that is filed with the~~
 196 ~~magistrate]~~ A citation filed with the court may [be used], with the consent of the defendant,

197 serve in lieu of an information to which the [person cited] defendant may plead guilty or no
198 contest to the charge or charges listed and be sentenced [or on which bail may be forfeited]
199 accordingly.

200 ~~[(b) With the magistrate's approval, a person may voluntarily forfeit bail without~~
201 ~~appearance being required in any case of a class B misdemeanor or less.]~~

202 ~~[(c) Voluntary forfeiture of bail shall be entered as a conviction and treated the same as~~
203 ~~if the accused pleaded guilty.]~~

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

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

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

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

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

214 (v) a violation that appears to:

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

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

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

219 (d) If the person cited is under 18 years of age, [and if any of the charges allege a
220 violation of Title 41, Motor Vehicles,] the court shall promptly mail a copy or notice of the
221 citation [or a notice of the citation] to the address as shown on the citation, to the attention of
222 the parent or guardian of the defendant.

223 (2) [An information shall be filed and] If the individual pleads not guilty to the offense
224 charged, further proceedings shall be held in accordance with the Rules of Criminal Procedure

225 and all other applicable provisions of this code [~~if the person cited pleads not guilty to the~~
226 ~~offense charged~~].

227 [~~(3) (a) The information is an original pleading.~~]

228 [~~(b) If a person cited waives by written agreement the filing of the information, the~~
229 ~~prosecution may proceed on the citation.~~]

230 Section 5. Section **77-17-8** is amended to read:

231 **77-17-8. Mistake in charging offense -- Procedure -- Witnesses.**

232 If₂ at any time before verdict or judgment₂ a mistake [~~has been~~] is made in charging the
233 proper offense, and [~~it appears that~~] there is probable cause to believe that the defendant is
234 chargeable with another offense, the court may commit [~~him or require him to give bail under~~
235 ~~Section 77-20-1 for his appearance to answer to the proper charge when filed, and may also~~
236 ~~require witnesses to give bail for their appearance~~] the defendant or require the defendant to
237 comply with one or more pretrial release conditions in accordance with Section 77-20-1 to
238 ensure the defendant's appearance in court.

239 Section 6. Section **77-18a-1** is amended to read:

240 **77-18a-1. Appeals -- When proper.**

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

242 (a) a final judgment of conviction, whether by verdict or plea;

243 (b) an order made after judgment that affects the substantial rights of the defendant;

244 (c) an order adjudicating the defendant's competency to proceed further in a pending
245 prosecution; or

246 (d) an order denying bail, as provided in [~~Subsection 77-20-1(8)~~] Section 77-20-1.

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

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

250 (a) a final judgment of dismissal, including a dismissal of a felony information
251 following a refusal to bind the defendant over for trial;

252 (b) a pretrial order dismissing a charge on the ground that the court's suppression of

- 253 evidence has substantially impaired the prosecution's case;
- 254 (c) an order granting a motion to withdraw a plea of guilty or no contest;
- 255 (d) an order arresting judgment or granting a motion for merger;
- 256 (e) an order terminating the prosecution because of a finding of double jeopardy or
- 257 denial of a speedy trial;
- 258 (f) an order granting a new trial;
- 259 (g) an order holding a statute or any part of it invalid;
- 260 (h) an order adjudicating the defendant's competency to proceed further in a pending
- 261 prosecution;
- 262 (i) an order finding, pursuant to Title 77, Chapter 19, Part 2, Competency for
- 263 Execution, that an inmate sentenced to death is incompetent to be executed;
- 264 (j) an order reducing the degree of offense pursuant to Section 76-3-402; or
- 265 (k) an illegal sentence.

266 (4) In addition to any appeal permitted by Subsection (3), the prosecution may seek
 267 discretionary appellate review of any interlocutory order entered before jeopardy attaches.

268 Section 7. Section 77-20-1 is amended to read:

269 **77-20-1. Right to bail -- Pretrial status order -- Denial of bail -- Detention hearing**
 270 **-- Motion to modify.**

271 (1) As used in this chapter:

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

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

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

278 (d) "Pretrial status order" means an order issued by the court exercising jurisdiction
 279 over an individual charged with a criminal offense that sets the terms and conditions of the
 280 individual's pretrial release or denies pretrial release and orders that the individual be detained

281 pending resolution of the criminal charges.

282 ~~[(b)]~~ (e) "Surety" and "sureties" mean a surety insurer or a bail bond agency.

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

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

286 (a) capital felony, when the court finds there is substantial evidence to support the
287 charge;

288 (b) felony committed while on probation or parole, or while free on bail awaiting trial
289 on a previous felony charge, when the court finds there is substantial evidence to support the
290 current felony charge;

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

295 (d) felony when the court finds there is substantial evidence to support the charge and it
296 finds by clear and convincing evidence that the individual violated a material condition of
297 release while previously on bail; or

298 (e) domestic violence offense if the court finds:

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

300 (ii) by clear and convincing evidence, that the individual would constitute a substantial
301 danger to an alleged victim of domestic violence if released on bail.

302 ~~[(3) Any individual who may be admitted to bail may be released by posting bail in the
303 form and manner provided in Section 77-20-4, or on the individual's own recognizance, on
304 condition that the individual appear in court for future court proceedings in the case, and on any
305 other conditions imposed in the discretion of the magistrate or court that will reasonably:]~~

306 ~~[(a) ensure the appearance of the accused;]~~

307 ~~[(b) ensure the integrity of the court process;]~~

308 ~~[(c) prevent direct or indirect contact with witnesses or victims by the accused, if~~

309 appropriate; and]

310 [~~(d) ensure the safety of the public.~~]

311 (3) (a) A court exercising jurisdiction over an individual charged with or arrested for a
312 criminal offense shall issue a pretrial status order designating the conditions to be imposed
313 upon the individual's release or ordering that the individual be detained under this section
314 during the time the individual awaits trial or other resolution of the criminal charges.

315 (b) A court granting pretrial release shall impose the least restrictive reasonably
316 available conditions of release on the individual who is the subject of the pretrial status order
317 that the court determines will reasonably ensure:

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

319 (ii) the safety of any witnesses or victims of the offense allegedly committed by the
320 individual;

321 (iii) the safety and welfare of the public; and

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

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

325 (ii) If a prosecutor files a motion for detention under Subsection (6), the court may
326 delay issuing the pretrial status order until after hearing the motion to detain if the court finds:

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

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

330 (4) (a) Except as otherwise provided in this section or Section [77-20-3.5](#), the court
331 shall order that an individual charged with a criminal offense be released on the individual's
332 own recognizance, on condition that the individual appear at all required court proceedings, if
333 the court finds that additional conditions are not necessary to reasonably ensure compliance
334 with Subsection (3)(b).

335 (b) The court shall impose additional release conditions if the court finds that
336 additional release conditions are necessary to reasonably ensure compliance with Subsection

- 337 (3)(b). The conditions imposed may include that the individual:
- 338 (i) not commit a federal, state, or local offense during the period of release;
- 339 (ii) avoid contact with a victim or victims of the alleged offense;
- 340 (iii) avoid contact with a witness or witnesses who may testify concerning the alleged
- 341 offense that are named in the pretrial status order;
- 342 (iv) not use or consume alcohol, or any narcotic drug or other controlled substance
- 343 except as prescribed by a licensed medical practitioner;
- 344 (v) submit to drug or alcohol testing;
- 345 (vi) complete a substance abuse evaluation and comply with any recommended
- 346 treatment or release program;
- 347 (vii) submit to electronic monitoring or location device tracking;
- 348 (viii) participate in inpatient or outpatient medical, behavioral, psychological, or
- 349 psychiatric treatment;
- 350 (ix) maintain employment, or if unemployed, actively seek employment;
- 351 (x) maintain or commence an education program;
- 352 (xi) comply with limitations on where the individual is allowed to be located or the
- 353 times the individual shall be or may not be at a specified location;
- 354 (xii) comply with specified restrictions on personal associations, place of residence, or
- 355 travel;
- 356 (xiii) report to a law enforcement agency, pretrial services program, or other designated
- 357 agency at a specified frequency or on specified dates;
- 358 (xiv) comply with a specified curfew;
- 359 (xv) forfeit or refrain from possession of a firearm or other dangerous weapon;
- 360 (xvi) if the individual is charged with an offense against a child, is limited or denied
- 361 access to any location or occupation where children are, including any residence where children
- 362 are on the premises, activities including organized activities in which children are involved,
- 363 locations where children congregate, or where a reasonable person should know that children
- 364 congregate;

365 (xvii) comply with requirements for house arrest;
366 (xviii) return to custody for a specified period of time following release for
367 employment, schooling, or other limited purposes;
368 (xix) remain in the custody of one or more designated individuals who agree to
369 supervise and report on the behavior and activities of the individual charged and to encourage
370 compliance with all court orders and attendance at all required court proceedings;
371 (xx) comply with a financial condition; or
372 (xxi) comply with any other condition that is necessary to reasonably ensure
373 compliance with Subsection (3)(b).
374 (c) If the court determines a financial condition, other than an unsecured bond, is
375 necessary to impose on an individual as part of the individual's pretrial release, the court shall
376 consider the individual's ability to pay when determining the amount of the financial condition.
377 (5) In making a determination under Subsection (3), the court may rely on the
378 following:
379 (a) any form of pretrial services assessment;
380 (b) the nature and circumstances of the offense or offenses charged, including whether
381 the charges include a violent offense and the vulnerability of witnesses or alleged victims;
382 (c) the nature and circumstances of the individual, including the individual's character,
383 physical and mental health, family and community ties, employment status and history,
384 financial resources, past criminal conduct, history of drug or alcohol abuse, and history of
385 timely appearances at required court proceedings;
386 (d) the potential danger to another individual or individuals posed by the release of the
387 individual;
388 (e) if the individual was on probation, parole, or release pending an upcoming court
389 proceeding at the time the individual allegedly committed the offense;
390 (f) the availability of other individuals who agree to assist the individual in attending
391 court when required or other evidence relevant to the individual's opportunities for supervision
392 in the individual's community;

393 (g) the eligibility and willingness of the individual to participate in various treatment
394 programs, including drug treatment; or

395 (h) other evidence relevant to the individual's likelihood of fleeing or violating the law
396 if released.

397 (6) (a) If the criminal charges filed against the individual include one or more offenses
398 eligible for detention under Subsection (2) or Utah Constitution, Article I, Section 8, the
399 prosecution may file a motion for pretrial detention.

400 (b) Upon receiving a motion under Subsection (6)(a), the court shall set a hearing on
401 the matter as soon as practicable.

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

406 (d) The court shall give both parties the opportunity to make arguments and to present
407 relevant evidence at the detention hearing.

408 (7) After hearing evidence on a motion for pretrial detention, the court may detain the
409 individual if:

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

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

415 (c) the court finds that no conditions that may be imposed upon granting the individual
416 pretrial release will reasonably ensure compliance with Subsection (3)(b).

417 (8) (a) If an individual is charged with a criminal offense described in Subsection
418 (8)(b), there is a rebuttable presumption that the individual be detained.

419 (b) Criminal charges that create a rebuttable presumption of detention under
420 Subsection (8)(a) include:

421 (i) criminal homicide as defined in Section 75-5-201; and
422 (ii) any offense for which the term of imprisonment may include life.
423 (c) The individual may rebut the presumption of detention by demonstrating, by a
424 preponderance of the evidence, that specified conditions of release will reasonably ensure
425 compliance with Subsection (3)(b).

426 ~~[(4)(a)]~~ (9) Except as otherwise provided, the court issuing a pretrial warrant of arrest
427 shall issue the initial pretrial status order ~~[denying or fixing the amount of bail shall be issued~~
428 ~~by the magistrate or court issuing the warrant of arrest].~~

429 ~~[(b) A magistrate may set bail upon determining that there was probable cause for a~~
430 ~~warrantless arrest.]~~

431 ~~[(c) A bail commissioner may set bail in a misdemeanor case in accordance with~~
432 ~~Sections 10-3-920 and 17-32-1.]~~

433 ~~[(d)]~~ (10) (a) An individual arrested for a violation of a jail release agreement or jail
434 release court order issued in accordance with Section 77-20-3.5:

435 (i) may not be released before the accused's first judicial appearance; and
436 (ii) may be denied ~~[bail]~~ pretrial release by the court under Subsection (2).

437 ~~[(5) The magistrate or court may rely upon information contained in:]~~

438 ~~[(a) the indictment or information;]~~

439 ~~[(b) any sworn probable cause statement;]~~

440 ~~[(c) information provided by any pretrial services agency; or]~~

441 ~~[(d) any other reliable record or source.]~~

442 (b) Nothing in this section precludes or nullifies a jail release agreement or jail release
443 order required under Section 77-20-3.5.

444 ~~[(6)]~~ (11) (a) A motion to modify the initial pretrial status order may be made by a
445 party at any time upon notice to the opposing party sufficient to permit the opposing party to
446 prepare for hearing and to permit ~~[any victim]~~ each alleged victim to be notified and be present.

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

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

452 ~~[(7)]~~ (12) Subsequent motions to modify ~~[bail orders]~~ a pretrial status order may be
453 made only upon a showing that there has been a material change in circumstances.

454 ~~[(8)]~~ (13) An appeal may be taken from an order of ~~[any]~~ a court denying bail to the
455 ~~[Supreme Court]~~ Utah Court of Appeals pursuant to the Utah Rules of Appellate Procedure,
456 which shall review the determination under Subsection ~~[(2)]~~ (7).

457 ~~[(9)]~~ (14) For purposes of this section, any arrest or charge for a violation of Section
458 76-5-202, Aggravated murder, is a capital felony unless:

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

462 Section 8. Section **77-20-1.1** is enacted to read:

463 **77-20-1.1. Pretrial release data requirements.**

464 (1) The Administrative Office of the Courts shall submit the following data on
465 individuals for whom the Administrative Office of the Courts has a state identification number
466 broken down by judicial district to the Commission on Criminal and Juvenile Justice before
467 July 1 of each year:

468 (a) for the preceding calendar year:

469 (i) the number of individuals charged with a criminal offense who failed to appear at a
470 required court preceding while on pretrial release, in accordance with Section 77-20-1, under
471 each of the following categories of release:

472 (A) the individual's own recognizance;

473 (B) a financial condition; and

474 (C) a pretrial release condition other than a financial condition;

475 (ii) the number of offenses that carry a potential penalty of incarceration an individual
476 committed while on pretrial release, in accordance with Section 77-20-1, under each of the

477 following categories of release:
478 (A) the individual's own recognizance;
479 (B) a financial condition; and
480 (C) a pretrial release condition other than a financial condition; and
481 (iii) the total amount of fees and fines, including bond forfeiture, collected by the court
482 from an individual for the individual's failure to comply with a condition of pretrial release
483 under each of the following categories of release:
484 (A) an individual's own recognizance;
485 (B) a financial condition; and
486 (C) a pretrial release condition other than a financial condition; and
487 (b) at the end of the preceding calendar year:
488 (i) the total number of outstanding warrants of arrest for individuals who were released
489 from law enforcement custody, in accordance with Section [77-20-1](#), under each of the
490 following categories of release:
491 (A) the individual's own recognizance;
492 (B) a financial condition; and
493 (C) a pretrial release condition other than a financial condition;
494 (ii) for each of the categories described in Subsection (1)(b)(i), the average length of
495 time that the outstanding warrants had been outstanding; and
496 (iii) for each of the categories described in Subsection (1)(b)(i), the number of
497 outstanding warrants for arrest for crimes of each of the following categories:
498 (A) a first degree felony;
499 (B) a second degree felony;
500 (C) a third degree felony;
501 (D) a class A misdemeanor;
502 (E) a class B misdemeanor; and
503 (F) a class C misdemeanor.
504 (2) Each county jail shall submit the following data, based on the preceding calendar

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

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

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

510 (c) the amount of monetary bail collected by the county jail.

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

514 Section 9. Section **77-20-4** is amended to read:

515 **77-20-4. Bail to be posted in cash, by credit or debit card, or by written**
516 **undertaking -- Specific monetary bail methods.**

517 (1) (a) Except as provided in Subsection (2), the judge or magistrate shall set bail at a
518 single amount per case or charge.

519 (b) Subject to Subsection (2), a defendant may choose to post the amount described in
520 Subsection (1)(a) by any of the following methods:

521 (i) in cash;

522 (ii) by written undertaking with sureties;

523 (iii) by written undertaking without sureties, at the discretion of the judge or
524 magistrate; or

525 (iv) by credit or debit card, at the discretion of the judge or bail commissioner.

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

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

530 (b) in order to allow the defendant to voluntarily forfeit monetary bail in accordance
531 with Section **77-7-21** and the offense with which the defendant is charged is listed in the shared
532 master offense table as one for which an appearance is not mandatory;

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

536 (d) if a warrant is issued for the defendant solely for failure to pay a criminal judgment
537 account receivable, as defined in Section 77-32a-101, and the defendant's monetary bail is
538 limited to the amount owed; or

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

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

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

546 (5) [~~Bail~~] Monetary bail refunded by the court may be refunded by credit to the debit or
547 credit card, or cash. The amount refunded shall be the full amount received by the court under
548 Subsection (4), which may be less than the full amount of the monetary bail set by the court.

549 (6) Before refunding monetary bail that is posted by the defendant in cash, by credit
550 card, or by debit card, the court may apply the amount posted toward accounts receivable, as
551 defined in Section 77-32a-101, that are owed by the defendant in the priority set forth in
552 Section 77-38a-404.

553 Section 10. Section 77-20-7 is amended to read:

554 **77-20-7. Duration of liability on undertaking -- Notices to sureties -- Exoneration**
555 **if charges not filed.**

556 (1) (a) Except as provided in Subsection (1)(b), the principal and the sureties on [~~the~~] a
557 bond or other written undertaking are liable on the bond or other written undertaking during all
558 proceedings and for all court appearances required of the defendant up to and including the
559 surrender of the defendant for sentencing, irrespective of any contrary provision in the bond or
560 other written undertaking. Any failure of the defendant to appear when required is a breach of

561 the conditions of the bond or other written undertaking ~~[or bail]~~ and subjects ~~[it]~~ the bond to
562 forfeiture, regardless of whether or not notice of appearance was given to the sureties. Upon
563 sentencing the ~~[bail]~~ bond or other written undertaking shall be exonerated without motion.

564 (b) If the sentence includes a commitment to a jail or prison, the ~~[bail]~~ bond or other
565 written undertaking shall be exonerated when the defendant appears at the appropriate jail or
566 prison, unless the judge does not require the defendant to begin the commitment within seven
567 days, in which case the ~~[bail]~~ bond or other written undertaking is exonerated upon sentencing.

568 (c) For purposes of this section, an order of the court accepting a plea in abeyance
569 agreement and holding that plea in abeyance pursuant to Title 77, Chapter 2a, Pleas in
570 Abeyance, is considered to be the same as a sentencing upon a guilty plea.

571 (d) Any suspended or deferred sentencing is not the responsibility of the surety and the
572 ~~[bail]~~ bond is exonerated without any motion, upon acceptance of the court and the defendant
573 of a plea in abeyance, probation, fine payments, post sentencing reviews, or any other deferred
574 sentencing reviews or any other deferred sentencing agreement.

575 (e) If a surety issues a bail bond after ~~[the]~~ sentencing, the surety is liable on the
576 undertaking during all proceedings and for all court appearances required of the defendant up
577 to and including the defendant's appearance to commence serving the sentence imposed under
578 Subsection (1).

579 (2) If ~~[no]~~ the prosecutor does not file an information ~~[or]~~, indictment ~~[charging a~~
580 ~~person with an offense is filed in court within]~~, request to extend time 120 days after the date
581 ~~[of the bail undertaking or cash receipt]~~ on which the bond or other written undertaking is
582 received, the court ~~[may]~~ shall:

583 (a) relieve a person from conditions of release ~~[at the person's request, and the bail~~
584 ~~bond or undertaking is exonerated without further order of the court unless the prosecutor~~
585 ~~requests an extension of time before the end of the 120-day period by:]~~;

586 ~~[(a) filing a notice for extension with the court, and]~~

587 ~~[(b) serving the notice for extension upon the sureties and the person or his attorney.]~~

588 ~~[(3) A court may extend bail and conditions of release for good cause.]~~

589 **(b) refund any monetary bail, as provided in Subsection 77-20-4(5); and**
590 **(c) exonerate any bond or other written undertaking without further order of the court.**
591 **(3) (a) A request to extend time shall:**
592 **(i) be served on any surety and the defendant or the defendant's attorney; and**
593 **(ii) be granted for a period of up to 60 days.**
594 **(b) A court may grant a request to extend time for a period of up to 120 days upon a**
595 **showing of good cause.**

596 ~~[(4) Subsection (2)]~~

597 **(c) An extension of time** does not prohibit the proper filing of charges against a person
598 at any time.

599 ~~[(5) If the court does not set on a calendar any hearings on a case within 18 months of~~
600 ~~the last court docket activity on a case, the undertaking of bail is exonerated without motion.]~~

601 Section 11. Section **77-20-8** is amended to read:

602 **77-20-8. Grounds for detaining or releasing defendant on conviction and prior to**
603 **sentence.**

604 (1) Upon conviction, by plea or trial, the court shall order that the convicted defendant
605 who is waiting imposition or execution of sentence be detained, unless the court finds by clear
606 and convincing evidence presented by the defendant that the defendant is not likely to flee the
607 jurisdiction of the court, and will not pose a danger to the physical, psychological, or financial
608 and economic safety or well-being of any other person or the community if released.

609 (2) If the court finds the defendant does not need to be detained, the court shall order
610 the release of the defendant on suitable conditions, which may include the conditions under
611 Subsection ~~[77-20-10(2)]~~ 77-20-1(4).

612 Section 12. Section **77-20-8.5** is amended to read:

613 **77-20-8.5. Sureties -- Surrender of defendant -- Arrest of defendant.**

614 (1) (a) Sureties may at any time prior to a defendant's failure to appear surrender the
615 defendant and obtain exoneration of monetary bail, by notifying the clerk of the court in which
616 the monetary bail was posted of the defendant's surrender and requesting exoneration.

617 Notification shall be made immediately following the surrender by surface mail, electronic
618 mail, or fax.

619 (b) To effect surrender, a certified copy of the surety's undertaking from the court in
620 which it was posted or a copy of the monetary bail agreement with the defendant shall be
621 delivered to the on-duty jailer, who shall detain the defendant in the on-duty jailer's custody as
622 upon a commitment, and shall in writing acknowledge the surrender upon the copy of the
623 undertaking or monetary bail agreement. The certified copy of the undertaking or copy of the
624 monetary bail agreement upon which the acknowledgment of surrender is endorsed shall be
625 filed with the court. The court may then, upon proper application, order the undertaking
626 exonerated and ~~[may]~~ shall order a refund of any paid premium, or part of a premium, as it
627 finds just.

628 (2) For the purpose of surrendering the defendant, the sureties may:

629 (a) arrest the defendant:

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

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

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

633 (3) An arrest under this section is not a basis for exoneration of the ~~[bail]~~ bond under
634 Section [77-20b-101](#).

635 (4) A surety acting under this section is subject to Title 53, Chapter 11, Bail Bond
636 Recovery Act.

637 Section 13. Section [77-20-9](#) is amended to read:

638 **[77-20-9. Disposition of forfeitures.](#)**

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

643 ~~[(1) the forfeited bail amount in cases in or appealed from district courts shall be~~
644 ~~distributed as provided in Section [78A-5-110](#);~~]

645 ~~[(2)]~~ (1) the forfeited ~~[bail]~~ amount in cases in precinct justice courts or in municipal
646 justice courts shall be distributed as provided in Sections [78A-7-120](#) and [78A-7-121](#); and

647 ~~[(3) the forfeited bail in cases in justice courts where the offense is not triable in that~~
648 ~~court shall be paid into the General Fund; and]~~

649 ~~[(4) the forfeited bail in cases not provided for in this section shall be paid 50% to the~~
650 ~~state treasurer and the remaining 50% to the county treasurer in the county in which the~~
651 ~~violation occurred or the forfeited bail is collected.]~~

652 (2) in all other cases:

653 (a) 60% of the forfeited bond shall be paid to the Pretrial Release Programs Special
654 Revenue Fund established in Section [63M-7-213](#);

655 (b) 25% of the forfeited bond shall be paid to the General Fund; and

656 (c) 15% of the forfeited bond shall be paid to the prosecuting agency that brings an
657 action to collect under Section [77-20b-104](#).

658 Section 14. Section **77-20-10** is amended to read:

659 **77-20-10. Grounds for detaining defendant while appealing the defendant's**
660 **conviction -- Conditions for release while on appeal.**

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

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

665 (i) reversal;

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

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

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

669 (c) by clear and convincing evidence presented by the defendant that the defendant is
670 not likely to flee the jurisdiction of the court, and will not pose a danger to the physical,
671 psychological, or financial and economic safety or well-being of any other person or the
672 community if released.

673 (2) If the court makes a finding under Subsection (1) that justifies not detaining the
674 defendant, the court shall order the release of the defendant, subject to conditions that result in
675 the least restrictive ~~[condition or combination of]~~ reasonably available conditions that the court
676 determines will reasonably ~~[assure]~~ ensure the appearance of the ~~[person]~~ defendant as required
677 and the safety of any other ~~[person]~~ individual, property, and the community. The conditions
678 may include ~~[that the defendant:]~~ the conditions described in Subsection [77-20-1\(4\)\(b\)](#).

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

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

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

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

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

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

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

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

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

695 ~~[(i) avoid all contact with the victims of the offense and with any witnesses who
696 testified against the defendant or potential witnesses who may testify concerning the offense if
697 the appeal results in a reversal or an order for a new trial;]~~

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

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

- 701 ~~[(l) not possess a firearm, destructive device, or other dangerous weapon;]~~
702 ~~[(m) not use alcohol, or any narcotic drug or other controlled substances except as~~
703 ~~prescribed by a licensed medical practitioner;]~~
704 ~~[(n) undergo available medical, psychological, or psychiatric treatment, including~~
705 ~~treatment for drug or alcohol dependency, and remain under the supervision of or in a specified~~
706 ~~institution if required for that purpose;]~~
707 ~~[(o) return to custody for specified hours following release for employment, schooling,~~
708 ~~or other limited purposes;]~~
709 ~~[(p) satisfy any other condition that is reasonably necessary to assure the appearance of~~
710 ~~the defendant as required and to assure the safety of any other person and the community; and]~~
711 ~~[(q) if convicted of committing a sexual offense or an assault or other offense involving~~
712 ~~violence against a child 17 years of age or younger, is limited or denied access to any location~~
713 ~~or occupation where children are, including but not limited to:]~~
714 ~~[(i) any residence where children are on the premises;]~~
715 ~~[(ii) activities, including organized activities, in which children are involved; and]~~
716 ~~[(iii) locations where children congregate, or where a reasonable person should know~~
717 ~~that children congregate.]~~
718 (3) The court may, in its discretion, amend an order granting release to impose
719 additional or different conditions of release.
720 (4) If the defendant ~~[has been]~~ is found guilty of an offense in a court not of record and
721 files a timely notice of appeal pursuant to Subsection 78A-7-118(1) for a trial de novo, the
722 court shall stay all terms of a sentence, unless at the time of sentencing the judge finds by a
723 preponderance of the evidence that the defendant poses a danger to another person or the
724 community.
725 (5) If a stay is ordered, the court may order post-conviction restrictions on the
726 defendant's conduct as appropriate, including:
727 (a) continuation of any pre-trial restrictions or orders;
728 (b) sentencing protective orders under Section 77-36-5.1;

729 (c) drug and alcohol use;
730 (d) use of an ignition interlock; and
731 (e) posting appropriate monetary bail.
732 (6) The provisions of Subsections (4) and (5) do not apply to convictions for an offense
733 under Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.

734 (7) Any stay authorized by Subsection (4) is lifted upon the dismissal of the appeal by
735 the district court.

736 Section 15. Section **77-20b-101** is amended to read:

737 **77-20b-101. Entry of nonappearance -- Notice to surety -- Release of surety on**
738 **failure of timely notice.**

739 (1) If a defendant who has posted bail fails to appear before the appropriate court as
740 required, the court shall within 30 days of the failure to appear issue a bench warrant that
741 includes the original case number. The court shall also direct that the surety or surety insurer
742 be given notice of the nonappearance. The clerk of the court shall:

743 (a) ~~[mail]~~ email notice of nonappearance ~~[by certified mail, return receipt requested,~~
744 ~~within 30 days]~~ to ~~[the address of]~~ the surety or surety insurer at the email address provided on
745 the bond;

746 ~~[(b) notify the surety as listed on the bail bond of the name, address, and telephone~~
747 ~~number of the prosecutor;]~~

748 ~~[(c) deliver]~~ (b) email a copy of the notice sent under Subsection (1)(a) to the
749 prosecutor's office ~~[at the same time notice is sent under Subsection (1)(a)];~~ and

750 ~~[(d)]~~ (c) ensure that the name, address, business email address, and telephone number
751 of the surety ~~[or]~~, its agent, or surety insurer as listed on the ~~[bail]~~ bond is stated on the bench
752 warrant~~;~~ and.

753 ~~[(e) mail notice of the failure to appear to the bail bond agency and the surety insurer.]~~

754 (2) The prosecutor may ~~[mail]~~ email notice of nonappearance ~~[by certified mail, return~~
755 ~~receipt requested,]~~ to the address of the surety or surety insurer as listed on the ~~[bail]~~ bond
756 within 37 days after the date of the defendant's failure to appear.

757 (3) If notice of nonappearance is not ~~[mailed]~~ emailed to a surety or surety insurer as
758 listed on the ~~[bail]~~ bond, other than the defendant, in accordance with Subsection (1) or (2), the
759 surety or surety insurer and its ~~[bail]~~ bond producer are relieved of further obligation under the
760 ~~[bail]~~ bond if the ~~[surety's current name and address or the current name and address of the bail~~
761 ~~bond agency are on the bail bond]~~ surety or surety insurer have listed their current name and
762 email addresses on the bond in the court's file.

763 (4) (a) (i) If a defendant appears in court within ~~[seven]~~ 30 days after a missed,
764 scheduled court appearance, the court may reinstate the ~~[bail]~~ bond without further notice to the
765 surety or surety insurer.

766 (ii) If the defendant, while in custody, appears on the case for which the ~~[bail]~~ bond
767 was posted, the court may not reinstate the ~~[bail]~~ bond without the consent of the bond
768 company.

769 (b) If a defendant fails to appear within ~~[seven]~~ 30 days after a scheduled court
770 appearance, the court may not reinstate the ~~[bail]~~ bond without the consent of the surety or
771 surety insurer.

772 (c) If the defendant is arrested and booked into a county jail booking facility pursuant
773 to a warrant for failure to appear on the original charges and the court is notified of the arrest,
774 or the court recalls the warrant due to the defendant's having paid the fine and prior to entry of
775 judgment of forfeiture, the court shall exonerate the ~~[bail]~~ bond.

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

778 (i) the surety or surety insurer has delivered the defendant to the county jail booking
779 facility in the county where the original charge or charges are pending;

780 (ii) the defendant has been released on a bond secured from a subsequent surety or
781 surety insurer for the original charge and the failure to appear;

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

785 (iv) the surety or surety insurer has transported or agreed to pay for the transportation
786 of the defendant from a location outside of the county back to the county where the original
787 charge is pending, and the payment is in an amount equal to government transportation
788 expenses listed in Section 76-3-201; or

789 (v) the surety or surety insurer demonstrates by a preponderance of the evidence that:

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

792 (B) a reasonable person would have concluded, based on the surety's or surety insurer's
793 determination, that the defendant was legally present in the United States; and

794 (C) the surety or surety insurer has failed to bring the defendant before the court
795 because the defendant is in federal custody or has been deported.

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

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

803 Section 16. Section **77-20b-102** is amended to read:

804 **77-20b-102. Time for bringing defendant to court.**

805 (1) If notice of nonappearance [~~has been mailed~~] is emailed to a surety or surety insurer
806 under Section 77-20b-101, the surety or surety insurer may bring the defendant before the court
807 or surrender the defendant into the custody of a county sheriff within the state within [~~six~~
808 ~~months of~~] 90 days after the date of nonappearance, during which time a forfeiture action on
809 the [~~bail~~] bond may not be brought.

810 (2) A surety or surety insurer may request an extension of the [~~six-month~~] 90-day time
811 period in Subsection (1), if the surety or surety insurer within that time:

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

813 (b) mails the motion for extension and a notice of hearing on the motion to the
814 prosecutor.

815 (3) The court may extend the ~~[six-month]~~ 90-day time in Subsection (1) for not more
816 than 60 days, if the surety or surety insurer has complied with Subsection (2) and the court
817 finds good cause.

818 Section 17. Section **77-20b-104** is amended to read:

819 **77-20b-104. Forfeiture of bail.**

820 (1) If a surety or surety insurer fails to bring the defendant before the court within the
821 time provided in Section 77-20b-102, the prosecuting attorney may request the forfeiture of the
822 ~~[bail]~~ bond by:

823 (a) filing a motion for ~~[bail]~~ bond forfeiture with the court, supported by proof of
824 notice to the surety or surety insurer of the defendant's nonappearance; and

825 (b) ~~[mailing]~~ emailing a copy of the motion to the surety or surety insurer.

826 (2) A court shall enter judgment of ~~[bail]~~ bond forfeiture without further notice if ~~[it]~~
827 the court finds by a preponderance of the evidence:

828 (a) the defendant failed to appear as required;

829 (b) the surety or surety insurer was given notice of the defendant's nonappearance in
830 accordance with Section 77-20b-101;

831 (c) the surety or surety insurer failed to bring the defendant to the court within the
832 ~~[six-month]~~ 90-day period under Section 77-20b-102; and

833 (d) the prosecutor has complied with the notice requirements under Subsection (1).

834 (3) If the surety or surety insurer shows by a preponderance of the evidence that it has
835 failed to bring the defendant before the court because the defendant is deceased through no act
836 of the surety or surety insurer, the court may not enter judgment of ~~[bail]~~ bond forfeiture and
837 the ~~[bail]~~ bond is exonerated.

838 (4) The amount of ~~[bail]~~ the bond forfeited is the face amount of the ~~[bail]~~ bond, but if
839 the defendant is in the custody of another jurisdiction and the state extradites or intends to
840 extradite the defendant, the court may reduce the amount forfeited to the actual or estimated

841 costs of returning the defendant to the court's jurisdiction. A judgment under Subsection (5)
842 shall:

- 843 (a) identify the surety or surety insurer against whom judgment is granted;
 - 844 (b) specify the amount of [~~bail~~] the bond forfeited;
 - 845 (c) grant the forfeiture of the [~~bail~~] bond; and
 - 846 (d) be docketed by the clerk of the court in the civil judgment docket.
- 847 (5) A prosecutor may immediately commence collection proceedings to execute a
848 judgment of [~~bail~~] bond forfeiture against the assets of the surety.

849 Section 18. Section **78A-2-220** is amended to read:

850 **78A-2-220. Authority of magistrate.**

851 (1) Except as otherwise provided by law, a magistrate as defined in Section **77-1-3**
852 shall have the authority to:

- 853 (a) commit a person to incarceration prior to trial;
- 854 (b) set or deny bail under Section **77-20-1** and release upon the payment of monetary
855 bail and satisfaction of any other conditions of release;
- 856 (c) issue to any place in the state summonses and warrants of search and arrest and
857 authorize administrative traffic checkpoints under Section **77-23-104**;
- 858 (d) conduct an initial appearance;
- 859 (e) conduct arraignments;
- 860 (f) conduct a preliminary examination to determine probable cause;
- 861 (g) appoint attorneys and order recoupment of attorney fees;
- 862 (h) order the preparation of presentence investigations and reports;
- 863 (i) issue temporary orders as provided by rule of the Judicial Council; and
- 864 (j) perform any other act or function authorized by statute.

865 (2) A judge of the justice court may exercise the authority of a magistrate specified in
866 Subsection (1) with the following limitations:

- 867 (a) a judge of the justice court may conduct an initial appearance, preliminary
868 examination, or arraignment as provided by rule of the Judicial Council; and

869 (b) a judge of the justice court may not [~~set bail~~] perform any act or function in a
870 capital felony [~~nor deny bail in any~~] case.

871 Section 19. **Repealer.**

872 This bill repeals:

873 Section **77-20-3, Release on own recognizance -- Changing amount of bail or**
874 **conditions of release.**

875 Section 20. **Effective date.**

876 This bill takes effect on October 1, 2020.

HB 206 – BAIL AND PRETRIAL RELEASE AMENDMENTS

Utah Code §77-20-1

Effective October 1, 2020

Pretrial Release Decision-Making Process

1. (4)(a): Judge shall order *own recognizance* release, with condition that Def. appear for all required court proceedings, unless judge finds that additional conditions are necessary to reasonably ensure compliance with (3)(b)(i)-(iv):
 - a. Individual's appearance in court when required
 - b. Safety of any witnesses or victims
 - c. Safety and welfare of the public, and
 - d. That the individual will not obstruct or attempt to obstruct justice
2. (3)(b): If judge determines that additional conditions are necessary, judge must impose the *least restrictive, reasonably available* conditions to ensure compliance with (3)(b)(i)-(iv).
 - a. (4)(b): Long non-exhaustive list of conditions that may be imposed
 - b. (4)(b)(viii) – Legally, I don't think you can compel treatment as a condition of pretrial release. You can order it post-conviction, but not pretrial. I believe this was an oversight when the conditions were copied from 77-20-10.
3. (4)(c): If judge determines that a financial condition of release is necessary, judge shall consider an individual's *ability to pay* when determining the amount.
 - a. Must state whether the individual does (or does not) have the ability to pay the amount set, and explain why that monetary amount is the least restrictive, reasonably available condition to ensure compliance with (3)(b)(i)-(iv).
 - b. Can use an Unsecured Bond without conducting an ability to pay analysis per (4)(c)
 - c. Could presume indigence
 - i. Then make a finding that there are no other less restrictive, reasonably available non-monetary conditions that will reasonably ensure compliance with (3)(b)(i)-(iv).
 - ii. Arguably, if you don't have pretrial services, less restrictive conditions aren't *reasonably available*.
 - d. PC on-call judge could call the jail and interview defendants via phone about ability to pay before making release decisions
 - e. Could use the "Financial Declaration – Monetary Bail" form
4. (5): In making all release decisions, judges can rely on the PSA and lots of other factors.
 - a. At the PC phase, we don't have access to most of that information.
 - b. Pretrial services could gather it. We would just need a way to get it to you electronically and quickly.
5. (8)(a): There is a presumption of detention if individuals are charged with one or more of the following offenses (8)(b):
 - a. Criminal homicide as defined in 75-5-201, and
 - b. Any offense for which the term of imprisonment may include life
6. (8)(c): The presumption is rebuttable if the defendant demonstrates, by a preponderance of the evidence, that specified conditions of release will reasonably ensure compliance with (3)(b)(i)-(iv).

7. (3)(c)(ii): If a prosecutor files a motion for detention, judges may delay issuing a pretrial status order until after a hearing, if the court finds:
 - a. The prosecutor's motion states a reasonable case for detention, and
 - b. Detaining the defendant until after the motion is heard is in the interests of justice and public safety.

8. (6)(a): After, or upon, the filing of charges, prosecutors may file a motion for detention if one or more of the offenses qualify for a no-bail hold under (2).
 - a. (6)(b): Upon filing of a detention motion under this section, the court shall set a hearing on the matter as soon as practicable.
 - b. (6)(c): The defendant has the right to counsel at the detention hearing, and the court shall give both parties the opportunity to make arguments and to present relevant evidence.
 - c. (8)(a): There is a presumption of detention if individuals are charged with one or more of the following offenses (8)(b):
 - i. Criminal homicide as defined in 75-5-201, and
 - ii. Any offense for which the term of imprisonment may include life
 - d. (8)(c): The presumption is rebuttable if the defendant demonstrates, by a preponderance of the evidence, that specified conditions of release will reasonably ensure compliance with (3)(b)(i)-(iv).
 - e. (7): After the hearing, the court may detain the individual if:
 - i. One of the charged offenses qualifies for a no-bail hold under (2);
 - ii. The prosecutor demonstrates substantial evidence to support the charge, and meets all additional evidentiary burdens required under (2); and
 - iii. The court finds that no conditions of release will reasonably ensure compliance with (3)(b)(i)-(iv).

Name

Address

City, State, Zip

Phone

Email

In the District Justice Court of Utah

_____ Judicial District _____ County

Court Address _____

Prosecutorial Jurisdiction

v.

Defendant

Financial Declaration - Monetary Bail

Case Number

Judge

The following information is true, and I have omitted nothing that is relevant to my financial status.

(1) Employment

I am employed full-time part-time

I am unemployed.

I am a student full-time part-time

Other _____

(2) Income

Defendant Gross Monthly Income: \$ _____

Spouse Gross Monthly Income: \$ _____

(3) Dependents (Include spouse, children or other dependents in your household.)

The following people depend on me for support.

Name	Age	Relationship to Me	Name	Age	Relationship to Me

(4) Monthly Expenses

I am personally paying the following monthly expenses:

Monthly Expenses	Amount
Rent or mortgage	\$
Food and Household Supplies	\$
Utilities (Such as electricity, gas, water, sewer, garbage, phone)	\$
Loans and Other Debt Payments (Such as credit card, child support, student loan)	\$
Health Care Expenses (including insurance)	\$
Court Fines, Fees, Restitution ordered in other cases	\$
Other (Describe)	\$
Total	\$

(5) Financial Assets

Asset	Current Value
Bank or Credit Union Account(s) (checking and savings)	\$
Cash	\$
Credit Card	\$
Other (Describe)	\$
Total	\$

(6) Real Property You Own

I own real property.

Current Value: \$_____

Monthly Payments: \$_____

I do not own real property.

(7) Other

The following facts also are relevant to my ability to pay monetary bail.

I declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signed at _____ (city, and state or country).

Date Signature ▶ _____
Printed Name _____

<p style="text-align: center;">IN THE [DISTRICT][JUSTICE] COURT OF UTAH [dist_num] Judicial District, [cnty_name] County / [city_name] City</p>	<p>Case No:</p> <p style="text-align: center;"><u>Complete one bond for each case</u></p>
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<p><i>Name and Mailing Address of Defendant:</i></p> 	<p>UNSECURED APPEARANCE BOND</p>
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<p><i>Email Address:</i></p>	
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<p><i>Telephone No. of Defendant:</i></p>	<p><i>Amount of this Bond</i></p>	
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UNSECURED BOND

I, the undersigned defendant, acknowledge that I am bound to pay to the [Name_Number] Court the sum shown above, subject to the conditions of this Bond below. **I UNDERSTAND THAT IF I VIOLATE ANY OF THE TERMS AND CONDITIONS OF RELEASE, A WARRANT MAY BE ISSUED FOR MY ARREST, AND THIS BOND MAY BE IMMEDIATELY FORFEITED AND A JUDGEMENT ENTERED AGAINST ME.**

I understand that if a judgment is entered forfeiting this Bond, the judgment may be recorded as a lien against my property and my wages may be subject to garnishment.

[NOTE TO CUSTODIAL AUTHORITY: Defendant may be released from custody upon executing this bond].

I, the undersigned defendant, declare under criminal penalty under the law of Utah that the foregoing is true and correct.

<p><i>Date of Execution of Bond:</i></p>	<p><i>Signature of Defendant:</i></p>
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CONDITIONS OF UNSECURED APPEARANCE BOND

The conditions of this Bond are that the above named defendant shall appear in the above entitled action(s) whenever required and will at all times comply with the orders and processes of the Court. It is agreed and understood that this Bond is effective and binding upon the defendant and any surety throughout all stages of the proceedings in the [Name_Number] Court until the entry of judgment from which no appeal is taken or until final disposition by the court. If the defendant appears as ordered and otherwise performs the foregoing conditions of the bond, then the bond may be exonerated, but if the defendant fails to obey any of these conditions, the Court may forfeit the bond and enter an immediate judgment.

RETURN OF CUSTODIAN OF DETENTION FACILITY

The defendant named above was released from my custody on the date shown below upon the execution of this Unsecured Appearance Bond.

<p><i>Date Defendant Released:</i></p>	<p><i>Signature of Custodian:</i></p>	<p>__ Sheriff __ Deputy Sheriff __ Other</p>
--	---------------------------------------	--

See Reverse for Additional Terms and Conditions of Release

ADDITIONAL TERMS AND CONDITIONS OF RELEASE

The above named defendant is ordered to comply with the Following terms and conditions of release:

√	Do not commit any new violations of law.	√	Appear for all court hearings.
	Do not use, possess, consume, inhale or inject any non-prescribed controlled substance or alcohol.		Take prescribed medications as ordered by physician or physical and mental health care provider.
	Do not abuse any substance. All medications, dietary supplements, nutritional supplements must be taken as directed.		Remain 500 yards away from any place or person when alcohol or illegal drugs are being consumed, inhaled, injected or otherwise used.
	Do not consume or use any substance for the purpose of or having the effect of evading, masking or defeating detection of the use of non prescribed controlled substances or alcohol.		Contact the _____ Police Department within 24 hours of release from custody for the surrender of any firearms or deadly weapons to be held pending the resolution of this case.
	Do not threaten to commit or actually commit any act of violence or other criminal conduct against the victim, family or household members.		Do not have enter in or remain near the home, business, place of employment, school, or any other place frequented regularly by the victim, family or household members.
	Do not have any direct or indirect contact with the victim, family or household members.		Maintain full time employment. (You may substitute schooling on an hour for hour basis)
	Submit proof of employment (current paycheck stubs or letter from employer).	√	Notify the Court within 24 hours if you moved from the above listed address.
	Notify the Court within 48 hours if you have any official contact with any law enforcement officer or agency. <i>Official contact means any type communication made in the performance of any law enforcement duty.</i>		Do not consume or use any food, dietary supplement, nutritional supplement or medication containing poppy seeds, alcohol, ephedra, pseudoephedrine or similar ingredients or their derivatives.
	Attend, participate, and pay for, treatment, counseling or educational classes.		Do not sell, transfer or dispose of any property or assets except as authorized by the court.
√	Do not leave the State of Utah without prior permission from the court		Surrender your passport and any other travel documents to the court within 24 hours.
	Do not frequent any establishment at which alcohol is the chief item for sale.		Submit to physical, medical, mental health or other examination/inspection as ordered.
	Submit to and pay for pretrial supervision through _____		Do not use or possess any firearms or deadly weapons.
	Do not operate any motor vehicle.		Submit to random drug and alcohol testing as ordered.
	OTHER:		OTHER:

ACKNOWLEDGMENT OF TERMS AND CONDITIONS OF RELEASE

I ACKNOWLEDGE MY RELEASE IS DEPENDENT UPON MY COMPLIANCE WITH THE ADDITIONAL TERMS AND CONDITIONS OF RELEASE AS ORDERED BY THE COURT AS SET FORTH ABOVE. I UNDERSTAND THAT IF I VIOLATE ANY OF THE TERMS AND CONDITIONS OF RELEASE, A WARRANT MAY BE ISSUED FOR MY ARREST AND THIS BOND MAY BE IMMEDIATELY FORFEITED AND A JUDGEMENT ENTERED AGAINST ME.

Date Ordered:

Signature of Defendant:

ORDER OF RELEASE

Upon satisfaction of the foregoing appearance bond and upon the acceptance of the Terms and Conditions of Release listed above, the Court orders that the above named defendant be released from custody pending the resolution of this matter.

Date Ordered:

Signature of Judge/Magistrate:

Tab 3

***The purpose of this document is to jumpstart a brainstorming session to identify issues and flesh out details. Undoubtedly, there are many critical topics and viewpoints missing from this document. A few that come to mind are contributing factors related to criminal justice involvement like chronic homelessness, drug and alcohol addiction, mental health, lack of treatment facilities, etc.*

Thoughts/updates/highlights regarding pretrial practices in this unprecedented time in our history:

It seems that COVID-19 has forced the criminal justice system to think outside the box, especially as it pertains to incarceration and utilizing technology to hold hearings remotely - hopefully resulting in more timely release decisions and less pretrial incarceration.

Pretrial practices have changed dramatically and are evolving almost daily. Most jurisdictions are handling things a little differently based on local resources and needs, existing procedures, and the level of collaboration amongst stakeholders, but to give you an idea, below are some of the changes I'm aware of:

- reductions in jail and prison populations
- reduction in the number of individuals on supervised probation
- law enforcement policies limiting arrests to only those essential for the protection of public safety
- prosecutor and law enforcement policies encouraging citations in lieu of arrest for lower level offenses
- Chief Justice's order requiring judges to review and reconsider custody status for individuals held on Class B and C misdemeanors, and encouraging release with appropriate conditions
- courts holding the vast majority of bail hearings, initial appearances, bench warrant hearings, and preliminary hearings remotely via phone or video
- new pretrial supervision program created by the Weber County Sheriff's Office

I'm working on pulling data to compare April 2019 and April 2020 numbers for warrantless arrests, criminal case filings, and citations. Preliminary data on arrests and case filings show a dramatic decrease in both. I'm hoping to be able to determine whether there has been a corresponding increase in the number of citations issued, or whether citations are also down. The three goals of pretrial justice are to 1) maximize liberty, 2) maximize public safety, and 3) maximize court appearance. It appears we are succeeding at #1, but how are we doing on 2 and 3?

As we all know, one of the biggest challenges we face is the lack of reliable data needed to accurately assess what's happening. You may have seen a couple of news articles asserting that criminal justice policy changes related to COVID have resulted in individuals being released from jail over and over almost as soon as they're booked, allowing them to go on crime sprees unchecked. What's important to keep in mind is...Are those anecdotal stories evidence of a consistent, systematic problem caused by an increase in pretrial releases? Or are they infrequent occurrences inevitable in any climate? No matter what release condition you use (surety bonds, pretrial supervision, cash bail, etc.), there will always be individuals who go on to commit new crimes. That was true before COVID and before pretrial reform was on our radar. If the

assertions in the media are correct, some of it is likely attributable to existing data gaps that keep judges and law enforcement agencies in the dark when there are multiple arrests in a relatively short period of time and/or across multiple counties/courts.

Pretrial practices overall are difficult for the general public (and most legislators) to understand, leaving them vulnerable to misinformation and scare tactics.

Lesson learned from other States:

States that have implemented successful pretrial reforms have something in common when it comes to data. They make data a priority and the foundation for decisions. They are constantly monitoring and improving their systems. In doing so, they take a data-driven approach to change. Rather than making policy changes based on anecdotal "horror stories" in the media, they gather data specific to the issue brought to their attention. For example, a sheriff in one county contacts the media and raises an alarm about a couple on a crime spree, claiming that the new "pretrial catch-and-release policy" is the cause and making the assertion that it is a systemic issue and the entire policy must be scrapped to protect the public.

When that happens, successful jurisdictions aren't reactionary. They dig into the details. What part of the system/policy is really at issue? Just saying, "the entire pretrial system is crap," doesn't help anyone. Is the problem limited to specific offense types? For example, are release decisions regarding burglary and DV-related offenses too lenient? Once the specific issue is identified, it's time to gather and drill down into the data. Was the incident the sheriff was talking about isolated or is it a frequent, statewide problem? At that point, successful jurisdictions bring all of the stakeholders (sheriff's association, prosecutors, judges, defense counsel, counties, legislators, etc.) to the table and discuss whether, what, and how policies need to change. Establishing those kinds of procedures and expectations at the outset of reform is absolutely critical.

It isn't realistic to think that we are going to design the perfect system right off the bat. Things will need to evolve and we need to be diligent and flexible. If we really do have a problem, we want to know about it and we want to fix it. However, we should not allow anecdotal fear mongering to dictate policy shifts. That almost always leads to bad policy.

Now is an ideal time to take advantage of unexpected, sweeping pretrial reforms to gather data and measure outcomes; drilling down into the weeds and determining what's working and what isn't. We can use those insights as we develop the "perfect" model for Utah.

So what do we want to know?

- Were there fewer arrests?
- Did the number of pretrial detainees increase or decrease?
- Was there a corresponding increase in failures to appear?
- Was there a corresponding increase in new criminal activity?
- Was there a corresponding increase in new violent criminal activity?
- Was the % of new crime higher with certain offenses (DUI, DV, burglary)? If so, how can we resolve that issue?

What data do we need to answer those questions?

- Number of individuals in jail pretrial before and after the event
- Number of individuals released pretrial before and after the event
- Length of stay for pretrial detainees before and after the event
- Number of failures to appear before and after the event
 - Fewer opportunities to FTA because hearings are postponed?
- Number of citations, criminal filings by summons and warrant, and warrantless arrests before and after the event
- Under what condition(s) were individuals released (surety bond, pretrial services, cash bail, etc.) before and after the event?
- Did the number of no-bail holds increase?
- Of the individuals released pretrial, how many were arrested or charged with a new criminal offense or new violent criminal offense during the pretrial period?
 - Was there a pattern to new criminal activity (theft, DV, DUI)?
 - Were the subsequent crimes after release similar or more serious than the original underlying charge?

What are the data issues and gaps?

- We do not have reliable jail data showing pretrial populations and length of stay
- New criminal activity is not defined
- New criminal activity is very difficult to ascertain for a number of reasons
 - Court data is case-specific, not person-specific
 - Judges cannot see pending arrests and/or cases across the state for an individual at the time they are making release decisions
 - Many times prosecutors haven't filed a case before the individual picks up another charge so there's nothing in the system for the judge to see
 - Jail management and prosecutor systems are not integrated across the state (or even at the local level in most counties).
 - Data isn't captured consistently across jurisdictions
- Data doesn't clearly or consistently distinguish whether warrants are pre- or post-adjudication
- To be considered in pretrial release counts, individuals must be eligible for release at the time a release decision is made. For example, even if a judge orders an individual released on the current charge, the person may have other holds. Those holds may not be pretrial holds and we don't have reliable data to make that distinction.
 - Example: Prosecutor files by summons but to the wrong address. A failure to appear warrant is issued because the defendant doesn't show to Initial Appearance. Once the defendant appears and the court gets a valid address, the individual is released on their own recognizance.
 - Because there isn't a functional data field-based distinction between an arrest warrant, a pre-trial bench warrant, or a post-adjudication warrant, it's impossible to distinguish those from defendants who missed their AP&P intake for example.

- To connect an individual with cases, arrests, warrants, etc., every system must use a unique, biometric identifier. We can use the SID but it isn't captured in every system, in every instance, or in all of the data fields we need.
 - Prosecutors rarely provide an SID in the e-filing system when filing an Information to create a case. And often the charges filed by the prosecutor are different than those for which they were arrested, or the case is filed in a different court than the one listed on the probable cause (PC) affidavit. Without an SID linking the PC with the Information we cannot capture the change in charges or location, or get the underlying PC, release order, and PSA in the case file.
 - If we had an SID at the time of e-filing, we could develop programming to recalculate a PSA based on the new charges. PSAs are a snapshot in time so the PSA on the underlying charge may look different than a PSA generated on the new charges – especially if the new charge is violent.
- In Salt Lake County, a judge may order an individual released on monetary bail but pretrial services may override that order and release an individual on supervision without paying. Our system doesn't capture pretrial's release decisions or the supervision conditions imposed.
- We do not have jail data capturing overcrowd releases
- No way to easily identify individuals released due to prosecutors' failure to file within the timeframe required by law
- We do not have jail data identifying individuals released by the jail using the fine/bail schedule prior to a judicial decision