Agenda
Pretrial Release & Supervision Committee Meeting
February 4, 2021
12:00 – 2:00 p.m.
Meeting held via WEBEX

12:00	Welcome and Approval of Minutes • January 7, 2020	Action	Tab 1	Judge George Harmond
12:05	Update: New Salt Lake County Time-to-File and Initial Appearance procedures	Discussion		Josh Graves Rich Mauro
12:15	Ability-to-Pay Matrix: Public Comments	Discussion / Action	Tab 2	Judge George Harmond
12:30	URCrP Subcommittee: • Rule 7A revisions • New Rule 7.5 • Rule 9 o Proposed Amendments o Time-to-File project	Discussion / Action	Tab 3	Judge Kendall Keisa Williams
1:00	Data Collection Subcommittee Update	Discussion	Tab 4	Eric Hutchings Jojo Liu Tucker Samuelsen
2:00	Adjourn	Action		Judge George Harmond

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

2021 Meeting Schedule:

March 4, 2021	August 5, 2021
April 1, 2021	September 2, 2021
May 6, 2021	October 7, 2021
June 3, 2021	November 4, 2021
July 1, 2021	December 2, 2021

Tab 1

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

Webex video conferencing
January 7, 2021 – 12 p.m. (noon) to 2 p.m.

DRAFT

MEMBERS	PRESENT	EXCUSED	GUESTS
Judge George Harmond, Chair	X		Chief Matthew Higley
Heidi Anderson		X	Dep. Chief Shanda Gonzalez
Wayne Carlos		X	Tucker Samuelsen
Judge Keith Eddington	X		Brody Arishita
Josh Graves	X		Paul Barron
Rep. Eric Hutchings	X		Chief Matthew Dumont
Andrea Jacobsen	X		Jojo Liu
Comm. Lorene Kamalu	X		Sheriff Rosie Rivera
Judge William Kendall		X	Josh Esplin
Cpt. Corey Kiddle	X		Yvette Rodier-Whitbe
Joanna Landau	X		Dep. Jeff Greenwell
Rich Mauro	X		Clay Carlos
Judge Brendan McCullagh		X	Sheriff Kelly Sparks
Judge Jeanne Robison	X		Weber County Sheriff
Reed Stringham	X		Lt. Tyler Fails
Cara Tangaro	X		Sgt. L. Bealer
			Renae Cowley
STAFF:			Brian Fletcher
Keisa Williams			Cpt. Shan Hackwell
Minhvan Brimhall			Rep. Stephanie Pitcher
			Judge Mary Noonan
			2 unknown call-ins

1) Welcome and Approval of Minutes (Judge Harmond):

Judge Harmond welcomed committee members to the meeting. The committee considered the minutes from the December 3, 2020 meeting. Lorene Kamalu noted that the acronym for the Utah State Association of County Commissions and Councils on page 2 should be USACCC. With no objections or further discussion on the minutes, Ms. Kamalu moved to approve the minutes as amended. Rich Mauro seconded the motion. The committee unanimously approved the minutes.

2) <u>Update: New Salt Lake County Time-to-File and Initial Appearance procedures:</u>

Mr. Graves: The effort started this week. Every morning the DA's office gets a list from the jail of everyone booked into the jail within the last 24 hours, but prior to 7:45 am that morning. The list then gets forwarded to a judge in the Third District who determines the filing deadline based on the offense(s) for which the individual was booked. For someone booked on a violent felony, as defined in Utah Code 76-3-203.5, the time-to-file deadline is the four calendar day period outlined in URCrP rule 9. For all other offenses, the judge changes the pre-filing release date to 48 hours. In those cases, the charges must be filed by 3 pm on the day following the booking date; otherwise, the individual will be released on pretrial services or on his own recognizance. We've just started, but it seems to be working well so far.

Cpt. Kiddle: Over the last couple of weeks, the SLCo jail hasn't received many of the 96 hr filings by 3:00 pm. We've been getting them between 6:00-8:00 pm at night, almost 5 hours after the deadline has passed. This is happening on a wide range of offenses, including domestic violence and 2nd degree felonies. We have been paying attention to this issue, and trying to communicate when we see a problem.

Mr. Graves: That is problematic. We need to continue to have those discussions with our special victims unit to make sure we are not missing our filing deadlines.

Mr. Mauro: It seems to be going well from our perspective. Cpt. Kiddle has arranged for us to have access to our clients for about 45 minutes prior to the hearing. We are very appreciative of that. I have been receiving positive feedback from my folks thus far. We are only on day four, so we'll see it how goes moving forward.

Cpt. Kiddle: It would be helpful to get the list from SLLDA earlier. With court ending when it does, sometimes we have to rush to get a person down to the courthouse to allow your guys time to access the client. If we could get the list sooner that would be helpful.

Mr. Mauro: The sooner we can get the list to you the better off we will be.

Rep. Hutchings: Have we done enough to provide the jail with the technology they need to be able to do any of this virtually? Are there any additional "asks" that we should be making to help fill in the gaps?

Mr. Mauro: I think Cpt. Kiddle and Jojo Liu have procured some laptops that can be utilized for that purpose from the CARES Act fund. I know Cpt. Kiddle and Lt. Warnick have been letting people use their own personal computers, but I think new laptops would expand our ability to be able to communicate with clients. Ideally, when it is safe, we can have those visits in person several hours before a hearing, if not the day before, but in the meantime having the laptops would help greatly.

Cpt. Kiddle: We have not received the computers yet. For the time being, we are able to manage by using my and Lt. Warnick's laptops for court hearings. If things get bigger, it could cause a problem.

Rep. Hutchings: The legislature has a ton of them in surplus that have been turned in with very little usage. If you contact the legislative IT group they can get you set up with them.

Chief Dumont: We recently received a quote for the laptops and will be using funding from the CARES Act. We hope to get those soon. We will be meeting with our fiscal team this week.

Judge Harmond: This really is a team effort and I appreciate the jail's cooperation in facilitating the process. We all may have to get used to doing things a little differently. Thank you everyone.

3) <u>URCrP Subcommittee:</u>

- Rule 7 and 7A drafts for review
- Working on new pretrial detention hearing rule

Ms. Williams: The rules subcommittee was asked to look at procedures and evidentiary issues related to pretrial detention hearings, and to consider both the legal and practical aspects of providing additional information to judges at the probable cause phase. The subcommittee completed proposed amendments to URCrP rules 7 and 7A. Judge Kendall, Josh Graves, and Rich Mauro will be working on a new rule on procedures for pretrial detention hearings. The subcommittee hopes to have a draft prepared for the committee's consideration at the next meeting.

In rule 7, the language about notice (starting at line 30) under release conditions was stricken. We received a lot of feedback that the language was confusing and unnecessary because the notification requirements are clearly spelled out in code. The least restrictive and ability to pay language matches what's in the code, and accounts for existing and emerging caselaw.

A lot of the feedback the committee received indicated a need for clear timelines. The new pretrial detention motion section begins at line 65. That change is consistent in both rule 7 and 7A. Those rules address what happens at initial appearance. If a prosecutor filed a motion for pretrial detention, the first appearance court must set a pretrial detention hearing without unnecessary delay, but no later than seven days after the initial appearance. Upon application and a showing of good cause by either party, the court may allow up to a three-day continuance. After that, the court may allow another three-day continuance with the consent of the defendant. The language in (e)(2) was pulled directly from the code.

Mr. Mauro: We looked at a couple of options on time limits. Generally, under the federal statute, they have five days, excluding weekends and holidays. We thought a seven-day period, including weekends and holidays, was a reasonable amount of time, and it's consistent with what a lot of other states do.

Mr. Graves: I think seven days is reasonable after the initial appearance.

Judge Harmond: In light of virtual hearings, it seems to be a little more nimble.

Judge Eddington: I don't see any problems, at least not for rural districts. We don't have the same time challenges.

Judge Eddington moved to approve the proposed changes to rules 7 and 7A and submit them to the Rules of Criminal Procedure Committee for consideration. Judge Robison seconded and the motion passed unanimously.

4) <u>Providing additional information from LE & pretrial at PC phase (mechanics):</u>

Judge Harmond: Ms. Jacobsen and Cpt. Kiddle have been working on some of the mechanics involved in law enforcement and pretrial services providing more information to judges at the pretrial phase.

Ms. Jacobsen: The first question was to identify the information we have that judges aren't getting. That would be active warrants, NCIC hits, federal detainers, and recent criminal history. Now we need to determine what information everyone wants, and during what timeframe? The last two years or four years? Past compliance with supervision? Whether the person is active with AP&P? Whether the person is going to be released to the Board of Pardons?

The most concerning scenario is when a client gets booked and released before the case is filed (arrest #1), and then gets booked again shortly afterward on a new offense (weeks or days later) (arrest #2), but because prosecutors haven't filed on arrest #1 yet, the judge is not aware of arrest #1 when making a release decision on arrest #2. If a case hasn't been filed, judges can't see it. Pretrial can see that a client has been booked four times in the last month, but that is not accessible to a judge.

As for what is appropriate to share, I am going to leave that for someone else to decide. I am happy to share what I can. I think the simplest place to start would be the no-bail eligible offenses in Utah Code 77-20-1(2). If the client is being booked on a felony and we have information that he was already released on a felony, that is simple for us to share. How we are getting things to judges right now is purely reactive. Pretrial met with Judge Kouris and Cpt. Kiddle's team about this. We have a couple of options. I can quickly pull up a report in pretrial's database, showing where clients are and the status of their workflow. It will show if the client has been screened and if pretrial decided to release or detain them (based on

our release authority). I sent a copy of that report over to Judge Kouris to ask if it's something he would like to see from a judge's perspective. Would it trigger a judge to ask for additional information like, why was he released, or why was he detained, or was it an appropriate release? Judge Kouris asked about something as simple as sending an email to the on call judge.

We are looking at moving one or two of our screeners to the jail to communicate with the jail staff when pretrial has already seen the person and plans take them on as a client, so they don't need to be seen by a judge. It would require judges' buy-in and would take us back to the paper-process before the electronic PC system.

Cpt. Kiddle: The idea is to put pretrial on the calendar and have them work closely with the PC clerk and the booking clerk to quickly identify the clients pretrial wants to take, so we are not doubling up on work. One of the trends I see is that pretrial will have someone up front and will start working with them, and then the judge issues a determination that is contrary to what pretrial is doing. I think implementing this process will save time and will be a little more streamlined.

Ms. Williams: The sequencing (of decisions) issue is a big issue. It's been on our radar for quite a while and it's something we've been wanting to fix, but it would require fairly extensive programming. In Salt Lake County, the 3rd district court granted release authority to pretrial services up to, and including, non-violent third degree felonies. In the paper world (before the electronic PC system), the on-call judge would receive a stack of printed PC affidavits every morning. Arrestees already released by pretrial were not included in the pile. In the new system, all PCs are sent to the on-call judge electronically in real time, and there is no mechanism for pretrial to indicate that they have already released (or plan to release) a person, meaning those PCs remain in the judge's electronic queue. Judicial release decisions and pretrial release decisions are frequently happening at the same time. We want and need to fix that.

I am not necessarily opposed to Ms. Jacobsen's idea of the jail not submitting an electronic PC on an individual that pretrial has released, but there are some downsides that you need to be aware of. You would be reducing judicial workload to some extent, because judges wouldn't have to review PCs for individuals that pretrial chose to release, but you'd be adding to the judicial assistants' workload. And the issue of getting more information to judges on the PCs they do have to review would still exist.

If a PC wasn't submitted through the electronic system, a PSA could not be generated, and the probable cause affidavit, PSA, and release order would not be available to the public or to attorneys in Xchange. Those documents would also not automatically attach to the case, once filed. They would have to be sent to the court in some other way (email?) and then manually loaded into the file by a clerk. In addition, pretrial would have to manually calculate a PSA on every PC not submitted through the system.

Ms. Williams summarized her proposal in the committee's packet, noting that the AOC's IT Department has not reviewed the proposal.

My idea would come with a price tag and the programming time would be substantial. However, I think it's the right way to do it, especially given our need and desire to capture data so that we can track what's happening in the pretrial arena. Right now, when pretrial makes a release decision and sets the conditions of release, the AOC doesn't have that data.

Cpt. Kiddle: Would that be an addition to our current process, or would it be a new process?

Ms. Williams: Under that proposal, the process for law enforcement wouldn't change. Law enforcement would submit their PCs just like they do now. This would affect the court and pretrial services.

Judge Harmond: Because of the unique nature of Salt Lake County's pretrial program, if a judge decides they want more information from pretrial services about a particular individual, an email would be an appropriate means. Concerning the additional information listed at the bottom of Ms. Jacobsen's proposal, I don't see any problems, legally, with providing that information to a judge, and it would be extraordinarily helpful. If we could find a way to incorporate that kind of information as a first step, it would certainly be helpful to judges in general. The process Ms. Williams is describing is big and would affect Salt Lake County more than anyone else. I am not sure that the IT department should be trying to do that, if it is not applicable go everyone.

Mr. Mauro: We had discussions about making pretrial's information available to the party's defense attorney and the prosecution. That would be immensely helpful in preparing for a hearing, and would streamline many first appearance calendars.

Judge Eddington: I would certainly appreciate that information.

Ms. Jacobsen and Mr. Mauro discussed the mechanics of sharing SLCo pretrial's information with all parties. Mr. Arishita recommended the use of Google Sheets.

Judge Harmond: Is it possible to modify the current PC system to add a couple of check boxes with like, the individual is out on AP&P, or the client is on pretrial services? Those could easily be checked when a PC is being prepared by law enforcement, and it would be extremely helpful to everyone. I don't know how much programming that would take or how much work it is for the jail staff.

Mr. Arishita: For Ms. Williams' idea, we would have to design the system to be accessible by pretrial services across the state. But as a spin up, we could start with SLCo pretrial so judges are not making determinations concurrently while somebody is being released.

Deputy Greenwell: Our PC system is going fairly well. I attend initial appearance court. We don't have the staff to do what Ms. Jacobsen is describing. Most patrol officers put as much information as they can about the case and charges in their PC statements.

Ms. Williams: For Deputy Greenwell and other smaller programs, if the goal is to get more information out to judges at the PC phase, Judge Harmond's idea of adding checkboxes to the PC system would probably work best. The boxes would be added to the law enforcement side of the PC system. It would take programming time and money, but it would allow law enforcement agencies to get more information to judges without adding it to the PC affidavit itself.

Judge Harmond: A general question to law enforcement participants, do you think it would be difficult to have a checklist in the PC system that would allow you to note whether an individual is on a probation hold, or Board of Pardons hold, or already with pretrial services? Do you have that information readily available in the jail?

Cpt. Kiddle: We don't have that information readily available. We depend on pretrial or probation for that information. If the checkboxes were added to the PC system on the law enforcement side, in SLCo, we could have pretrial sitting next to my PC team, making it very easy to communicate back and forth if pretrial was taking someone out or not. And if pretrial release wasn't granted, we could have a list of items that they could check saying, currently the person has pending charges, etc.

Cpt. Hackwell: We don't usually know whether someone has an immigration hold when we're submitting a PC to the judge, so I don't know if adding that checkbox would be helpful.

Judge Harmond: We obviously need to do some more work, but this is a good place to start.

Ms. Williams: I would recommend asking the subcommittee to put together what the information in those check boxes should be on the law enforcement side and get a quote from DPS and our IT team to see how long it would take and the costs involved. That would give us an idea of whether it's an idea the committee wants to pursue. This was with the rules subcommittee, but at this point, it might be a better fit for the data collection subcommittee.

Rep. Hutchings: I reached out to Rep. Anderegg to see if would be willing to champion this funding-wise, not necessarily a building block request for any agency, but doing it internally as a funding request. He is absolutely interested if we are able to create a wish list and dollar amount request. I would be happy to help push this.

Judge Harmond: Great. If the data collection subcommittee wouldn't mind taking it on, focus on a checklist function rather than a narrative to simplify it for jail staff. It should be available for the whole state.

5) <u>Data Collection Subcommittee Update:</u>

- SLCo Jail Dashboard
- SLCo Bail/Pretrial Dashboard

Ms. Liu: Tucker Samuelsen and I are from the Salt Lake County Mayor's Office of Criminal Justice Initiatives. In that capacity, we are staff to the Criminal Justice Advisory Council and much of what we do to support the Council's decision-making is with data. Some of the work we're doing aligns with the data collection subcommittee under the leadership of Rep. Hutchings. We have been wanting to create an integrated pretrial dashboard to track performance outcomes in real time. It wouldn't just be a static, quarterly or yearly report. As we are implementing new practices, it would alert us to where things might be problematic and where we might need to put up additional guardrails. Mr. Samuelsen will show you what we have so far and what the data collection subcommittee has identified as future next steps. We are also hoping for some input from this group.

Mr. Samuelsen: One of the inherent challenges in doing this work is that the pretrial process is not contained within one agency. You have to get data from the court, the jail, and the counties. Being able to gather people from all of those different agencies in a virtual room has been useful and has helped guide us through the process. Essentially, our goal in building the dashboard is to identify key metrics to track system performance moving forward, and as a platform to share data and inform about the system in general. A dashboard is a very good tool to show aggregate looks and to inform about a whole process. The goal is to figure out the metrics and to inform about policy on a real time basis. We wanted to create something that would be useful to stakeholders who are familiar with this process.

Mr. Samuelsen walked the committee through the pretrial dashboard and preliminary data.

Ms. Williams: Does anyone have feedback on things that you think would be important for us to track? Policies and procedures change from year to year. We need something that will allow us to track data and provide an analysis for policy makers, no matter what the policy happens to be.

Feedback:

- Filter by people detained pretrial vs. people supervised/released on own recognizance
- Filter by people held without bail specifically, as opposed to other holds
- Filter by warrants, non-warrants, warrant type (failure to appear?)
- Filter by hold types (AP&P, fugitive)
- Filter by race, ethnicity, socioeconomic status (address?)
- Filter by number of bookings in certain time periods (30 days – 12 months)
- Capture the time between release and re-arrest. How long were they out before they were rebooked?

Rep. Hutchings: It is remarkable that we at a point where we can run a query and really look into these things. This gives us a great place to start. I think the legislature would be very interested in the breakdown of violent crimes or crimes against persons, and anything related to whether the rules and regulations are addressing the right population.

Ms. Liu: That's an important point. When we are trying to inform other stakeholders and the public, the significance of the way we break down some of the offense categories may not necessarily align with the takeaways. We can take a look at how we break down charge types so that it means something to those outside of the system.

Judge Harmond: Is there a way to capture the number of arrests within a 12-month period? One of the things this Committee struggles with is public safety concerns when someone is released and arrested again in a short period of time. Is there a way to capture data to shed light on the issue?

Mr. Samuelsen: We have the number of prior bookings. Currently, it isn't limited by a specific period of time, but that's certainly something we could do. A tool like this is intended to be an aggregate view. We could show the number of prior bookings in the past 12 months - for this population of over 400 people, but not how many bookings a specific individual had over 12 months.

Ms. Williams: How do we duplicate these efforts across the state? Is the programming behind this dashboard something that can be shared? Is it expensive?

Ms. Liu: We use Microsoft Power BI and it is something we pay for. I am not aware of other dashboard software that is open-access. Salt Lake County holds a license and it's used across all of the entities in the county, so I don't know what the entry costs might be. We can find out and report back. I imagine getting a license to use Microsoft Power BI is not cost prohibitive. It's more about what it takes in terms of staff to create the queries and infrastructure to build a dashboard, and then what it takes to maintain it.

Mr. Samuelsen: Once an entity purchases the software, we can help by sharing code/instructions on how to put their data and the software together to create a dashboard. We could cut out a lot of their legwork and they wouldn't have to reinvent the wheel.

Ms. Liu: The Davis County jail uses Spillman and they are looking to do essentially the same thing we did. We can learn from them to see how transferrable it is.

Rep. Hutchings: There is a precedent for the State to step up to help with funding on stuff like this. A couple of years ago we did it for prosecutors, helping provide statewide software. Would this committee support the data collection subcommittee in making a request to the State to look at whether there was a possibility of purchasing a statewide license so all jails could participate?

Comm. Kamalu: Anything we can do to simplify the process for counties, with a template or funding, would be amazing.

Rep. Hutchings: CCJJ is still looking at the definition of recidivism. I'm wondering if we could flag, not just re-arrests, but re-arrests for certain types of offenses. For example, a DV offender that re-offends on another DV offense, or violates a protective order. I think that could be very informative. Using our own State data, how consistently is somebody who has been convicted, or is waiting to go to trial on a certain type of crime, reoffending? And if they do, on what type?

Judge Harmond: That kind of data would allow us to have discussions based on facts, rather than anecdotal information.

Mr. Samuelsen: That is much easier to track when you're getting data from different entities as well, like the court.

Ms. Williams: Is there a way to know whether someone has been booked in another county in the state? In a perfect world, if every jail in Utah had a dashboard like this, would there be a way to share that data? For example, if someone is booked in SLCo this week, you could see that they were booked into the Utah County jail last week?

Mr. Barron: It's possible, but the lag time in terms of querying multiple databases around the state to get that information would be a challenge.

Rep. Hutchings: That makes a great argument, though, for statewide support of the availability of this type of data. Otherwise, if we're jumping from county to county, we're missing a massive amount of very informative information for the judges. Isn't one of the criticisms of this reform that we don't know what people have done in other places?

Ms. Liu: We shouldn't become too wedded to the idea that the dashboard is the only product that can provide data analysis. It is true that we would not be able to integrate BCI information into something like this in real time, but we are on the cusp of also starting to get data from them in order to do a backward-looking analysis. Even though it's not real time, I think it would still give us a lot of insight about how our system is functioning.

Judge Harmond: I am sure decision-makers would appreciate 3, 6, or 12-month data if real-time data isn't possible. At least they would have some good, hard information from which to make decisions. The data can still be very useful even if it takes a bit of time to generate.

Adjourn:

There being no further business, the meeting was adjourned at 1:50pm with no motion. The next meeting is scheduled for February 4, 2021 at 12 pm (noon) via Webex.

Tab 2

Code of Judicial Administration, Appendix J.

ABILITY-TO-PAY MATRIX - PRETRIAL RELEASE

November 23, 2020

2021 Poverty Guidelines

ANNUAL INCOME	Poverty Level			
Family Size	≤ 100%	101% - 150%	151% - 199%	200+%
1	$ 12,880.00	$12,881 - $19,320	$19,321 - $25,759	$ 25,760
2	$ 17,420.00	$17,421 - $26,130	$26,131 - $34,839	$ 34,840
3	$ 21,960.00	$21,961 - $32,940	$32,941 - $43,919	$ 43,920
4	$ 26,500.00	$26,501 - $39,750	$39,751 - $52,999	$ 53,000
5	$ 31,040.00	$31,041 - $46,560	$46,561 - $62,079	$ 62,080
6	$ 35,580.00	$35,581 - $53,370	$53,371 - $71,159	$ 71,160
7	$ 40,120.00	$40,121 - $60,180	$60,181 - $80,239	$ 80,240
8	$ 44,660.00	$44,661 - $66,990	$66,991 - $89,319	$ 89,320
9	$ 49,200.00	$49,201 - $73,800	$73,801 - $98,399	$ 98,400
10	$ 53,740.00	$53,741 - $80,610	$80,611 - $107,479	$ 107,480
For each add'l person add $4,540				
78B-22-202				

If monetary bail is deemed a least restrictive, reasonably available condition necessary to ensure appearance, below is the recommended amount:

	Poverty Level:	≤ 100%	101% - 150%	151% - 199%	200+%
PSA FTA Risk Score (Appearance Rate**):	**FTA 1** (90%)	$0	$0	$0	$0
	FTA 2 (85%)	$0	$0	$0	$0
	FTA 3 (80%)	$0	$0	$0	$0
	FTA 4 (69%)	$100	$250	$750	$1,000
	FTA 5 (65%)	$250	$500	$1,250	$2,500
	FTA 6 (60%)	$500	$1,000	$2,500	*$5,000

***Avg appearance rate for individuals with the same risk score in the PSA validation study.*

Notes:

Utah Code §77-20-1(4)(c): "If the court determines a financial condition, other than an unsecured bond, is necessary to impose on an individual as part of the individual's pretrial release, the court shall consider the individual's ability to pay when determining the amount of the financial condition."

*Setting monetary bail is a highly fact dependent decision. The recommended amounts do not reflect the maximum amount a judge may order. Judges should ordinarily impose monetary bail based on a person's ability-to-pay. However, judges continue to have the same discretion to deviate from the recommended amounts as they had under the Uniform Fine and Bail Schedule, provided judges conduct an individualized assessment of ability-to-pay and risk. For example, if the defendant's income is higher than 200% of the poverty level and the circumstances surrounding the arrest or charge indicate a significant flight risk, a judge might determine that a higher monetary amount is necessary to incentivize that particular defendant to appear in court.

The purpose behind all forms of financial release (secured bond, unsecured bond, cash, etc.) is to incentivize an individual to appear in court. There is no rational relationship between money and public safety, so the criminal activity scores on the PSA are not factored into the recommended dollar amounts. No financial condition is recommended when the FTA score is below 4 because the likelihood of appearance for scores 1-3 is very high (1 = 90%, 2 = 85%, 3 = 80%), compared to a significant drop starting at FTA 4 (4 = 69%, 5 = 65%, 6 = 60%).

If the individual and/or the circumstances surrounding the case indicate a public safety risk, non-financial conditions should be considered in lieu of or in addition to financial conditions of release. If the individual poses a *significant* public safety risk, determine whether they are eligible for a no-bail hold under Utah Code §77-20-1(2). Under Utah Code §77-20-1(8), there is a presumption of detention if the individual is charged with criminal homicide or any offense for which the term of imprisonment may include life. Judges may delay issuing a pretrial status order if a prosecutor files a motion for detention under Utah Code §77-20-1(6).

Note: Surety bail agents are only liable for bringing a defendant to court. They are not liable if the defendant commits a new offense. In fact, if the defendant commits a new crime while out on a secured bond, the agent may be released from its obligations.

The maximum recommended amount is $5,000 because:

1. There is a presumption of own recognizance release;
2. The court is directed to determine the "least restrictive" condition necessary to "reasonably ensure" appearance in court;
3. Even for those with the highest FTA risk (FTA 6), the likelihood of appearance is still relatively high at 60%;
4. Collateral consequences of an over-reliance on money can include loss of housing, loss of jobs, loss of custody, car repossession, interruption in medication and medical care, etc.;
5. Holding low-risk defendants for even 2-3 days increases their risk of recidivism by almost 40% compared those held no more than 24 hours; and
6. Public safety risk will be considered separately and, in addition to, failure to appear risk.

The ability-to-pay matrix may be used to determine monetary bail amounts for every financial condition type including cash, credit/debit cards, secured bonds, and unsecured bonds.

UTAH COURT RULES – PUBLISHED FOR COMMENT

The Supreme Court and Judicial Council invite comments about amending these rules. To view the proposed amendment, click on the rule number.

To submit a comment or view the comments of others, click on "Continue Reading." To submit a comment, scroll down to the "Leave a Reply" section, and type your comment in the "Comment" field. Type your name and email address in the designated fields and click "Post Comment."

Comments cannot be acknowledged, but all will be considered. Comments are saved to a buffer for review before publication.

Posted: November 25, 2020

Utah Courts

Code of Judicial Administration – Comment Period Closed January 9, 2021

CJA Appendix J. Ability-to-Pay Matrix (AMEND). In response to House Bill 206, the Uniform Fine and Bail Schedule has been replaced by the Uniform Fine Schedule and the Ability-to-Pay Matrix. The Ability-to-Pay Matrix provides recommended monetary bail amounts using the poverty guidelines and an individual's risk of failing to appear in court. Setting monetary bail is a highly fact dependent decision. The recommended amounts do not reflect the maximum amount a judge may order. Judges should ordinarily impose monetary bail based on a person's ability-to-pay. However, judges continue to have the same discretion to deviate from the recommended amounts as they had under the Uniform Fine and Bail Schedule, provided judges conduct an individualized assessment of ability-to-pay and risk.

This entry was posted in CJA_Appx_J.

« Rules of Professional Conduct – Comment Period Closes January 17, 2021

Rules Governing the Utah State Bar – Comment Period Closes December 17, 2020 »

To view all comments submitted during a particular comment period, click on the comment deadline date. To view all comments to an amendment, click on the rule number.

CATEGORIES

- -Alternate Dispute Resolution
- -Code of Judicial Administration
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- -Rules Governing Licensed Paralegal Practitioner
- -Rules Governing the State Bar

UTAH COURTS

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30 thoughts on “Code of Judicial Administration – Comment Period Closed January 9, 2021”

Lexie Wilson
January 1, 2021 at 7:53 pm

I am a concerned community member in Salt Lake County. The new Ability to Pay (ATP) matrix shows Utah’s awareness of many defendant’s inability to pay bail, but it is not enough. Cash bail remains an unjust method to incentivize court appearance, and cash bail should be abolished entirely. Until there is an end to money bail in Utah, we must continue to denounce the inadequacy of reforms like the ATP matrix to actually assist indigent defendants.

The recommended bail amount according to the ATP matrix is calculated based on two factors: #1 the defendant’s annual income in relation to the poverty level, and #2 the defendants FTA Risk Score. Both of these metrics are flawed data sources to determine someone’s ability to pay bail.

First, the Utah court system does not, as of today, have infrastructure in place to assess someone’s annual income prior to their initial appearance. When the judge does not have access to annual income information, the defendant becomes responsible to present their income information to the judge. Defendants are often unable to communicate with their public defender prior to the initial appearance, and these appearances are reported to be quite confusing and overwhelming, especially for first time offenders. The courts are obligated to remove this burden from the defendant. To provide the judge with accurate annual income information for defendants prior to the initial appearance is a large data infrastructure undertaking that would likely cost money and labor to the State. Instead, we argue that the ATP matrix itself is too simplistic for its intended purpose – that is, to incentivize further court appearances. The easiest, cheapest solution is to abolish cash bail and unsecured bonds altogether.

Second, the FTA Risk Score calculation is embedded with several harmful assumptions. The risk score is increased if the defendant has failed to appear at a court hearing within the last two years,

- -Rules of Appellate Procedure
- -Rules of Civil Procedure
- -Rules of Criminal Procedure
- -Rules of Evidence
- -Rules of Juvenile Procedure
- -Rules of Professional Conduct
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- -Rules of Small Claims Procedure
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failed to appear prior to two years ago, or if they have any prior misdemeanor or felony charges. These metrics are not a measure of flight risk. A person with a high FTA risk score is assumed to have intentionally skipped court or jumped bail, but the data show that this is rarely the case. The largest study on court appearances to date, conducted by the Bureau of Justice Statistics between 1990 and 2004 in 40 of the 75 largest U.S. counties, found that more than three quarters of defendants showed up for all of their court dates. Those that missed court have reported emergency incidents, inability to skip work or arrange childcare, or simply forgot that they are required to appear. The ATP matrix punishes all missed court dates with higher recommended bail amounts, and it therefore systematically perpetuates harm especially against poor communities of color in Utah. Additionally, the FTA risk score is increased for any prior charges. We know that marginalized communities are over-policed and disproportionately charged with misdemeanors and felonies (https://www.sentencingproject.org/publications/un-report-on-racial-disparities/), and therefore, the ATP matrix only reinforces these systemic, racialized biases and further punishes our most vulnerable communities.

The ATP matrix claims to be more equitable for impoverished Utahns, but Utahns will not see justice until cash bail and risk assessment tools are abandoned by the courts. Utah courts will save costs by abolishing cash bail and risk assessments, and instead offering to provide services to defendants that will help them appear in court. These services might include free childcare, abolition of bench warrants for FTAs, free court date text reminders, and remote video courtrooms.

Thank you for your sincere consideration of this comment.

Liz Maryon
January 2, 2021 at 4:20 pm

I would like to add this public comment to emphasize my support for the following statement by Decarcerate Utah with regard to HB206:
“Decarcerate Utah would like to express our concerns with HB206 and suggest crucial steps that the state must take to ensure true community safety.
HB206 recommends that judges use the “ability to pay matrix” (which determines a bail amount based on income and past “failure-to-appear” incidents) in determining bail amounts. Although we appreciate the recognition that it is unethical to keep a legally innocent person in jail simply because they cannot afford to leave, this bill essentially does nothing to resolve this harm. First, judges are in no way obligated to follow the matrix or the suggestion of a $5000 maximum bail, which then continues the same historical discrimination against marginalized and impoverished communities based on a judge’s “discretion”. Second, the ability-to-pay matrix does not consider the systemic

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barriers and lack of resources which underlie defendants' difficulties in attending their court dates. This oversight continues to punish, rather than assist defendants in reappearance, and disproportionately impacts victims of systemic oppression.

Instead of trying to reform a system which is inherently corrupt, we should follow LA County's lead and abolish cash bail entirely. The vast majority of defendants want to make it to their scheduled court dates, but are met with systemic barriers that stop them. A defendant designated as high risk by the ability to pay matrix is assumed to have intentionally skipped court or jumped bail in the past, but the data show that this is rarely the case. The largest study on court appearances to date, conducted by the Bureau of Justice Statistics between 1990 and 2004 in 40 of the 75 largest U.S. counties, found that more than three quarters of defendants showed up for all of their court dates. Those that missed court reported emergency incidents, inability to skip work or arrange childcare, or simply forgot that they were required to appear. When we acknowledge that most crime and inability to make it to court appearances is the result of systemic barriers like lack of access to communication technologies (including internet access, translation barriers, etc.), reliable transportation, medical and mental health care, housing insecurity, child-care, food/water, etc., then we can see that guaranteeing justice and safety is not about locking people in cages because they are poor, but providing these resources in the community to actually heal harm at its source. If the courts were interested in actually helping people, they would address these systemic barriers and provide resources to individuals outside of jail.

Utah taxpayers are already paying to provide basic resources (shelter, food, medical care, etc.) to pre-trial detention inmates in jail, so why not provide these resources within the community to support rehabilitation and address the existing community level barriers, rather than cause increased harm and recidivism as a result of horrific jail conditions? Courts could also support defendant appearances by taking simple steps like sending text reminders about scheduled court appointments, which has been shown to increase court appearances to more than 95% (https://pretrialrisk.com/the-danger/criminal-justice-bias/failures-to-appear/). Decarcerate Utah also recommends increased options for virtual court hearings, accommodations for technological difficulties, and flexible schedules and/or options for rescheduling hearings. Giving defendants the ability to reschedule when emergencies of poverty arise, compensating them for unpaid leave, and providing child-care for court appointments would be much more effective in helping people show up to court, and also reduce the harm associated with pre-trial detention.

Researchers have found that the longer low-risk individuals are held in jail, the more likely they are to engage in criminal activity upon release (https://nicic.gov/hidden-costs-pretrial-detention). We know that harm begets more harm, so cash bail detention is certainly not keeping our communities safer. The ability-to-pay matrix does not resolve this harm because it continues to allow for the criminalization and punishment of the poor with toothless suggestions for "lower bail" and a reification of the cash bail system as an effective crime deterrent.

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HB206 does not meet the justice and safety needs of our community because it further strengthens the false validity of the cash bail system by reiterating that cash bail can be effective and just, when we know these claims are false. If HB206 mandated that an individual must be able to reasonably afford their bail, then we would have no inmates held on bail for pre-trial detention. HB206 clearly has not accomplished this, and so we continue to have criminalization of the poor through cash bail. The only way to "reform" cash bail is to abolish it. We demand true community safety which can only be achieved through community support, access to basic resources, restorative justice models, and an end to the current profit driven criminal justice system."

Alicia
January 2, 2021 at 4:31 pm

I am a concerned community member in Salt Lake County and am submitting this comment to bring attention to the shortcomings of the Ability-to-Pay (ATP) Matrix.
The ATP matrix relies on a defendant's income and their FTA risk score. It is great that Utah courts are finally considering the devastating impact that cash bail has on low-income defendants. Unfortunately, the ATP matrix's reliance on the FTA risk score renders the matrix a harmful tool for continued oppression of Utah's Black and Brown, poor, immigrant, LGBTQ, and otherwise marginalized communities.
How can we calculate "failure to appear" without accounting for the personal and structural conditions that cause a person to miss court? The courts should provide services to help defendants appear in court, not punish them for failing to do so by setting inflated bail amounts.
Utah's FTA risk score increases for any prior misdemeanor or felony charges. Research has shown that marginalized communities are much more likely to be targeted by police and criminally charged. The ATP matrix reinforces and further punishes according to the classist and racist biases found in Utah's criminal justice system.
I call on the courts to consider abolishing cash bail and the FTA risk assessment altogether. I urge the courts to expand Pretrial Services to help defendants through the court system.

Marie
January 2, 2021 at 7:09 pm

I am a community member in Salt Lake County and am submitting this comment to bring attention to the shortcomings of the Ability-to-Pay (ATP) Matrix.
The ATP matrix relies on a defendant's income and their FTA risk score. I applaud the Utah courts considering the devastating

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- CJC04
- CJC05
- CJCApplicability
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impact that cash bail has on low-income defendants. Unfortunately, the ATP matrix's reliance on the FTA risk score renders the matrix a harmful tool for marginalized communities. How can we calculate "failure to appear" without accounting for the personal and structural conditions that cause a person to miss court? The courts should provide services to help defendants appear in court, not punish them for failing to do so by setting inflated bail amounts.
Utah's FTA risk score increases for any prior misdemeanor or felony charges. Research has shown that marginalized communities are much more likely to be targeted by police and criminally charged. The ATP matrix reinforces and further punishes according to the common biases found in Utah's criminal justice system.
Please consider abolishing cash bail and the FTA risk assessment altogether and expand Pretrial Services to help defendants through the court system.

Kev Nemelka
January 3, 2021 at 10:37 am

I'm commenting to support Decarcerate Utah regarding HB206, which is at its core a racist, classist piece of legislation that will only further marginalize communities that are already overpoliced and discriminated against. The ability-to-pay matrix parades as an objective/scientific guide to "make things easier" for judges, but it is absolutely reductive and baseless, ignoring circumstantial and systemic contexts we all know comprise a harsher reality for Black/Brown and/or poor members of our community.

Instead of having a business-as-usual, originality mindset when it comes to making laws that hurt people, you can take quantifiable steps to remedy the challenges that the ability-to-pay matrix claims to address but only exacerbates:

1. Set up text reminder technology to remind people about scheduled court appointments—this has been shown to increase court appearances to more than 95% (https://pretrialrisk.com/the-danger/criminal-justice-bias/failures-to-appear/)
2. Increase options for virtual court hearings, accommodations for technological difficulties and flexible schedules
3. Give defendants the ability to reschedule when emergencies of poverty arise, compensate them for unpaid leave and provide child care for court appointments
4. would be much more effective in helping people show up to court, and also reduce the harm associated with pre-trial detention.

These suggestions would be much more effective in helping people show up to court and reduce the harm associated with pre-trial detention. Please consider these ideas. Utah taxpayers already pay to provide basic resources (shelter, food, medical

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care, etc.) to pre-trial detention inmates in jail, so why not provide these resources within the community to support rehabilitation and address the existing community level barriers, rather than cause increased harm and recidivism as a result of horrific jail conditions? We must stop criminalizing the impoverished community. HB206 feeds the false validity that cash bail can be effective and just, when we know empirically that these claims are statistically untrue. The only way to "reform" cash bail is to abolish it. We yearn for true community safety, which can only be achieved through community support, access to basic resources, restorative justice models and an end to the current profit-driven criminal justice system.
Thank you for considering my comments.

Michael
January 3, 2021 at 11:03 am

I am a concerned community member in Salt Lake County and am submitting this comment to bring attention to the shortcomings of the Ability-to-Pay (ATP) Matrix.

The ATP matrix relies on a defendant's income and their FTA risk score. It is great that Utah courts are finally considering the devastating impact that cash bail has on low-income defendants. Unfortunately, the ATP matrix's reliance on the FTA risk score renders the matrix a harmful tool for continued oppression of Utah's Black and Brown, poor, immigrant, LGBTQ, and otherwise marginalized communities.

How can we calculate "failure to appear" without accounting for the personal and structural conditions that cause a person to miss court? The courts should provide services to help defendants appear in court, not punish them for failing to do so by setting inflated bail amounts.

Utah's FTA risk score increases for any prior misdemeanor or felony charges. Research has shown that marginalized communities are much more likely to be targeted by police and criminally charged. The ATP matrix reinforces and further punishes according to the classist and racist biases found in Utah's criminal justice system.
I call on the courts to consider abolishing cash bail and the FTA risk assessment altogether. I urge the courts to expand Pretrial Services to help defendants through the court system.

Mariam
January 3, 2021 at 11:23 am

Hi, I am a community member in Salt Lake County and am submitting this comment to bring attention to the shortcomings

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of the Ability-to-Pay (ATP) Matrix.
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I call on the courts to consider abolishing cash bail and the FTA risk assessment altogether. I urge the courts to expand Pretrial Services to help defendants through the court system.

Katrina
January 3, 2021 at 4:16 pm

While it's great that Utah courts are finally considering the devastating impact that cash bail has on low-income defendants, ATP matrix's reliance on the FTA risk score renders the matrix a harmful tool for continued oppression of Utah's Black and Brown, poor, immigrant, LGBTQ, and otherwise marginalized communities.

There are lots of reasons people would fail to appear in court, many of which are due to systemic and personal conditions that put marginalized communities at a disadvantage. The courts should provide services to help defendants appear in court, not punish them for failing to do so by setting inflated bail amounts.

Utah's FTA risk score increases for any prior misdemeanor or felony charges. Research has shown that marginalized communities are much more likely to be targeted by police and criminally charged. The ATP matrix reinforces and further punishes according to the classist and racist biases found in Utah's criminal justice system.

I call on the courts to consider abolishing cash bail, like was done in LA County, and the FTA risk assessment altogether. I urge the courts to expand Pretrial Services to help defendants through the court system.

Emilia Whitmer
January 3, 2021 at 4:59 pm

I am a concerned community member in Salt Lake County and am submitting this comment to bring attention to the shortcomings of the Ability-to-Pay (ATP) Matrix.

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I ask the courts to consider abolishing cash bail and the FTA risk assessment altogether. I urge the courts to expand Pretrial Services to help defendants through the court system.

Thank you for considering my comments.

Bethany Gull
January 3, 2021 at 5:34 pm

As a resident of Utah County, I would like to voice my concerns about the proposed Ability-to-Pay (ATP) Matrix. While I'm very happy that as a state we are recognizing the damage the bail system has had on many low-income people, the ATP matrix's reliance on the FTA risk score renders the matrix a harmful tool for continued oppression of Utah's Black and Brown, poor, immigrant, LGBTQ, and otherwise marginalized communities.
If we do not take into account the structural and individual conditions that cause a person to miss court, our bail system will continue to punish poverty. The courts should provide services to help defendants appear in court, not punish them for failing to do so by setting inflated bail amounts.
Utah's FTA risk score increases for any prior misdemeanor or felony charges. Research has shown that marginalized communities are much more likely to be targeted by police and

criminally charged. The ATP matrix reinforces and further punishes according to the classist and racist biases found in Utah's criminal justice system.
A better solution would be to consider abolishing cash bail and the FTA risk assessment altogether. I urge the courts to expand Pretrial Services to help defendants through the court system.

Ethan Maryon
January 3, 2021 at 6:32 pm

I would like to add this public comment to emphasize my support for the following statement by Decarcerate Utah with regard to HB206:
"Decarcerate Utah would like to express our concerns with HB206 and suggest crucial steps that the state must take to ensure true community safety.
HB206 recommends that judges use the "ability to pay matrix" (which determines a bail amount based on income and past "failure-to-appear" incidents) in determining bail amounts. Although we appreciate the recognition that it is unethical to keep a legally innocent person in jail simply because they cannot afford to leave, this bill essentially does nothing to resolve this harm. First, judges are in no way obligated to follow the matrix or the suggestion of a $5000 maximum bail, which then continues the same historical discrimination against marginalized and impoverished communities based on a judge's "discretion". Second, the ability-to-pay matrix does not consider the systemic barriers and lack of resources which underlie defendants' difficulties in attending their court dates. This oversight continues to punish, rather than assist defendants in reappearance, and disproportionately impacts victims of systemic oppression.
Instead of trying to reform a system which is inherently corrupt, we should follow LA County's lead and abolish cash bail entirely. The vast majority of defendants want to make it to their scheduled court dates, but are met with systemic barriers that stop them. A defendant designated as high risk by the ability to pay matrix is assumed to have intentionally skipped court or jumped bail in the past, but the data show that this is rarely the case. The largest study on court appearances to date, conducted by the Bureau of Justice Statistics between 1990 and 2004 in 40 of the 75 largest U.S. counties, found that more than three quarters of defendants showed up for all of their court dates. Those that missed court reported emergency incidents, inability to skip work or arrange childcare, or simply forgot that they were required to appear. When we acknowledge that most crime and inability to make it to court appearances is the result of systemic barriers like lack of access to communication technologies (including internet access, translation barriers, etc.), reliable transportation, medical and mental health care, housing insecurity, child-care, food/water, etc., then we can see that guaranteeing justice and safety is not about locking people in cages because they are poor, but providing these resources in the community to actually heal harm at its source. If the courts were

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interested in actually helping people, they would address these systemic barriers and provide resources to individuals outside of jail.
Utah taxpayers are already paying to provide basic resources (shelter, food, medical care, etc.) to pre-trial detention inmates in jail, so why not provide these resources within the community to support rehabilitation and address the existing community level barriers, rather than cause increased harm and recidivism as a result of horrific jail conditions? Courts could also support defendant appearances by taking simple steps like sending text reminders about scheduled court appointments, which has been shown to increase court appearances to more than 95% (https://pretrialrisk.com/the-danger/criminal-justice-bias/failures-to-appear/). Decarcerate Utah also recommends increased options for virtual court hearings, accommodations for technological difficulties, and flexible schedules and/or options for rescheduling hearings. Giving defendants the ability to reschedule when emergencies of poverty arise, compensating them for unpaid leave, and providing child-care for court appointments would be much more effective in helping people show up to court, and also reduce the harm associated with pre-trial detention.
Researchers have found that the longer low-risk individuals are held in jail, the more likely they are to engage in criminal activity upon release (https://nicic.gov/hidden-costs-pretrial-detention). We know that harm begets more harm, so cash bail detention is certainly not keeping our communities safer. The ability-to-pay matrix does not resolve this harm because it continues to allow for the criminalization and punishment of the poor with toothless suggestions for "lower bail" and a reification of the cash bail system as an effective crime deterrent.
HB206 does not meet the justice and safety needs of our community because it further strengthens the false validity of the cash bail system by reiterating that cash bail can be effective and just, when we know these claims are false. If HB206 mandated that an individual must be able to reasonably afford their bail, then we would have no inmates held on bail for pre-trial detention. HB206 clearly has not accomplished this, and so we continue to have criminalization of the poor through cash bail. The only way to "reform" cash bail is to abolish it. We demand true community safety which can only be achieved through community support, access to basic resources, restorative justice models, and an end to the current profit driven criminal justice system."

Ruby Bates
January 3, 2021 at 11:48 pm

The ATP matrix claims to be more equitable for impoverished Utahns, but Utahns will not see justice until cash bail is abandoned by the courts. Utah courts will save costs by abolishing cash bail, and instead offering to provide services to defendants that will help them appear in court. These services might include free childcare, abolition of bench warrants for

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FTAs, free court date text reminders, and remote video courtrooms, an especially important consideration given the pandemic numbers in Utah. Beyond that, cash bail, no matter how "equitable" the bail amount may be, indicates that people do not need to be held before sentencing. Cash bail allows wealthy people to buy freedom. Individuals who cannot afford to pay bail are placed in a dangerous situation given the pandemic. Social distancing is not possible in jail. Holding people unnecessarily in a pandemic is an issue public health, and should be avoided whenever possible as infection rates in jails and prisons are much higher than in the general population

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January 3, 2021 at 11:49 pm

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Oskar Bates
January 4, 2021 at 12:55 am

End cash bail. This is a punishment that affects the poorest of us who are already struggling and is not a problem for rich 'criminals'. Unfair and unjust, and a scam.

Katie
January 4, 2021 at 10:02 am

I live in Salt Lake County and I am very concerned about continuing to have cash bail in Utah. How likely a person is to "fail to appear" is calculated in a discriminatory way, as it increases for prior charges (not convictions, just charges). We know from research that marginalized communities are more likely to be targeted by law enforcement and thereby face criminal charges, which means that it is members of these marginalized communities who will have to pay higher bail.

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However, if cash bail is abolished, we don't even have to think about the details of what to charge someone! We know from research that the longer low-risk folks are held in jail, the more likely they are to engage in criminal activity after they are released, so what purpose does cash bail serve? It's not making communities any safer.

The courts should abolish cash bail and the "failure to appear" risk assessment, and instead expand pretrial services to help defendants make their court dates.

Brinley
January 5, 2021 at 10:00 am

I would like to express my concerns with HB206 and how it will be enacted to make sure that this community is working toward a more holistic and transformative sense of community safety.

Currently money bail is being arbitrarily used by judges as a form of ransom that keeps people locked up in a dangerous environment. The ability to pay matrix is supposed to take into account a person's income and failure to appear risk, but these measurements are incoherently and discretionally used to determine the amount of bail to set. Judges are not obligated to follow this matrix or the suggestion of the $5,000 max bail cap, which perpetuates racial and other discriminations against our marginalized and poor communities of Utah. This oversight continues to punish, rather than assist defendants in appearance or rehabilitate an individual, and disproportionately impacts victims of systemic oppression.

I would like to see us follow the lead of other counties that have abolished cash bail in its entirety. There are many reasons people may miss a court date, and setting a high bail amount does not resolve any of them. We must acknowledge that most crimes and inability to appear in court are the results of systemic barriers like lack of access to communication technologies (internet access, translation barriers, etc), reliable transportation, child care, time missed from work, quality healthcare including mental health, housing insecurity, and more.

We should instead shift our focus to providing resources in the community to create safer conditions of living. If the courts were interested in actually helping people, they would address these systemic barriers and provide resources to individuals outside of jail. Utah taxpayers are already paying to provide basic resources (shelter, food, medical care, etc.) to pre-trial detention inmates in jail, so why not provide these resources within the community to support rehabilitation and address the existing community level barriers, rather than cause increased harm and recidivism as a result of horrific jail conditions? Giving defendants the ability to reschedule when emergencies of poverty arise, compensating them for unpaid leave, and providing child-care for court appointments would be much more effective in helping people

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show up to court, and also reduce the harm associated with pre-trial detention.

We know that harm begets more harm, so cash bail detention is certainly not keeping our communities safer. The ability-to-pay matrix does not resolve this harm because it continues to allow for the criminalization and punishment of the poor with toothless suggestions for "lower bail" and a reification of the cash bail system as an effective crime deterrent.

HB206 does not meet the justice and safety needs of our community because it further strengthens the false validity of the cash bail system by reiterating that cash bail can be effective and just, when we know these claims are false. The only way to resolve the harms created by cash bail is to completely eliminate and abolish it.

Eve Rickles-Young
January 5, 2021 at 10:51 am

I am a resident of Salt Lake County and I believe there are problems with the Ability-to-Pay (ATP) Matrix.

While I appreciate that Utah courts are thinking about the impact cash bail has on low-income communities, relying on the FTA risk score means continuing to uphold an unfair system. How can we calculate "failure to appear" without accounting for the structural conditions that wouldn't allow them to appear? Rather than punishing folks who cannot appear for reasons beyond their control, the court should figure out a way to provide assistance, not penalty.

In addition, penalizing people for previous misdemeanor or felony charges completely ignores the structure of the criminal justice system in Utah that targets marginalized communities.

There is no justice within a cash bail system. The courts should abolish cash bail and the Failure to Appear system. The courts should expand pretrial services and the help they can provide to defendants going through the court system.

Adair Kovac
January 5, 2021 at 4:50 pm

No one who could afford their bail would choose to sit in jail instead, so any true reform to make cash bail cease to be primarily a way of discriminatorily jailing the poor without due process would necessarily abolish pre-trial detention. Additionally, most of the people who don't show up for their court appointments had some barrier in place to doing so. For

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instance, I've talked to people living on the streets who have non-appearances on their records simply because they have no way to receive letters from the court. Punitive measures won't help that, we need constructive solutions to our communities' problems. A record of non-appearances when someone had insurmountable barriers to attending court isn't a "flight risk".

Cale Carthey
January 5, 2021 at 7:56 pm

I am a citizen of Salt Lake County and am writing regarding the proposed Ability To Pay (ATP) matrix.
While I am glad that we are working towards reform and hopefully an end to the cash bail system that inhumanely punishes people for being low-wealth, the proposed matrix is not the way to accomplish this. A person with a high Failure to Appear (FTA) risk score is assumed to have intentionally skipped court or jumped bail, but the data show that this is rarely the case. The largest study on court appearances to date, conducted by the Bureau of Justice Statistics between 1990 and 2004 in 40 of the 75 largest U.S. counties, found that more than three quarters of defendants showed up for all of their court dates. Those that missed court have reported emergency incidents, inability to skip work or arrange childcare, or simply forgot that they are required to appear. This should not be used as the basis for bail amounts.
The Ability-to-Pay Matrix being proposed would increase bail amounts for over-policed, marginalized communities by using past charges (not convictions) as a factor in the amount of bail owed. This reinforces systemic racism and classism.
The concept of money bail is unjust, racist, classist, and puts people in unnecessary danger. This ATP matrix does not fix that.

Sandra Luo
January 6, 2021 at 9:10 am

Hello! I'm a Salt Lake County resident and wanted to add this public comment to emphasize my support for the following statement by Decarcerate Utah with regard to HB206:

"Instead of trying to reform a system which is inherently corrupt, we should follow LA County's lead and abolish cash bail entirely. The vast majority of defendants want to make it to their scheduled court dates, but are met with systemic barriers that stop them. A defendant designated as high risk by the ability to pay matrix is assumed to have intentionally skipped court or jumped bail in the past, but the data show that this is rarely the case. The largest study on court appearances to date, conducted by the Bureau of Justice Statistics between 1990 and 2004 in 40 of the 75 largest U.S. counties, found that more than three

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quarters of defendants showed up for all of their court dates. Those that missed court reported emergency incidents, inability to skip work or arrange childcare, or simply forgot that they were required to appear. When we acknowledge that most crime and inability to make it to court appearances is the result of systemic barriers like lack of access to communication technologies (including internet access, translation barriers, etc.), reliable transportation, medical and mental health care, housing insecurity, child-care, food/water, etc., then we can see that guaranteeing justice and safety is not about locking people in cages because they are poor, but providing these resources in the community to actually heal harm at its source. If the courts were interested in actually helping people, they would address these systemic barriers and provide resources to individuals outside of jail."

End cash bail!

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Josh Kivlovitz
January 8, 2021 at 10:13 am

Instead of trying to reform a system which is inherently corrupt, we should follow LA County's lead and abolish cash bail entirely. The vast majority of defendants want to make it to their scheduled court dates, but are met with systemic barriers that stop them. A defendant designated as high risk by the ability to pay matrix is assumed to have intentionally skipped court or jumped bail in the past, but the data show that this is rarely the case. The largest study on court appearances to date, conducted by the Bureau of Justice Statistics between 1990 and 2004 in 40 of the 75 largest U.S. counties, found that more than three quarters of defendants showed up for all of their court dates. Those that missed court reported emergency incidents, inability to skip work or arrange childcare, or simply forgot that they were required to appear. When we acknowledge that most crime and inability to make it to court appearances is the result of systemic barriers like lack of access to communication technologies (including internet access, translation barriers, etc.), reliable transportation, medical and mental health care, housing insecurity, child-care, food/water, etc., then we can see that guaranteeing justice and safety is not about locking people in cages because they are poor, but providing these resources in the community to actually heal harm at its source. If the courts were interested in actually helping people, they would address these systemic barriers and provide resources to individuals outside of jail.

Utah taxpayers are already paying to provide basic resources (shelter, food, medical care, etc.) to pre-trial detention inmates in jail, so why not provide these resources within the community to support rehabilitation and address the existing community level barriers, rather than cause increased harm and recidivism as a result of horrific jail conditions? Courts could also support defendant appearances by taking simple steps like sending text

reminders about scheduled court appointments, which has been shown to increase court appearances to more than 95% (https://pretrialrisk.com/the-danger/criminal-justice-bias/failures-to-appear/). Decarcerate Utah also recommends increased options for virtual court hearings, accommodations for technological difficulties, and flexible schedules and/or options for rescheduling hearings. Giving defendants the ability to reschedule when emergencies of poverty arise, compensating them for unpaid leave, and providing child-care for court appointments would be much more effective in helping people show up to court, and also reduce the harm associated with pre-trial detention.

Researchers have found that the longer low-risk individuals are held in jail, the more likely they are to engage in criminal activity upon release (https://nicic.gov/hidden-costs-pretrial-detention). We know that harm begets more harm, so cash bail detention is certainly not keeping our communities safer. The ability-to-pay matrix does not resolve this harm because it continues to allow for the criminalization and punishment of the poor with toothless suggestions for "lower bail" and a reification of the cash bail system as an effective crime deterrent.

HB206 does not meet the justice and safety needs of our community because it further strengthens the false validity of the cash bail system by reiterating that cash bail can be effective and just, when we know these claims are false. If HB206 mandated that an individual must be able to reasonably afford their bail, then we would have no inmates held on bail for pre-trial detention. HB206 clearly has not accomplished this, and so we continue to have criminalization of the poor through cash bail. The only way to "reform" cash bail is to abolish it. We demand true community safety which can only be achieved through community support, access to basic resources, restorative justice models, and an end to the current profit driven criminal justice system.

Sara B LoTemplio
January 8, 2021 at 11:44 am

Hi! My name is Sara and I'm a South Salt Lake resident.
The ATP matrix relies on a defendant's income and their FTA risk score. It is great that Utah courts are finally considering the devastating impact that cash bail has on low-income defendants. Unfortunately, the ATP matrix's reliance on the FTA risk score renders the matrix a harmful tool for continued oppression of Utah's Black and Brown, poor, immigrant, LGBTQ, and otherwise marginalized communities.
How can we calculate "failure to appear" without accounting for the personal and structural conditions that cause a person to miss court? The courts should provide services to help defendants appear in court, not punish them for failing to do so by setting inflated bail amounts.
Utah's FTA risk score increases for any prior misdemeanor or

felony charges. Research has shown that marginalized communities are much more likely to be targeted by police and criminally charged. The ATP matrix reinforces and further punishes according to the classist and racist biases found in Utah's criminal justice system.
I call on the courts to consider abolishing cash bail and the FTA risk assessment altogether. I urge the courts to expand Pretrial Services to help defendants through the court system.

Kathryn Van Sleen
January 8, 2021 at 11:44 am

I am a concerned community member in Salt Lake County who wants to speak out against the new Ability to Pay matrix, which may show Utah's awareness of many defendant's inability to pay bail, but it nowhere near enough. Cash is an inherently unjust and racist system and cash bail must be abolished entirely. Until there is an end to money bail in Utah, I will continue to denounce and critique the inadequacy of reforms like the ATP matrix.

The recommended bail amount according to the ATP matrix is calculated based on two factors: #1 the defendant's annual income in relation to the poverty level, and #2 the defendants FTA Risk Score. Both of these metrics are flawed data sources to determine someone's ability to pay bail.

First, the Utah court system does not, as of today, have infrastructure in place to assess someone's annual income prior to their initial appearance. When the judge does not have access to annual income information, the defendant becomes responsible to present their income information to the judge. Defendants are often unable to communicate with their public defender prior to the initial appearance, and these appearances are reported to be quite confusing and overwhelming, especially for first time offenders. The courts are obligated to remove this burden from the defendant. To provide the judge with accurate annual income information for defendants prior to the initial appearance is a large data infrastructure undertaking that would likely cost money and labor to the State. Instead, we argue that the ATP matrix itself is too simplistic for its intended purpose – that is, to incentivize further court appearances. The easiest, cheapest solution is to abolish cash bail and unsecured bonds altogether.

Second, the FTA Risk Score calculation is embedded with several harmful assumptions. The risk score is increased if the defendant has failed to appear at a court hearing within the last two years, failed to appear prior to two years ago, or if they have any prior misdemeanor or felony charges. These metrics are not a measure of flight risk. A person with a high FTA risk score is assumed to have intentionally skipped court or jumped bail, but the data show that this is rarely the case. The largest study on court appearances to date, conducted by the Bureau of Justice Statistics between 1990 and 2004 in 40 of the 75 largest U.S.

counties, found that more than three quarters of defendants showed up for all of their court dates. Those that missed court have reported emergency incidents, inability to skip work or arrange childcare, or simply forgot that they are required to appear. The ATP matrix punishes all missed court dates with higher recommended bail amounts, and it therefore systematically perpetuates harm especially against poor communities of color in Utah. Additionally, the FTA risk score is increased for any prior charges. We know that marginalized communities are over-policed and disproportionately charged with misdemeanors and felonies (https://www.sentencingproject.org/publications/un-report-on-racial-disparities/), and therefore, the ATP matrix only reinforces these systemic, racialized biases and further punishes our most vulnerable communities.

The ATP matrix claims to be more equitable for impoverished and poor Utahns, but Utahns will not see justice until cash bail and risk assessment tools are abandoned by the courts. Utah courts will save costs by abolishing cash bail and risk assessments, and instead offering to provide services to defendants that will help them appear in court. These services could include free childcare, abolition of bench warrants for FTAs, free court date text reminders, lyft or public transportation credits, and remote video courtroom options.

Thank you for your consideration of this comment.

Alli
January 8, 2021 at 12:09 pm

I am a resident in Salt Lake County and I'm submitting this comment today to talk about the shortcomings of the Ability-to-Pay (ATP) Matrix.

I believe cash bail is already a harmful tool that affects our most marginalized communities and the ATP matrix further weaponizes this by being dependent on a defendants income and their FTA risk score, or how likely it is that they will appear in court. But how do we calculate "failure to appear" without accounting for the personal and structural conditions that cause a person to miss court? The vast majority of defendants want to make it to their scheduled court dates, but are met with systemic barriers that stop them or make it unable to do so. This system only punishes the defendant rather than incentivizing them. The FTA risk score also increases for any prior charges — and research has shown that marginalized communities are far more likely to be targeted by police and criminally charged — thus directly affecting Utah's Black, Brown, Indigenous, poor, immigrant and LGBTQ communities.

I urge the courts to expand pretrial services to help defendants through the court system rather than punish them by setting inflated bail amounts. I also call on the courts to abolish the cash

bail and FTA risk assessment altogether as it has historically been a harmful tool in keeping people jailed.

Morgan Beh
January 8, 2021 at 1:18 pm

I am a concerned community member in Salt Lake County and am submitting this comment to bring attention to the shortcomings of the Ability-to-Pay (ATP) Matrix.
The ATP matrix relies on a defendant's income and their FTA risk score. It is great that Utah courts are finally considering the devastating impact that cash bail has on low-income defendants. Unfortunately, the ATP matrix's reliance on the FTA risk score renders the matrix a harmful tool for continued oppression of Utah's Black and Brown, poor, immigrant, LGBTQ, and otherwise marginalized communities.
How can we calculate "failure to appear" without accounting for the personal and structural conditions that cause a person to miss court? The courts should provide services to help defendants appear in court, not punish them for failing to do so by setting inflated bail amounts.
Utah's FTA risk score increases for any prior misdemeanor or felony charges. Research has shown that marginalized communities are much more likely to be targeted by police and criminally charged. The ATP matrix reinforces and further punishes according to the classist and racist biases found in Utah's criminal justice system.
I call on the courts to consider abolishing cash bail and the FTA risk assessment altogether. I urge the courts to expand Pretrial Services to help defendants through the court system.

Amanda Peterson
January 8, 2021 at 8:32 pm

Hello, I am a concerned community member in Salt Lake County and I'm submitting this comment to bring attention to the shortcomings of the Ability-to-Pay (ATP) Matrix.

The ATP matrix relies on a defendant's income and their FTA risk score. It is good that Utah courts are finally considering the devastating impact that cash bail has on low-income defendants. Unfortunately, the ATP matrix's reliance on the FTA risk score renders the matrix a harmful tool for continued oppression of Utah's Black and Brown, poor, immigrant, LGBTQ, and otherwise marginalized communities.

How can we calculate "failure to appear" without accounting for the personal and structural conditions that cause a person to miss court? The courts should provide services to help defendants appear in court, not punish them for failing to do so

by setting inflated bail amounts.
Utah's FTA risk score increases for any prior misdemeanor or felony charges. Research has shown that marginalized communities are much more likely to be targeted by police and criminally charged. The ATP matrix reinforces and further punishes according to the classist and racist biases found in Utah's criminal justice system.

The courts should abolish cash bail and the FTA risk assessment altogether and expand Pretrial Services to help defendants through the court system.

Eliza
January 8, 2021 at 9:07 pm

Thank you for considering public opinions about the ATP Matrix. While I am happy to see that fewer people will be held in jails pre-trial under this new system, I still have serious concerns about the equity of a cash bail system in general. Using the FTA Risk Score continues to place heavier burdens on people with lower incomes. People do not fail to appear in court because they are lazy or dangerous or don't care: it is extremely difficult to attend hearings when you do not have paid time off, child care, access to reliable transportation, or a reliable way to receive information from the courts. While judges are more than happy to reset court dates for lawyers who come unprepared, this same flexibility is not granted to defendants. Rather than using this as a metric to determine bail, I hope to see an expansion of supportive services for defendants. I would also like to see serious consideration of removing the cash bail system, and to stop needlessly incarcerating people pre-trial for reasons that can only be attributed to socioeconomic barriers. Thank you for your time.

Bonnie Cooper
January 8, 2021 at 10:23 pm

I am a resident of Salt Lake County and am submitting this comment to voice my dissatisfaction with the current plans to implement the Ability-to-Pay (ATP) Matrix.

I am pleased that Utah courts are attempting to address the crippling financial burden that cash bail unfairly imposes upon low-income defendants. Regrettably, use of the FTA risk score leaves open many loopholes for continued oppression of Utah's Black and Brown, poor, immigrant, LGBTQ, and otherwise marginalized communities.

One major caveat is that "failure to appear" is an unjust metric to determine a defendant's "worthiness" for reduced bail. As a stay at home mom, with only one child at home, I often find myself at

the mercy of my toddler's sleep schedule, moods, and bodily functions. Despite my best efforts, occasionally a slew of small, but essential to address, unforeseeable events will cause me to be late, or miss an appointment altogether. Society is quick to condemn mothers and caregivers who fail in these regards, but it truly happens to everyone, and quite often. These burdens are only exacerbated when you factor in additional children and other members of a household who may require care, single parent households, socio-economic status, access to transportation as well as potential lack of effective public transportation depending on the neighborhood, ability to take time off work, the current limitations on finding childcare during a pandemic and many more variables. The courts should provide services to help defendants appear in court, not punish them for failing to do so by setting inflated bail amounts.

Additionally, Utah's FTA risk score increases for any prior misdemeanor or felony charges. Research has shown that marginalized communities are much more likely to be targeted by police and criminally charged. The ATP matrix reinforces and further punishes according to the classist and racist biases found in Utah's criminal justice system.

I call on the courts to consider abolishing cash bail and the FTA risk assessment altogether. I urge the courts to expand Pretrial Services to help defendants through the court system.

Thank you for considering my comment.

Cesar Bojorquez
January 9, 2021 at 10:27 am

I am a concerned community member in Salt Lake County and am submitting this comment to bring attention to the shortcomings of the Ability-to-Pay (ATP) Matrix.
The ATP matrix relies on a defendant's income and their FTA risk score. It is great that Utah courts are finally considering the devastating impact that cash bail has on low-income defendants. Unfortunately, the ATP matrix's reliance on the FTA risk score renders the matrix a harmful tool for continued oppression of Utah's Black and Brown, poor, immigrant, LGBTQ, and otherwise marginalized communities.
How can we calculate "failure to appear" without accounting for the personal and structural conditions that cause a person to miss court? The courts should provide services to help defendants appear in court, not punish them for failing to do so by setting inflated bail amounts.
Utah's FTA risk score increases for any prior misdemeanor or felony charges. Research has shown that marginalized communities are much more likely to be targeted by police and criminally charged. The ATP matrix reinforces and further punishes according to the classist and racist biases found in Utah's criminal justice system.
I call on the courts to consider abolishing cash bail and the FTA

risk assessment altogether. I urge the courts to expand Pretrial Services to help defendants through the court system.

Serving any jail time without ever being convicted of a crime is fundamentally wrong. The amount of lost work itself places strain on stable housing and supportive relationships of the individuals facing charges. If they are the source of financial income any money that would have been used for food, children, and rent go toward getting the individual out of the jail system to be able to retire to supporting themselves and their dependents.

Thank you for your consideration in this matter. I trust you will adjust procedure and sentiments to benefit all affected individuals.

Anne Charles
January 9, 2021 at 3:59 pm

I'm a Salt Lake City resident and am expressing my support for the Ability-to-Pay (ATP) Matrix. This would be a step towards a more equitable justice system. Imprisonment should not be determine by how much money one has. This would be a step towards equal accountability under the law. It is unfair that those with wealth and privilege can abide by different standards and rules to abide by.

Tab 3

Rule 7A. Procedures for arraignment on class B or C misdemeanors, or infractions.

(a) **Initial appearance.** At the defendant's initial appearance, the court must inform the defendant of the following:

(a)(1) ~~of~~ the charge(s) in the information, indictment, or citation and furnish a copy;

(a)(2) ~~of~~ any affidavit or recorded testimony given in support of the information and how to obtain them;

(a)(3) ~~of~~ the right to retain counsel or have counsel appointed by the court without expense if unable to obtain counsel;

(a)(4) ~~of~~ rights concerning pretrial release; and

(a)(5) that the defendant is not required to make any statement, and that any statement the defendant makes may be used against the defendant in a court of law.

(b) **Right to counsel.** If the defendant is present at the initial appearance without counsel, the court must determine if the defendant is capable of retaining the services of an attorney within a reasonable time. If the court determines the defendant has such resources, the court must allow the defendant a reasonable time and opportunity to retain and consult with counsel. If the court determines the defendant is indigent, the court must appoint counsel pursuant to rule 8, unless the defendant knowingly and intelligently waives such appointment.

(c) **Release conditions.** Except as provided in paragraph (d), the court ~~must issue a pretrial status order~~ shall determine whether the defendant is eligible for pretrial release pursuant to Utah Code § 77-20-1. ~~Parties should be prepared to address this issue, including the notice requirements under Utah Code section 77-37-3 and Utah Code section 77-38-3.~~

(c)(1) The court shall impose the least restrictive reasonably available conditions of release reasonably necessary to:

(c)(1)(A) ensure the defendant's appearance at future court proceedings;

(c)(1)(B) ensure that the defendant will not obstruct or attempt to obstruct the criminal justice process;

(c)(1)(C) ensure the safety of any witnesses or victims of the offense allegedly committed by the defendant; and

(c)(1)(D) ensure the safety and welfare of the public and the community.

(c)(2) In determining whether a financial condition of release is least restrictive and reasonably necessary, the court shall consider the defendant's ability to pay and allow the defendant an opportunity to be heard.

(c)(3~~1~~) A motion to modify the pretrial status order issued at the initial appearance may be made by either party at any time upon notice to the opposing party sufficient to permit the opposing party to prepare for the hearing and to permit each alleged victim to be notified and be present.

(c)(4~~2~~) Subsequent motions to modify a pretrial status order may be made only upon a showing that there has been a material change in circumstances.

(c)(5~~3~~) A hearing on a motion to modify a pretrial status order may be held in conjunction with ~~a preliminary hearing or~~ any ~~other~~ pretrial hearing.

(d) **Continuances.** Upon application of either party and a showing of good cause, the court may allow up to a seven day continuance of the hearing to allow for preparation, including notification to any victims. The court may allow more than seven days with the consent of the defendant.

(e) **Pretrial Detention Motions.**

(e)(1) If the prosecution has filed a motion for pretrial detention, the first appearance court must set a pretrial detention hearing without unnecessary delay, and no later than seven days following the initial appearance. Upon application of either party and a showing of good cause, the court may allow up to a three day continuance of the hearing. The court may allow more than three days with the consent of the defendant.

(e)(2) The court may delay issuing a pretrial status order upon review of the pretrial detention motion and a finding that:

(e)(2)(A) the motion states a reasonable case for detention, and

(e)(2)(B) detaining the defendant until after the pretrial detention hearing is in the interests of justice and public safety.

(f~~e~~) **Entering a plea.**

(f~~e~~)(1) If defendant is prepared with counsel, or if defendant waives the right to be represented by counsel, the court must call upon the defendant to enter a plea.

(f~~e~~)(2) If the plea is guilty, the court must sentence the defendant as provided by law, or impose the terms of a plea in abeyance agreement as approved by the parties.

(f~~e~~)(3) If the plea is not guilty, the court must set the matter for trial or a pretrial conference within a reasonable time. Such time should be no longer than 30 days if defendant is in custody.

(~~e~~f)(4) The court may administratively enter a not guilty plea for the defendant. If the court has appointed counsel, the defendant does not desire to enter a plea, or for other good cause, the court must then schedule a pretrial conference.

Effective ~~October 1, 2020~~May/November 1, 20__

Rule 7.5. Pretrial Detention Hearings

(a) Upon receiving a motion for pretrial detention for an individual charged with one or more offenses eligible for detention, the court shall hold a pretrial detention hearing.

(b) A defendant has the right to be represented by counsel at the pretrial detention hearing.

(c) Prior to the detention hearing, the prosecution must provide to the defendant all information in its possession upon which it intends to rely at the hearing.

(d) Both parties shall be afforded the opportunity to make arguments and present relevant information at the detention hearing. The hearing may proceed by proffer. However, the court has discretion to determine the manner of presentation of information at the hearing, including allowing for testimony, affidavits, or other information. A continuance of the hearing may be granted for the purpose of furnishing additional information if the court finds that the proffer or information presented at the hearing is insufficient to make a determination.

(e) At the conclusion of the hearing, the court may order the defendant detained pending trial if the court finds that:

(e)(1) the state has presented substantial evidence in support of its pretrial detention motion, including meeting all statutory and Constitutional evidentiary requirements; and

(e)(2) that no conditions that may be imposed upon granting the individual pretrial release will reasonably ensure:

(e)(2)(i) the individual's appearance in court when required;

(e)(2)(ii) the safety of any witnesses or victims of the offense allegedly committed by the individual;

(e)(2)(iii) the safety and welfare of the public; and

(e)(2)(iv) that the individual will not obstruct or attempt to obstruct the criminal justice process.

(f) Where there is a rebuttable presumption of detention, the court shall order the defendant detained unless it determines that the defendant has rebutted the presumption of detention by demonstrating, by a preponderance of the evidence, that specified conditions of release will reasonably ensure compliance with the factors outlined in in subsection (e)(2).

Effective May/November 1, 20__

Rule 9. Proceedings for persons arrested without a warrant on suspicion of a crime.

(a) **Probable cause determination**.

(a)(1) A person arrested and delivered to a correctional facility without a warrant for an offense must be presented without unnecessary delay before a magistrate for the determination of probable cause and eligibility for pretrial release pursuant to Utah Code § 77-20-1.

(a)(2) The arresting officer, custodial authority, or prosecutor with authority over the most serious offense for which defendant was arrested must, as soon as reasonably feasible but in no event longer than 24 hours after the arrest, present to a magistrate a sworn statement that contains the facts known to support probable cause to believe the defendant has committed a crime. The statement must contain any facts known to the affiant that are relevant to determining the appropriateness of precharge release and the conditions thereof.

(a)(3) If available, the magistrate should also be presented the results of a validated pretrial risk assessment tool.

(a)(4) The magistrate must review the information provided and determine if probable cause exists to believe the defendant committed the offense or offenses described. If the magistrate finds there is probable cause, the magistrate must determine if the person is eligible for pretrial release pursuant to Utah Code § 77-20-1. The magistrate ~~will~~ shall impose the least restrictive reasonably available conditions of release reasonably necessary to:

(a)(4)(A) ensure the individual's appearance at future court proceedings;

(a)(4)(B) ensure that the individual will not obstruct or attempt to obstruct the criminal justice process;

(a)(4)(C) ensure the safety of any witnesses or victims of the offense allegedly committed by the individual; and

(a)(4)(D) ensure the safety and welfare of the public and the community.

(a)(5) In determining whether a financial condition of release is least restrictive and reasonably necessary, the court shall consider the defendant's ability to pay.

(a)(6~~5~~) If the magistrate finds the statement does not support probable cause to support the charges filed, the magistrate may determine what if any charges are supported, and proceed under paragraph (a)(4).

(a)(7~~6~~) If probable cause is not articulated for any charge, the magistrate must return the statement to the submitting authority indicating such.

(a)(8~~7~~) A statement that is verbally communicated by telephone must be reduced to a sworn written statement prior to presentment to the magistrate. The statement must be retained by the submitting authority and as soon as practicable, a copy shall be delivered to the magistrate who made the determination.

(a)(9~~8~~) The arrestee need not be present at the probable cause determination.

(b) **Magistrate availability.**

(b)(1) The information required in paragraph (a) may be presented to any magistrate, although if the judicial district has adopted a magistrate rotation, the presentment should be in accord with that schedule or rotation. If the arrestee is charged with a capital offense, the magistrate may not be a justice court judge.

(b)(2) If a person is arrested in a county other than where the offense was alleged to have been committed, the arresting authority may present the person to a magistrate in the location arrested, or in the county where the crime was committed.

(c) **Time for review.**

(c)(1) Unless the time is extended at 24 hours after ~~booking~~arrest, if no probable cause determination and pretrial status order have been received by the custodial authority, the defendant must be released on the arrested charges on recognizance.

(c)(2) During the 24 hours after arrest, for good cause shown an arresting officer, custodial authority, or prosecutor with authority over the most serious offense for which defendant was arrested may request an additional 24 hours to hold a defendant and prepare the probable cause statement or request for release conditions.

(c)(3) If after 24 hours, the suspect remains in custody, an information must be filed without delay charging the suspect with offenses from the incident leading to the arrest.

(c)(4)(A) Except for the offenses referenced in (c)(5)(a), i~~I~~f no information has been filed by 3:00pm on the ~~fourth~~ second calendar day after the defendant was booked, the release conditions set under subsection (a)(4)~~(~~ shall revert to recognizance release.

(c)(4)(B) The two~~four~~ day period in this subsection may be extended upon application of the prosecutor for a period of three more days, for good cause shown.

(c)(4)(C) If the time periods in this subsection (c)(4)(A) and (c)(4)(B) expire on a weekend or legal holiday, the period expires at 3:00pm on the next business day.

(c)(5)(A) If a defendant is booked for any “violent felony” as defined in Utah Code 76-3-203.5(c), the prosecutor has four calendar days after the Defendant was booked to file an Information. If no Information has been filed by 3:00 p.m. on the fourth calendar day after the defendant was booked, the release conditions under subsection (a)(4) shall revert to recognizance release.

(c)(5)(B) The four day period in this subsection may be extended upon application of the prosecutor for a period of three more days, for good cause shown.

(c)(5)(C) If the time periods in subsection (c)(5)(A) and (c)(5)(B) expire on a weekend or legal holiday, the period expires at 3:00 p.m. on the next business day.

(d) **Other processes.** Nothing in this rule is intended to preclude the accomplishment of other procedural processes at the time of the probable cause determination.

Effective ~~October~~ May 1, 2021~~20~~

Tab 4

SLDA's Office
Pretrial Detention Motion Filing Data
January 28, 2021

From October 1st, 2020 to present, the SLDA's respective screening units have submitted 499 pretrial detention motions upon filing charges. Of those, only 17 were denied up front. This means the Courts have granted 94.5% of the pretrial detention requests at the filing stage. Below is a breakdown by screening unit:

- General screening – 98 detention motions filed, 93 were granted, 5 were denied.
- Domestic Violence – 237 detention motions filed, 231 were granted, 4 were denied with reduced bail, 1 denied for summons, and 1 set to track a pending case.
- Special Victims – 51 detention motions filed, 2 denied with reduced bail set.
- Gang Team – 113 detention motions filed, 6 denied.

Since October 1st, the SLDA's office has filed a total of 4,194 cases as an office. Of those 4,194 cases, the DA's office has only sought pretrial detention on 499. Put differently, they have only requested pretrial detention motions in 11.8% of all of the cases filed.

This data does not account for wh
ether these individuals continued to be held after they had a detention hearing. The data simply shows that 479 individuals will be detained without bail pending their detention hearing.

SALT LAKE COUNTY
MAYOR'S OFFICE OF CRIMINAL JUSTICE INITIATIVES

AN INITIAL ANALYSIS OF THE EFFECT OF HB206 ON THE CUSTODY STATUS OF FELONY DOMESTIC VIOLENCE AND OTHER FELONY CASES BOOKED AT THE SALT LAKE COUNTY JAIL

Jojo Liu, Director
Tucker Samuelsen, Data Analyst

HB206 has only been in effect since October 2020 yet some clear trend lines are visible with respect to the impact of HB206 on the pretrial custody status of felony domestic violence and other serious cases. **For 1st degree felonies and other serious cases, the net effect has been that pretrial release is less likely in those categories of cases**.

Prior to HB206, the courts set bail according to a standard bail schedule. Under that framework, individuals charged with serious and violent offenses could secure release by bonding out on the high bail amounts associated with the severity level of their booking.

For example, pre-HB206:

- Case # 191401782. 8 distinct felony filings in 2019, including 6 in a 3- month period. Every case alleged assault or stalking against the same victim. In each subsequent case, the bail amount was further increased, the defendant bails on each increased amount, and is released on each case.
- Case # 191904618 - 5 prior convictions of DV against same victim, active protective order in place. Aggravated assault against same victim (ex-wife) with children present. 100K bond paid by commercial bond company after 3 days in jail.
- Case #191402694 – alleged gang member, attempted murder case, released on 500K bond, less than 24 hours after booking by commercial bail bond company. Rebooked 6 months later for witness tampering, against the witnesses in the murder case.

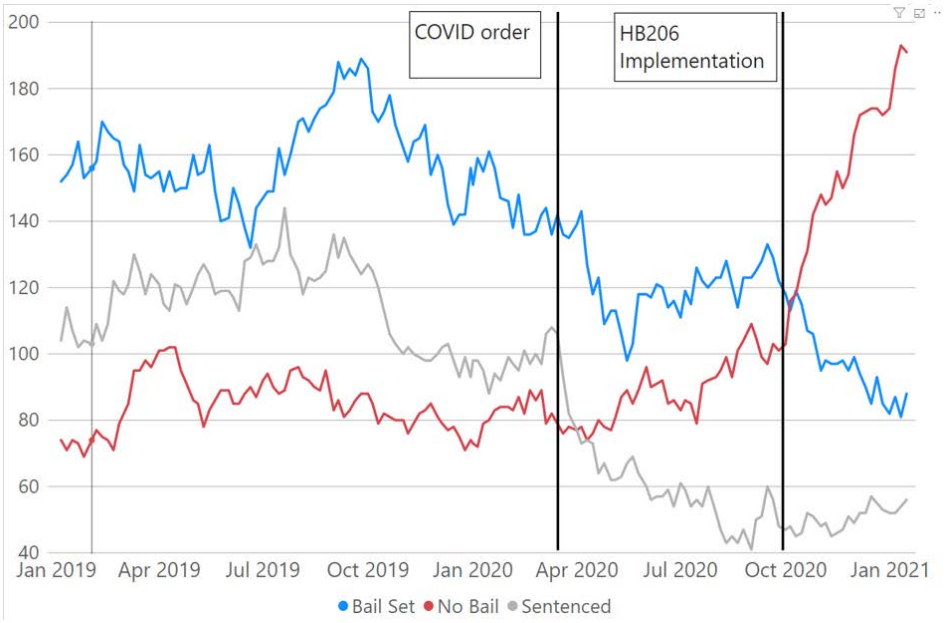
HB206 moved pretrial release decision-making away from a standard bail schedule tied to charge type, and instead requires an individuated inquiry on the pretrial conditions appropriate for each case.

Since HB206: (The below metrics compare the 3 months since HB206 implementation against 3 months prior)

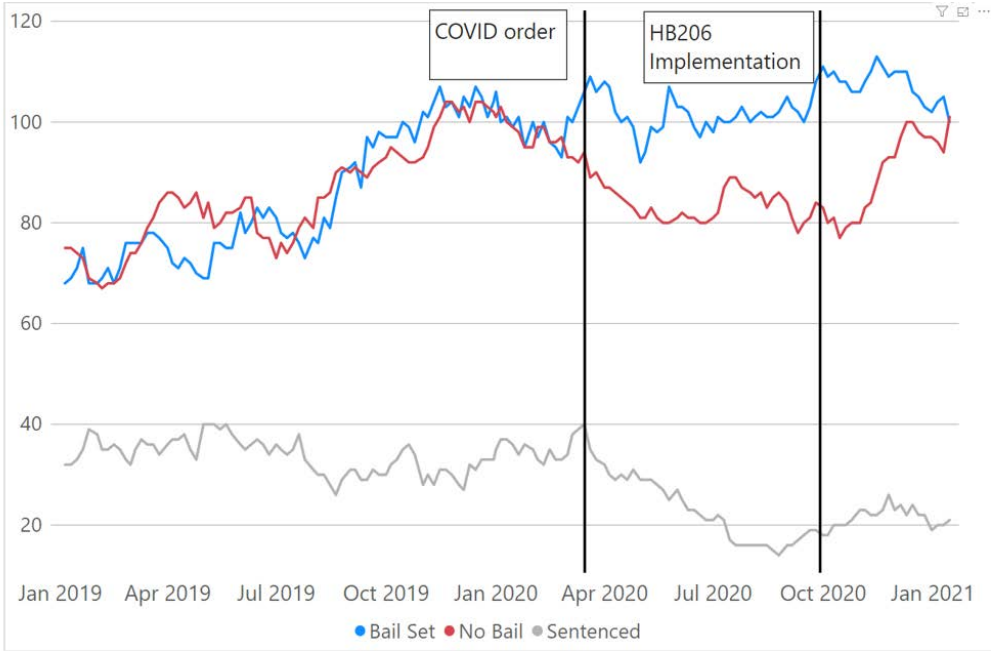
- The percentage of individuals who bonded out on Felony Domestic Violence cases has dropped by 38%.
- The percentage of people individuals who bonded out on Felony Domestic Violence cases within one week of booking dropped by 41%
- The percentage of first-degree felony bookings that were released within 7 days dropped from 33% to 16%.

For those charged with Felony Domestic Violence offense, Felony Sex Offenses, Weapons Offenses, and those charged with any type of Felony 1 charges, the number of individuals subject to no bail holds has increased significantly since HB206 went into effect on October 1, 2020.

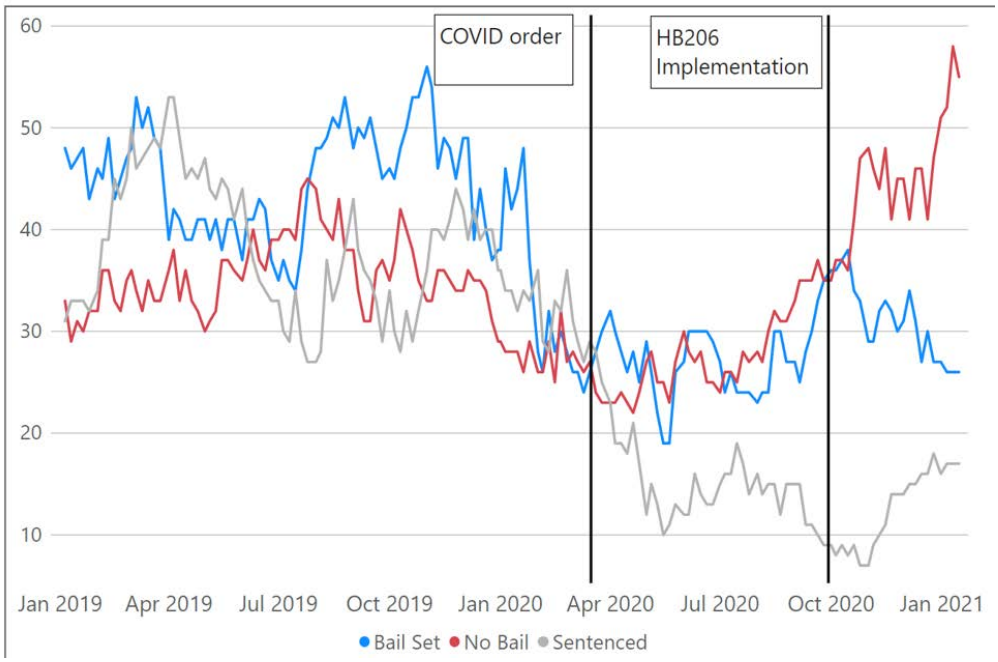
Felony Domestic Violence Cases:



Felony Sex Offense Cases:



Weapons Charges



All 1st Degree Felonies