JEFFREY G. THOMSON, JR., NO. 14023
DAVIS COUNTY ATTORNEY'S OFFICE
PO BOX 618
FARMINGTON, UTAH 84025
TELEPHONE: (801) 451-4300
FACSIMILE: (801) 451-4328
jthomson@co.davis.ut.us

IN THE UTAH SUPREME COURT,
STATE OF UTAH

STATE OF UTAH, Plaintiff / Appellant, vs. KOLBY RYAN BARNETT, Defendant / Appellee.	**STATE'S NOTICE OF SUPPLEMENAL AUTHORITIES** App. No. 20220636-SC

Pursuant to Rule 24(j) of the Utah Rules of Appellate Procedure, the State respectfully asks that the Court also take notice of the following historical authorities, attached as addenda, "of central importance to" giving context to the statutes Barnett now references in his Notice of Supplemental Authorities (May 11, 2023).

- Addendum A: Compiled Laws of Utah, vol. II, §§ 5160 *et seq.* (1888).
- Addendum B: Utah Code Ann. §§ 105-44-1 *et seq.* (1943).
- Addendum C: Utah Code Ann. § 77-20-1 (1980).
- Addendum D: Utah Code § 77-20-1 (1992).

- Addendum E: Utah Code Ann. § 77-20-1 (2020).
- Addendum F: Utah Code Ann. § 77-20-1 (2021)

Moreover, "of central importance to" the Substantive Due Process "issue" the Utah Association of Criminal Defense Lawyers ("Amicus") has raised, beyond the authorities referenced in the State's Responsive Brief to Brief of Amicus Curiae (April 19, 2023), two additional authorities have come "to the attention of" the State. They are:

(1) *Schall v. Martin*, 467 U.S. 253 (1984) (upholding New York's pretrial detention statute for juveniles).

(2) *Ewing v. California*, 538 U.S. 11, 30 (2003) (finding, under the Eighth Amendment, "rational," "justified," and "entitled to deference" "the State's public-safety interest in incapacitating and deterring recidivist felons").

RESPECTFULLY SUBMITTED this 11 day of May, 2023.

/s/ Jeffrey G. Thomson
Jeffrey G. Thomson
Deputy Davis County Attorney

CERTIFICATE OF SERVICE

I certify that on May 11, 2023 a copy of the **STATE'S NOTICE OF SUPPLEMENAL AUTHORITIES** was emailed as follows:

Emily Adams
eadams@theappellategroup.com
Freyja Johnson
fjohnson@theappellategroup.com
Attorneys for the Defendant / Appellee

DATED this 11 day of May, 2023.

/s/ Jeffrey G. Thomson
Jeffrey G. Thomson
Davis County Attorney's Office

Addendum A

THE

COMPILED LAWS OF UTAH

THE DECLARATION OF INDEPENDENCE

AND

CONSTITUTION OF THE UNITED STATES

AND

STATUTES OF THE UNITED STATES LOCALLY APPLICABLE AND IMPORTANT.

COMPILED AND PUBLISHED

BY AUTHORITY.

VOL. II.

SALT LAKE CITY:

HERBERT PEMBROKE, BOOK, JOB AND LEGAL BLANK PRINTER, 72 EAST TEMPLE STREET.

1888.

TITLE IX.

MISCELLANEOUS PROCEEDINGS.

CHAPTER I.

BAIL.

ARTICLE I.

IN WHAT CASES DEFENDANT MAY BE ADMITTED TO BAIL.

Admission to bail defined.

§ 5160. s 384. Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon bail.

Taking of bail defined.

§ 5161. s 385. The taking of bail consists in the acceptance by a competent court or magistrate, of the undertaking of sufficient bail for the appearance of the defendant, according to the terms of the undertaking, or that the bail will pay to the people of this Territory a specified sum.

Offence not bailable.

§ 5162. s 386. A defendant charged with an offence punishable with death cannot be admitted to bail, when the proof of his guilt is evident or the presumption thereof great. The finding of an indictment does not add to the strength of the proof or the presumption to be drawn therefrom.

When defendant may be admitted to bail before conviction.

§ 5163. s 387. If the charge is for any other offence he may be admitted to bail before conviction, as a matter of right.

When defendant may be admitted to bail after conviction.

§ 5164. s 388. After conviction of an offence not punishable with death, a defendant who has appealed may be admitted to bail.

1. As a matter of right, when the appeal is from a judgment imposing a fine only.

2. As a matter of discretion in all other cases.

On what occasions, and with what conditions, bail may be taken.

§ 5165. s 389. If the offence is bailable, the defendant may be admitted to bail before conviction:

1. For his appearance before the magistrate on the examination of the charge before being held to answer.

2. To appear at the court to which the magistrate is required to return the depositions and statement, upon the defendant being held to answer after examination.

3. After indictment, either before bench warrant is issued for his arrest or upon any order of the court committing him or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment in the court in which it is found or to which it may be transferred for trial.

4. And after conviction and upon an appeal.

5. If the appeal is from a judgment imposing a fine only, on the undertaking of bail, that he will pay the sum, or such part of it as the appellate court may direct, if the judgment is affirmed or modified, or the appeal is dismissed.

6. If judgment of imprisonment has been given, that he will surrender himself in execution of the judgment, upon

Addendum B

THE

UTAH CODE ANNOTATED

1943

VOLUME 6

Published December 31, 1942, by
Authority of an Act of the Legislature
Effective January 2, 1943

CHAPTER 44

BAIL *

* **History of act.** This chapter was R. S. 1898, Title 76, Ch. 45; Comp. Laws 1907, Title 91, Ch. 45.

105–44–1. Admission to Bail Defined.

Admission to bail is the order of a competent court, magistrate or legally authorized officer that the defendant be discharged from actual custody upon bail. (C. L. 17, § 9243.)

History.
This section is identical with Laws 1878, § 384, p. 142, except for addition of words "or legally authorized officer." It is also practically identical with 2 Comp. Laws 1888, § 5160.

Comparable provisions.
Cal. Penal Code, § 1268 (identical); Idaho Code, § 19–2801, Mont. Rev. Codes, § 12133 (substantially identical).

Cross-references.
Bail commissioners, 15–6–70 et seq.; bail in justices' courts, 105–57–47.

1. Words and phrases defined.
The words "admission to bail" are not synonymous with "discharge from custody." Therefore complaint in action on bail bond, which alleges that defendant was "admitted to bail," is demurrable, because this is not an allegation that defendant was released from custody. People v. Solomon, 5 U. 277, 15 P. 4.

Decisions from other jurisdictions.
— California.
Where there has been a trial, upon which the jury has disagreed, this is a circumstance which, while not conclusive, is entitled to weight in determining whether the prisoner should be admitted to bail. Ex parte Weinberg, 177 Cal. 781, 171 P. 937.

The object of requiring bail is not pecuniary compensation to the state, but to compel the presence of the accused in court to the end that justice may be ad-

ministered. General Casualty Co. of America v. Justice's Court of San Diego Tp., San Diego County, 41 Cal. App.2d 784, 107 P.2d 663.

— Idaho.
The admission to bail is a matter entirely separate and independent from the issuance of a certificate of probable cause. In re Neil, 12 Idaho 749, 87 P. 881.

105-44-2. How Taken.

The taking of bail consists in the acceptance by a competent court, magistrate or a legally authorized officer of an undertaking, with sufficient sureties, for the appearance of the defendant according to the terms of the undertaking or that the sureties will pay to the state a specified sum, if he does not so appear. (C. L. 17, § 9244.)

History.
This section differs slightly from 2 Comp. Laws 1888, § 5161.

Comparable provisions.
Cal. Penal Code, § 1269, Idaho Code, § 19-2802, Mont. Rev. Codes, § 12134 (substantially identical).

1. Who may take bail.
When Utah was a territory, it was held that circuit and supreme court commissioners had authority to take bail. United States v. Eldredge, 5 U. 161, 172, 13 P. 673.

105-44-3. In Capital Cases Taken by Whom, and When.

A defendant charged with an offense punishable with death may be admitted to bail only by a judge of the supreme or district court. When, however, the proof of his guilt is evident or the presumption strong, bail shall not be taken. The filing of an information or the finding of an indictment shall not add to the strength of the proof or the presumption to be drawn therefrom. (C. L. 17, § 9245.)

History.
This section is practically identical with 2 Comp. Laws 1888, § 5162.

Comparable provisions.
Cal. Penal Code, § 1270, Idaho Code, § 19-2803, Mont. Rev. Codes, § 12135 (defendant charged with offense punishable with death cannot be admitted to bail, when proof of his guilt is evident or presumption thereof great; finding of indictment [or filing of information, Montana] does not add to strength of proof or presumptions to be drawn therefrom).
Iowa Code 1939, § 13609 (all defendants bailable both before and after conviction, except for offenses punishable with death, when proof is evidence or presumption great); § 13610 (no defendant convicted of murder in first degree, or of crime of treason, shall be admitted to bail).

Cross-references.
Bail in capital cases, Const. Art. I, § 8.

1. Bailable cases.
The territorial assembly excepted capital cases from those bailable. Ex parte Springer, 1 U. 214.

2. Application for bail.
Application for bail must be made to judge of supreme court or district court, and supreme court could not admit defendant to bail. Nickolopolous v. Emery, 59 U. 588, 206 P. 284.

Decisions from other jurisdictions.
— California.
Provision in Constitution declaring that all persons accused of crime are entitled to bail "unless for capital offenses when the proof is evident or the presumption great" has been interpreted to mean that bail should be refused in a capital case when the evidence is such that a verdict of guilty based upon it would be sustained by a court. Ex parte Weinberg, 177 Cal. 781, 171 P. 937.

— Iowa.
A person convicted of murder in the second degree cannot be admitted to bail pending an appeal from the judgment of conviction. Baldwin v. Westenhaver, 75 Iowa 547, 39 N. W. 882.
Where one accused of murder in the first degree has been convicted of murder in the second degree and secures a reversal on appeal, he is entitled to bail, notwithstanding the statutory provision

to the effect that no defendant convicted of murder shall be admitted to bail, because after securing a reversal he cannot again be put on trial for the first degree of the offense and is in the same situation as though charged originally with murder in the second degree and not yet tried, under which circumstances he would be entitled to bail. State v. Helm, 92 Iowa 540, 61 N. W. 246.

The denial of a motion by one under indictment for murder in the first degree to be admitted to bail, "without prejudice to defendant's right to present said matter by habeas corpus," was in effect a ruling in abatement rather than on the merits. Ford v. Dilley, 174 Iowa 243, 156 N. W. 513.

A capital indictment should have no evidentiary weight against bail because (1) the grand jury neither can nor does make a finding as to whether the offense charged is bailable, and (2) because the question of degree to be charged has no judicial treatment by a grand jury. Ford v. Dilley, 174 Iowa 243, 156 N. W. 513.

— Montana.

In Montana all persons are bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great (Mont. Const. Art. 3, § 19); accordingly, when an application is made for bail, in a capital case, the county attorney, if he resists the application, should make some showing that the proof is evident or the presumption great, thus bringing the case within the exception mentioned in the Constitution; on failure to make such showing, the defendant is entitled to bail in all cases; but, if such showing is made, the court or judge should refuse bail without hesitation. State v. District Court of Second Judicial District, 35 Mont. 504, 90 P. 513.

A. L. R. notes.

Abolition of death penalty as affecting right to bail of one charged with murder in first degree, 8 A. L. R. 1352.

105–44–4. A Matter of Right in Cases Other than Capital.

If the charge is for any other offense, he may be admitted to bail before conviction as a matter of right. (C. L. 17, § 9246.)

History.

This section is practically identical with 2 Comp. Laws 1888, § 5163; R. S. 1898, § 4986; Comp. Laws 1907, § 4986.

Comparable provisions.

Cal. Penal Code, § 1271, Idaho Code, § 19–2804, Mont. Rev. Codes, § 12136 (identical).

Iowa Code 1939, § 13609 (all defendants are bailable both before and after conviction, by sufficient surety, except for offenses punishable with death when the proof is evident or the presumption great).

Cross-references.

Bail as a matter of right in other than capital cases, Const. Art. I, § 8; on habeas corpus proceeding, 104–65–21; security to keep peace, 105–4–9.

Decisions from other jurisdictions.

— Iowa.

The purpose of a bond for the bail of an accused is to assure his attendance on court as required, rather than to profit by its breach. State v. Sandy, 138 Iowa 180, 116 N. W. 599.

A. L. R. notes.

Rape as bailable offense, 118 A. L. R. 1115.

105–44–5. Admission to Bail Upon Appeal.

After conviction of an offense not punishable with death a defendant who has appealed may be admitted to bail:

(1) As a matter of right, when the appeal is from a judgment imposing a fine only.

(2) As a matter of discretion, in all other cases.

(C. L. 17, § 9247.)

History.

This section is practically identical with 2 Comp. Laws 1888, § 5164.

Comparable provisions.

Cal. Penal Code, § 1272 (includes substantially same provisions); Idaho Code, § 19–2805, Mont. Rev. Codes, § 12137 (identical).

1. Discretion of court.

In criminal prosecution, where judgment appealed from imposed fine and imprisonment, defendant's admission to

bail, pending appeal from that judgment, was not matter of right, but was in discretion of court. Clawson v. United States, 113 U. S. 143, 28 L. Ed. 957, 5 S. Ct. 393. (Miller and Field JJ., dissenting.)

In absence of abuse of discretion on part of trial court, reviewing court was not justified in revoking order of commitment and admitting defendant, sentenced to prison, to bail pending his appeal. Ex parte Clawson (U.), 5 P. 74 (not officially reported).

Decisions from other jurisdictions. — California.

In determining whether prisoner should be admitted to bail, a persuasive factor, though not controlling, is the acquittal of the prisoner on a trial of one of several indictments, where all are founded upon a single transaction. Ex parte Weinberg, 177 Cal. 781, 171 P. 937.

The generally accepted rule is that courts and judges should not exercise the power to grant bail after conviction of a felony except "with the greatest caution and only when the peculiar circumstances of the case render it proper"; at the same time the laws of the state should be administered in a humane manner, and it is for that reason that the power to grant bail in a proper case is conferred upon courts and judges; where the showing of fact is sufficient to meet the above requirement, judges and courts should not hesitate to give the benefit of the law to a defendant. In re Pantages, 209 Cal. 536, 291 P. 831.

105-44-6. Before Conviction—After Conviction on Appeal.

If the offense is bailable, the defendant may be admitted to bail:

Before conviction—

(1) For his appearance before the magistrate on the examination of the charge before being held to answer.

(2) To appear at the court to which the magistrate is required to return the complaint, upon the defendant's being held to answer after examination.

(3) After information filed or indictment found, either before warrant is issued for his arrest or upon any order of the court committing him or enlarging the amount of bail, or upon his being surrendered by his bail, to answer the information or indictment in the court in which it is filed or found, or to which it may have been transferred for trial.

After conviction and upon an appeal—

(1) If the appeal is from a judgment imposing a fine only, on an undertaking of bail that he will pay the same or such part thereof as the appellate court may direct, if the judgment is affirmed or modified, or if the appeal is dismissed.

(2) If judgment of imprisonment has been given, that he will surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the appeal being dismissed, or that, in case the judgment is reversed and the cause remanded for a new trial, he will appear in the court to which the cause may be remanded and submit himself to the orders and process thereof. (C. L. 17, § 9248.)

History.

This section is practically identical with 2 Comp. Laws 1888, § 5165.

Comparable provisions.

Cal. Penal Code, § 1273 (substantially identical); Idaho Code, § 19-2806, Mont. Rev. Codes, § 12138 (similar).

Cross-references.

In justices' courts, 105-57-39.

1. Sureties on bail bond.

While liability of sureties on bail bond will not be extended by implication, yet if bond was a continuing one, and language of bond warrants it, sureties will be held bound for appearance of accused in district court as well as before magistrate for examination. State v. Sorensen, 48 U. 663, 160 P. 1181.

A. L. R. notes.

Constitutional right to bail pending appeal from conviction, 77 A. L. R. 1236.

105–44–7. Notice to District Attorney of Application for Bail.

When the admission to bail is a matter of discretion, the court or officer to whom the application is made must require reasonable notice thereof to be given to the district attorney. (C. L. 17, § 9249.)

History.
This section is practically identical with 2 Comp. Laws 1888, § 5166.

Comparable provisions.
Cal. Penal Code, § 1274, Idaho Code, § 19–2807, Mont. Rev. Codes, § 12139 (substantially identical).

105–44–8. When Amount of Bail Fixed.

When the offense charged is not punishable with death, the court at the time the indictment is presented and filed or the information is filed must make an order, to be entered in the minutes, fixing the amount in which the defendant may be admitted to bail, unless the court indorses such order on the warrant. (C. L. 17, § 9250.)

Cross-references.
Excessive bail and fines, Const. Art. I, § 9; defendant on bail appearing for trial may be committed, 105–32–33; defendant to give bail or be committed, 105–15–6.

A. L. R. notes.
Amount of bail required in criminal action, 53 A. L. R. 399; factors in fixing amount of bail, 72 A. L. R. 801.

105–44–9. Id. Indorsement on Warrant.

When the order fixing the amount of bail is entered in the minutes the clerk must indorse the same on the warrant. (C. L. 17, § 9251.)

105–44–10. Magistrates Who May Admit to Bail.

Except as otherwise provided in capital cases, a defendant held to answer upon an examination for a public offense may be admitted to bail by the magistrate by whom he is so held, or by any magistrate who has power to issue the writ of habeas corpus. (C. L. 17, § 9252.)

Comparable provisions.
Idaho Code, § 19–2808, Mont. Rev. Codes, § 12140 (similar).

Cross-references.
Bail on preliminary examination, 105–15–6, 105–15–21 et seq.; on arrest, 105–12–9 et seq.; jurisdiction of supreme court to issue writ of habeas corpus, 20 2–2; of district court, 20 3–4.

105–44–11. When Offense Is Not Capital.

When the offense charged in the information or indictment is not punishable with death, the officer serving the warrant must, if required, take the defendant before a magistrate in the county in which it was issued, or in which he is arrested, for the purpose of giving bail. (C. L. 17, § 9253.)

Comparable provisions.
Mont. Rev. Codes, § 12145 (similar).

Cross-references.
Bail as a matter of right in other than capital cases, Const. Art. I, § 8, 105–44–4.

105–44–12. When Offense Is Capital.

If the offense charged in the information or indictment is punishable with death, the officer arresting the defendant must deliver him into custody according to the command of the warrant; and when the de-

fendant has been so delivered he must be held by the sheriff, unless admitted to bail on examination upon a writ of habeas corpus, or upon a motion to the court in which the action is pending or the judge thereof. (C. L. 17, § 9254.)

Comparable provisions.
Mont. Rev. Codes, § 12146 (similar).

Cross-references.
Bail in capital cases, Const. Art. I, § 8.

105-44-13. Form of Undertaking of Bail.

Bail must be put in by a written undertaking, executed by at least two sufficient sureties (with or without the defendant, in the discretion of the magistrate), and duly acknowledged, in substantially the following form:

An order having been made on the.....day of....., 19...., by....., justice of the peace of..... county, (or an information having been filed or an indictment having been found on the.....day of....., 19...., in the district court of the county of.....), that.....be held to answer upon a charge of (stating briefly the nature of the offense), or (as the case may be) charging (name of defendant) with the crime of (designating it generally), and he having been admitted to bail in the sum of..... dollars;

Now therefore, we, ...and..... (as the fact may be), of (stating their place of residence), jointly and severally hereby undertake that the above named (naming the defendant) will appear and answer the charge above mentioned (or the information or indictment above mentioned, as the case may be) in whatever court it may be presented, and will at all times hold (or surrender) himself amenable to the orders and process of the court, and, if convicted, will appear for judgment and render himself in execution thereof, or, if he fails to perform any of these conditions, that he will pay to the state of Utah the sum of..... dollars (inserting the sum in which the defendant shall be admitted to bail); and if said (naming the defendant) does not make payment within ten days after the forfeiture of said bond as provided by statute, judgment shall be entered on motion of the prosecuting attorney, with or without notice, in favor of the state of Utah and against said sureties for said amount above set forth herein. (C. L. 17, § 9255.)

History.
As amended by L. 35, ch. 133, eff. May 14, adding clause after "bail" in sixth line from last of text.

Comparable provisions.
Cal. Penal Code, § 1278, Idaho Code, § 19-2809, Iowa Code 1939, § 13612, Mont. Rev. Codes, § 12141 (similar).

1. Sufficiency of undertaking.
Ambiguities in the bond should be avoided, as liability of sureties is strictissimi juris. State v. Sorenson, 48 U. 663, 160 P. 1181, disapproving form of bond.

If the complaint alleges filing of the undertaking, that is sufficient. The filemark is no part of the undertaking. Furthermore, recitals in the court's findings as to the time of filing undertaking will be accepted ordinarily, where evidence is conflicting. United States v. Eldredge, 5 U. 161, 171, 13 P. 673.

The undertaking sufficiently describes the offense of unlawfully cohabiting with more than one person if it recites that "the complaint charged . . . . . .

with having committed the crime of unlawful cohabitation with more than one person between," etc., the recognizance or undertaking need not state the offense with technical particularity. It is wholly unnecessary to go into details. United States v. Eldredge, 5 U. 161, 170, 13 P. 673.

2. Sureties on undertaking.

Liability of sureties on bail bond is strictissimi juris, and will not be extended by implication or presumption beyond terms of their undertaking. But instrument will not be given a strained construction. State v. Sorenson, 48 U. 663, 160 P. 1181.

The responsibility of the sureties attaches the moment the party is released, and their liability becomes fixed by a breach of its conditions—the forfeiture of the undertaking. United States v. Eldredge, 5 U. 161, 173, 13 P. 673.

Decisions from other jurisdictions. — California.

The meaning of sections 1277 and 1278 of the Penal Code, when read in connection with the other sections of the Code leading up to them, is that a defendant may be admitted to bail, not merely until the time he is convicted, but until he appears for judgment; and a bond, such as was under consideration in case at bar, continues until defendant, for whose release it is given, makes this appearance. People v. Fidelity & Deposit Co. of Maryland, 107 Cal. App. 160, 290 P. 59.

A. L. R. notes.

Necessity of reference in bail bond to specific crime, 103 A. L. R. 535.

105–44–14. Id. Qualifications of Sureties.

The qualifications of bail shall be as follows:

(1) Each of them must be a resident householder or freeholder within this state; but the court or magistrate may refuse to accept any person as bail who is not a resident of the county where bail is offered.

(2) They must each be worth the amount specified in the undertaking, exclusive of property exempt from execution; but the court or magistrate on taking bail may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking, if the whole justification is equivalent to that of sufficient bail.

(C. L. 17, § 9256.)

Comparable provisions.

Cal. Penal Code, § 1279 (includes substantially same provisions); Idaho Code, § 19–2810, Mont. Rev. Codes, § 12142 (substantially identical).

Cross-references.

Property exempt from execution, 104–37–13; false personation in becoming bail, 103–18–3.

A. L. R. notes.

Qualification of surety on bail bond as affected by lien or encumbrance on his real property, 56 A. L. R. 1097.

105–44–15. Justification of Sureties.

The bail must in all cases justify by affidavit taken before the magistrate that they each possess the qualifications provided in the next preceding section. The magistrate may further examine the bail upon oath concerning their sufficiency in such manner as he may deem proper.

(C. L. 17, § 9257.)

Comparable provisions.

Cal. Penal Code, § 1280 (identical); Idaho Code, § 19–2811, Mont. Rev. Codes, § 12143 (substantially identical); Iowa Code 1939, §§ 13620 and 13621 (similar).

105–44–16. Discharge of Defendant on Giving Bail.

Upon the allowance of bail and the execution of the undertaking the magistrate must, if the defendant is in custody, make and sign an

order for his discharge, upon the delivery of which to the proper officer the defendant must be discharged. (C. L. 17, § 9258.)

Comparable provisions.
Cal. Penal Code, § 1281, Idaho Code, § 19-2812 (identical); Iowa Code 1939, § 13623 (similar); Mont. Rev. Codes, § 12144 (substantially identical).

Decisions from other jurisdictions.
— Montana.
This section contemplates that, when the bail is given, the prisoner shall be discharged; the two points aimed at are securing the bond and releasing the prisoner; the intermediate steps are merely directory; an oral order of release given by the magistrate to the officer who has charge of the prisoner is a sufficient compliance with the statute so far as the prisoner and his sureties are concerned, although it shows a neglect of the statutory formalities by the justice which is not commendable; if anything more is necessary, the prisoner and his sureties cannot take advantage of it. State v. Lagoni, 30 Mont. 472, 76 P. 1044.

105-44-17. Increase or Reduction of Bail—Notice.

After a defendant has been admitted to bail upon an information or indictment the court in which the charge is pending may, upon good cause shown, either increase or reduce the amount of bail. If the amount is increased, the court may order the defendant to be committed to actual custody, unless he gives bail in such increased amount. If application is made by the defendant for a reduction of the amount, notice of the application must be served upon the district attorney.
(C. L. 17, § 9259.)

Comparable provisions.
Cal. Penal Code, § 1289, Idaho Code, § 19-2818, Mont. Rev. Codes, § 12151 (substantially identical).

105-44-18. Who May Admit to Bail on Appeal—Qualifications—Sureties—Undertaking.

In cases in which the defendant may be admitted to bail upon an appeal the order admitting him to bail may be made by any magistrate having the power to issue the writ of habeas corpus, or by the magistrate before whom the trial was had. The bail must possess the qualifications, and bail must be put in, in all respects as provided in other cases of bail, except that the undertaking must be conditioned as prescribed in section 105-44-6 for undertakings of bail on appeal.
(C. L. 17, § 9260.)

History.
This section is practically identical with 2 Comp. Laws 1888, §§ 5177, 5178.

Comparable provisions.
Cal. Penal Code, §§ 1291, 1292 (substantially identical); Idaho Code, § 19-2819, Mont. Rev. Codes, § 12152 (similar).

105-44-19. Deposit Instead of Bail.

The defendant, at any time after an order admitting him to bail, instead of giving bail may deposit with the magistrate, or with the clerk of the court in which he shall be held to answer, the sum mentioned in the order, and upon delivering to the officer in whose custody he is, a certificate of the deposit he must be discharged from custody.
(C. L. 17, § 9261.)

Addendum C

LAWS

of the

STATE OF UTAH, 1980

Passed at the

BUDGET SESSION

of the

FORTY-THIRD LEGISLATURE

Convened at the Capitol in the City of Salt Lake
January 14, 1980
and Adjourned Sine Die on
February 2, 1980

Published by Authority

CHAPTER 20
BAIL

77-20-1. Right to bail—Cases requiring hearing.

A person charged with or arrested for a public offense shall be admitted to bail as a matter of right in all cases except where the proof is evident or the presumption of guilt is strong that the accused committed:

(1) A capital offense;

(2) A felony while he was free on bail awaiting trial on a previous felony; or

(3) A felony while he was on probation or parole for a felony.

In these cases the accused may be admitted to bail only by a magistrate or upon the circuit or district court's refusal, and upon good cause shown, by a justice of the supreme court, after hearing and finding that the interests of justice do not require detention without bail.

77-20-2. Issuance of order admitting to bail and fixing amount.

The order admitting to bail and fixing the amount thereof may be issued by a magistrate having jurisdiction over the person arrested or jurisdiction over the trial of the offense committed, or by any person authorized in writing by the magistrate pending an appearance before a magistrate.

77-20-3. Release on own recognizance—Changing amount of bail.

(1) Any person who may be admitted to bail may likewise be released on his own recognizance in the discretion of the magistrate.

(2) After admitting the defendant to bail, the magistrate may, in his discretion, increase or decrease the amount of the bail.

77-20-4. Bail posted in cash or written undertaking.

Bail may be posted in cash or written undertaking with or without sureties at the discretion of the magistrate. Written undertaking shall substantially conform to any form approved by the supreme court.

77-20-5. Qualifications of sureties—Justification—Requirements of undertaking.

(1) The sureties on written undertakings shall be real or personal property holders within the state and shall collectively have a net worth of at least twice the amount of the undertaking, exclusive of property exempt from execution.

(2) Each surety shall justify by affidavit upon the undertaking and each may be further examined upon oath by the magistrate or by the prosecuting attorney in the presence of a magistrate, in respect to his property and net worth.

(3) The undertaking shall, in addition to other requirements, provide that each surety submits himself to the jurisdiction of the court and irrevocably

Addendum D

LAWS

of the

STATE OF UTAH

passed at the

1991 SECOND SPECIAL SESSION,

1992 GENERAL SESSION,

and

1992 THIRD SPECIAL SESSION

Published by Authority

CHAPTER 127
H. B. No. 394
Passed February 26, 1992
Approved March 13, 1992
Effective April 27, 1992

COURT JURISDICTION

By Jerrold S. Jensen
John L. Valentine
Ted D. Lewis
R. Lee Ellertson
Merrill F. Nelson

AN ACT RELATING TO THE JURISDICTION OF THE APPELLATE AND TRIAL COURTS; PERMITTING THE POUROVER OF AGENCY APPEALS IN THE SUPREME COURT TO THE COURT OF APPEALS; REPEALING THE REQUIREMENT THAT THE DISTRICT COURT MAINTAINS TAX DIVISIONS; CLARIFYING JURISDICTION LIMIT OF CIRCUIT COURT AND EFFECT OF SMALL CLAIMS JUDGMENT.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:
40-10-14, AS LAST AMENDED BY CHAPTER 47, LAWS OF UTAH 1986
59-1-601, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1987
59-1-602, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1987
59-1-604, AS RENUMBERED AND AMENDED BY CHAPTER 3, LAWS OF UTAH 1987
59-1-607, AS RENUMBERED AND AMENDED BY CHAPTER 3, LAWS OF UTAH 1987
59-1-608, AS RENUMBERED AND AMENDED BY CHAPTER 3, LAWS OF UTAH 1987
59-11-113, AS RENUMBERED AND AMENDED BY CHAPTER 2, LAWS OF UTAH 1987
73-3-15, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1987
73-4-17, UTAH CODE ANNOTATED 1953
77-20-1, AS LAST AMENDED BY CHAPTER 4, LAWS OF UTAH 1988 SECOND SPECIAL SESSION
78-2-2, AS LAST AMENDED BY CHAPTER 67, LAWS OF UTAH 1989
78-2A-3, AS LAST AMENDED BY CHAPTER 268, LAWS OF UTAH 1991
78-4-7, AS LAST AMENDED BY CHAPTER 268, LAWS OF UTAH 1991
78-6-1, AS LAST AMENDED BY CHAPTER 268, LAWS OF UTAH 1991

REPEALS AND REENACTS:
78-22-1, AS LAST AMENDED BY CHAPTER 77, LAWS OF UTAH 1977

REPEALS:
59-1-605, AS RENUMBERED AND AMENDED BY CHAPTER 3, LAWS OF UTAH 1987
59-1-606, AS RENUMBERED AND AMENDED BY CHAPTER 3, LAWS OF UTAH 1987
59-1-609, AS LAST AMENDED BY CHAPTER 161, LAWS OF UTAH 1987

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

Section 1. Section Amended.

Section 40-10-14, Utah Code Annotated 1953, as last amended by Chapter 47, Laws of Utah 1986, is amended to read:

40-10-14. Division's findings issued to applicant and parties to conference — Notice to applicant of approval or disapproval of application — Hearing — Temporary relief — Appeal to district court — Further review.

(1) If a conference has been held under Subsection 40-10-13 (2), the division shall issue and furnish the applicant for a permit and persons who are parties to the proceedings with the written finding of the division granting or denying the permit in whole or in part and stating the reasons, within the 60 days after the conference.

(2) If there has been no conference held under Subsection 40-10-13 (2), the division shall notify the applicant for a permit within a reasonable time as set forth in regulations, taking into account the time needed for proper investigation of the site, the complexity of the permit application, and whether or not written objection to the application has been filed, whether the application has been approved or disapproved in whole or part.

(3) Upon approval of the application, the permit shall be issued. If the application is disapproved, specific reasons shall be set forth in the notification. Within 30 days after the applicant is notified of the final decision of the division on the permit application, the applicant or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final determination. The board shall hold a hearing pursuant to the rules of practice and procedure set forth in implementing rules and regulations within 30 days of this request and provide notification to all interested parties at the time that the applicant is notified. Within 30 days after the hearing the board shall issue and furnish the applicant, and all persons who participated in the hearing, with the written decision of the board granting or denying the permit in whole or in part and stating the reasons.

(4) Where a hearing is requested pursuant to Subsection (3), the board may, under conditions it prescribes, grant temporary relief it deems appropriate pending final determination of the proceedings if:

(a) all parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(b) the person requesting the relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceedings; and

(c) the relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

(5) For the purpose of the hearing, the board may administer oaths, subpoena witnesses or written or printed materials, compel attendance of the wit-

(1) The commission is charged with the administration and enforcement of this chapter and may promulgate rules under Chapter [46] 46a, Title 63, [the] Utah Administrative Rulemaking Act, to effectuate the purposes of this chapter.

(2) The commission shall collect the tax provided for under this chapter, including applicable interest and penalties, and shall represent this state in all matters pertaining to collection, either before courts or otherwise. The commission may institute proceedings for the collection of this tax, and any interest and penalties on the tax, in the district court of any county in which any portion of the property is situated. For this purpose the commission may call to its assistance the attorney general and the various county attorneys throughout the state.

(3) Any party to a proceeding before the district court concerning the tax imposed by this chapter, including the commission, may appeal [to the Supreme Court of the state] from the order, judgment, or decree entered by the district court [in accordance with the Utah Rules of Civil Procedure].

Section 8. Section Amended.

Section 73–3–15, Utah Code Annotated 1953, as last amended by Chapter 161, Laws of Utah 1987, is amended to read:

73–3–15. Dismissal of action for review of informal adjudicative proceedings.

(1) An action to review a decision of the state engineer from an informal adjudicative proceeding may be dismissed upon the application of any of the parties upon the grounds provided in Rule 41 of the Utah Rules of Civil Procedure for the dismissal of actions generally and for failure to prosecute such action with diligence.

(2) (a) For the purpose of this section, failure to prosecute a suit to final judgment within two years after it is filed, or, if an appeal is taken [to the Supreme Court] from a district court judgment within three years after the filing of the suit, constitutes lack of diligence.

(b) A court shall dismiss those suits after ten days' notice by regular mail to the plaintiff.

Section 9. Section Amended.

Section 73–4–17, Utah Code Annotated 1953, is amended to read:

73–4–17. Certified copy of final judgment — Filing.

Within thirty days after the entry of final judgment of the district court, or if an appeal is taken [to the Supreme Court] from a district court judgment, within thirty days after the final judgment on remittitur is entered, it shall be the duty of the clerk of the district court to deliver to the state engineer a certified copy of such judgment and to cause a certified copy thereof to be filed with the county recorder of each county in which the water adjudicated is diverted from its natural source and of each county where the water is applied. No filing fee shall be charged by either the state engineer or the county recorder.

Section 10. Section Amended.

Section 77–20–1, Utah Code Annotated 1953, as last amended by Chapter 4, Laws of Utah 1988 Second Special Session, is amended to read:

77–20–1. Right to bail — Denial of bail — Hearing.

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

(a) capital offense, when there is substantial evidence to support the charge;

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

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

(2) [Under Subsection (1), the accused may be denied bail only by a circuit or district court judge. If bail is denied, a justice of the Supreme Court or a judge of the Court of Appeals may, after a hearing and finding that the interests of justice do not require detention without bail, order that the accused be admitted to bail] Bail set or denied prior to bind over may be redetermined after bind over.

(3) An appeal may be taken from an order of any court denying bail to the Supreme Court, which shall review the determination under Subsection (1).

Section 11. Section Amended.

Section 78–2–2, Utah Code Annotated 1953, as last amended by Chapter 67, Laws of Utah 1989, is amended to read:

78–2–2. Supreme Court jurisdiction.

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) a judgment of the Court of Appeals;

(b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;

(c) discipline of lawyers;

(d) final orders of the Judicial Conduct Commission;

(e) final orders and decrees in formal adjudicative proceedings originating with:

UTAH CODE UNANNOTATED 1992

VOLUME 4

Complete through the
1992 THIRD SPECIAL SESSION

THE MICHIE COMPANY
Law Publishers
Charlottesville, Virginia

77-20-1. Right to bail — Denial of bail — Hearing.

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

(a) capital offense, when there is substantial evidence to support the charge;

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

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

(2) Bail set or denied prior to bind over may be redetermined after bind over.

(3) An appeal may be taken from an order of any court denying bail to the Supreme Court, which shall review the determination under Subsection (1). 1992

77-20-2. Issuance of order admitting to bail and fixing amount.

The order admitting to bail and fixing the amount thereof may be issued by a magistrate having jurisdiction over the person arrested or jurisdiction over the trial of the offense committed, or by any person authorized in writing by the magistrate pending an appearance before a magistrate. 1980

77-20-3. Release on own recognizance — Changing amount of bail.

(1) Any person who may be admitted to bail may likewise be released on his own recognizance in the discretion of the magistrate.

(2) After admitting the defendant to bail, the magistrate may, in his discretion, increase or decrease the amount of the bail. 1980

77-20-4. Bail posted in cash or written undertaking.

Bail may be posted in cash or written undertaking with or without sureties at the discretion of the magistrate. Written undertaking shall substantially conform to any form approved by the Supreme Court. 1980

77-20-5. Qualifications of sureties — Justification — Requirements of undertaking.

(1) The sureties on written undertakings shall be real or personal property holders within the state. The qualifications and bonding limits of bail bond sureties who are engaged in the for-profit, commercial business of posting property bonds shall be established by rules of the Judicial Council. All other sureties shall collectively have a net worth of at least twice the amount of the undertaking, exclusive of property exempt from execution.

(2) Each surety shall justify by affidavit upon the undertaking and each may be further examined upon oath by the magistrate or by the prosecuting attorney in the presence of a magistrate, in respect to his property and net worth.

(3) The undertaking shall, in addition to other requirements, provide that each surety submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the undertaking may be served, and that his liability may be enforced on motion and upon such notice as the court may require without the necessity of an independent action. 1991

77-20-6. Release on approval of undertaking.

Upon approval of the undertaking by the magistrate, the officer having custody of the arrested person shall release him. 1980

77-20-7. Duration of liability on undertaking — Notices to sureties.

(1) The principal and the sureties on the written undertaking are liable thereon during all proceedings and for all appearances required of the defendant up to and including the surrender of the defendant in execution of any sentence imposed irrespective of any contrary provision in the undertaking.

(2) Notice of any required appearance by the defendant may be given by the court to the sureties who shall thereupon cause the defendant's appearance as required. Any failure of the defendant to appear when required is a breach of the conditions of the undertaking or bail and subjects it to forfeiture irrespective of whether or not notice was given to the sureties. 1980

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

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

(2) If the court finds the defendant does not need to be detained, the court shall order the release of the defendant on suitable conditions, which may include the conditions under Subsection 77-20-10(2). 1988

77-20-8.5. Sureties — Surrender of defendant — Arrest of defendant.

(1) (a) The sureties may at any time prior to a forfeiture of their bail surrender the defendant and obtain exoneration of their bail by filing written requests at the time of the surrender.

(b) To effect surrender, certified duplicate copies of the undertaking shall be delivered to a peace officer, who shall detain the defendant in his custody as upon a commitment, and shall in writing acknowledge the surrender upon one copy of the undertaking. This certified copy of the undertaking upon which the acknowledgment of surrender is endorsed shall be filed with the court. The court may then, upon proper application, order the undertaking exonerated and may order a refund of any paid premium, or part of a premium, as it finds just.

(2) For the purpose of surrendering the defendant, the sureties may arrest him at any time before they are finally exonerated and at any place within the state. 1988

77-20-9. Disposition of forfeitures.

If by reason of the neglect of the defendant to appear, money deposited instead of bail or money paid by sureties on surety bond is forfeited and the forfeiture is not discharged or remitted, the clerk with whom it is deposited or paid shall, immediately after final adjournment of the court, pay over the money forfeited as follows:

(1) The forfeited bail case district courts shall be distr Section 77-18-3;

(2) The forfeited bail in from circuit courts shall b vided in Section 78-4-22;

(3) The forfeited bail in tice courts or in municipal j distributed as provided in

(4) The forfeited bail in c precinct justice courts, o courts where the offense i court shall be distributed a 77-18-3; and

(5) The forfeited bail in c in this section shall be paid surer and the remaining 50 surer in the county in wh curred or the forfeited bail is

77-20-10. Grounds for det while appealing his ditions for release

(1) The court shall order that been found guilty of an offense term of imprisonment in jail or filed an appeal or a petition for a detained, unless the court find

(a) the appeal raises a su law or fact likely to result

(i) reversal;

(ii) an order for a n

(iii) a sentence that term of imprisonment

(b) the appeal is not for t and

(c) by clear and convincin by the defendant that he is jurisdiction of the court, and ger to the physical, psych and economic safety or wel person or the community i

(2) If the court makes a findi (1) which justifies not detainin court shall order the release of t to conditions that result in the le tion or combination of conditions mines will reasonably assure th person as required and the safet and the community. The conditi the defendant:

(a) post appropriate bail;

(b) not commit a federal, during the period of releas

(c) remain in the custody son who agrees to assume s fendant and who agrees to re a release condition to the co person is reasonably able to the defendant will appear not pose a danger to the saf son or the community;

(d) maintain employment actively seek employment;

(e) maintain or commence gram;

(f) abide by specified re associations, place of abode

(g) avoid all contact with offense and with any witn against the defendant or pot

Addendum E

Effective 10/1/2020
Superseded 5/5/2021

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

(1) As used in this chapter:
(a) "Bail bond agency" means the same as that term is defined in Section 31A-35-102.
(b) "Financial condition" or "monetary bail" means any monetary condition that may be imposed under Section 77-20-4 to secure an individual's pretrial release.
(c) "Pretrial release" or "bail" means release of an individual charged with or arrested for a criminal offense from law enforcement or judicial custody during the time the individual awaits trial or other resolution of the criminal charges.
(d) "Pretrial status order" means an order issued by the court exercising jurisdiction over an individual charged with a criminal offense that sets the terms and conditions of the individual's pretrial release or denies pretrial release and orders that the individual be detained pending resolution of the criminal charges.
(e) "Surety" and "sureties" mean a surety insurer or a bail bond agency.
(f) "Surety insurer" means the same as that term is defined in Section 31A-35-102.
(2) An individual charged with or arrested for a criminal offense shall be admitted to bail as a matter of right, except if the individual is charged with a:
(a) capital felony, when the court finds there is substantial evidence to support the charge;
(b) felony committed while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when the court finds there is substantial evidence to support the current felony charge;
(c) felony when there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the individual would constitute a substantial danger to any other individual or to the community, or is likely to flee the jurisdiction of the court, if released on bail;
(d) felony when the court finds there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the individual violated a material condition of release while previously on bail; or
(e) domestic violence offense if the court finds:
(i) that there is substantial evidence to support the charge; and
(ii) by clear and convincing evidence, that the individual would constitute a substantial danger to an alleged victim of domestic violence if released on bail.
(3)
(a) A court exercising jurisdiction over an individual charged with or arrested for a criminal offense shall issue a pretrial status order designating the conditions to be imposed upon the individual's release or ordering that the individual be detained under this section during the time the individual awaits trial or other resolution of the criminal charges.
(b) A court granting pretrial release shall impose the least restrictive reasonably available conditions of release on the individual who is the subject of the pretrial status order that the court determines will reasonably ensure:
(i) the individual's appearance in court when required;
(ii) the safety of any witnesses or victims of the offense allegedly committed by the individual;
(iii) the safety and welfare of the public; and
(iv) that the individual will not obstruct or attempt to obstruct the criminal justice process.
(c)
(i) The court shall issue the pretrial status order without unnecessary delay.

(ii) If a prosecutor files a motion for detention under Subsection (6), the court may delay issuing the pretrial status order until after hearing the motion to detain if the court finds:
(A) the prosecutor's motion states a reasonable case for detention; and
(B) detaining the defendant until after the motion is heard is in the interests of justice and public safety.

(4)
(a) Except as otherwise provided in this section or Section 78B-7-802, the court shall order that an individual charged with a criminal offense be released on the individual's own recognizance, on condition that the individual appear at all required court proceedings, if the court finds that additional conditions are not necessary to reasonably ensure compliance with Subsection (3)(b).
(b) The court shall impose additional release conditions if the court finds that additional release conditions are necessary to reasonably ensure compliance with Subsection (3)(b). The conditions imposed may include that the individual:
(i) not commit a federal, state, or local offense during the period of release;
(ii) avoid contact with a victim or victims of the alleged offense;
(iii) avoid contact with a witness or witnesses who may testify concerning the alleged offense that are named in the pretrial status order;
(iv) not use or consume alcohol, or any narcotic drug or other controlled substance except as prescribed by a licensed medical practitioner;
(v) submit to drug or alcohol testing;
(vi) complete a substance abuse evaluation and comply with any recommended treatment or release program;
(vii) submit to electronic monitoring or location device tracking;
(viii) participate in inpatient or outpatient medical, behavioral, psychological, or psychiatric treatment;
(ix) maintain employment, or if unemployed, actively seek employment;
(x) maintain or commence an education program;
(xi) comply with limitations on where the individual is allowed to be located or the times the individual shall be or may not be at a specified location;
(xii) comply with specified restrictions on personal associations, place of residence, or travel;
(xiii) report to a law enforcement agency, pretrial services program, or other designated agency at a specified frequency or on specified dates;
(xiv) comply with a specified curfew;
(xv) forfeit or refrain from possession of a firearm or other dangerous weapon;
(xvi) if the individual is charged with an offense against a child, is limited or denied access to any location or occupation where children are, including any residence where children are on the premises, activities including organized activities in which children are involved, locations where children congregate, or where a reasonable person should know that children congregate;
(xvii) comply with requirements for house arrest;
(xviii) return to custody for a specified period of time following release for employment, schooling, or other limited purposes;
(xix) remain in the custody of one or more designated individuals who agree to supervise and report on the behavior and activities of the individual charged and to encourage compliance with all court orders and attendance at all required court proceedings;
(xx) comply with a financial condition; or

(xxi) comply with any other condition that is necessary to reasonably ensure compliance with Subsection (3)(b).

(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.

(5) In making a determination under Subsection (3), the court may rely on the following:

(a) any form of pretrial services assessment;

(b) the nature and circumstances of the offense or offenses charged, including whether the charges include a violent offense and the vulnerability of witnesses or alleged victims;

(c) the nature and circumstances of the individual, including the individual's character, physical and mental health, family and community ties, employment status and history, financial resources, past criminal conduct, history of drug or alcohol abuse, and history of timely appearances at required court proceedings;

(d) the potential danger to another individual or individuals posed by the release of the individual;

(e) if the individual was on probation, parole, or release pending an upcoming court proceeding at the time the individual allegedly committed the offense;

(f) the availability of other individuals who agree to assist the individual in attending court when required or other evidence relevant to the individual's opportunities for supervision in the individual's community;

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

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

(6)

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

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

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

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

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

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

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

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

(8)

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

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

(i) criminal homicide as defined in Section 75-5-201; and

(ii) any offense for which the term of imprisonment may include life.

(c) The individual may rebut the presumption of detention by demonstrating, by a preponderance of the evidence, that specified conditions of release will reasonably ensure compliance with Subsection (3)(b).

(9) Except as otherwise provided, the court issuing a pretrial warrant of arrest shall issue the initial pretrial status order.

(10)

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

(i) may be denied pretrial release by the court under Subsection (2); and

(ii) if denied pretrial release, may not be released before the individual's initial appearance before the court.

(b) Nothing in this section precludes or nullifies a jail release agreement or jail release order required under Section 78B-7-802.

(11)

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

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

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

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

(13) An appeal may be taken from an order of a court denying bail to the Utah Court of Appeals pursuant to the Utah Rules of Appellate Procedure, which shall review the determination under Subsection (7).

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

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

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

Addendum F

Effective 5/5/2021
Repealed 11/16/2021

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

(1) As used in this chapter:
  (a) "Bail bond agency" means the same as that term is defined in Section 31A-35-102.
  (b) "Surety" and "sureties" mean a surety insurer or a bail bond agency.
  (c) "Surety insurer" means the same as that term is defined in Section 31A-35-102.
(2) An individual charged with or arrested for a criminal offense shall be admitted to bail as a matter of right, except if the individual is charged with:
  (a) a capital felony, when the court finds there is substantial evidence to support the charge;
  (b) a felony committed while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when the court finds there is substantial evidence to support the current felony charge;
  (c) a felony when there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the individual would constitute a substantial danger to any other individual or to the community, or is likely to flee the jurisdiction of the court, if released on bail;
  (d) a felony when the court finds there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the individual violated a material condition of release while previously on bail;
  (e) a domestic violence offense if the court finds:
    (i) that there is substantial evidence to support the charge; and
    (ii) by clear and convincing evidence, that the individual would constitute a substantial danger to an alleged victim of domestic violence if released on bail;
  (f) the offense of driving under the influence or driving with a measurable controlled substance in the body if:
    (i) the offense results in death or serious bodily injury to an individual; and
    (ii) the court finds:
      (A) that there is substantial evidence to support the charge; and
      (B) by clear and convincing evidence that the person would constitute a substantial danger to the community if released on bail; or
  (g) a felony violation of Section 76-9-101 if there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the individual is not likely to appear for a subsequent court appearance.
(3)
  (a) Any individual who may be admitted to bail may be released by posting bail in the form and manner provided in Section 77-20-4, or on the individual's own recognizance, on condition that the individual appear in court for future court proceedings in the case, and on any other conditions imposed in the discretion of the magistrate or court in a pretrial status order setting the terms and conditions of the individual's pretrial release that will reasonably:
    (i) ensure the appearance of the accused;
    (ii) ensure the integrity of the court process;
    (iii) prevent direct or indirect contact with witnesses or victims by the accused, if appropriate; and
    (iv) ensure the safety of the public.
  (b) An individual arrested for a violation of Subsection 76-9-101(4) may not be released from custody before the individual appears before a magistrate or a judge.

(4)
(a) Except as otherwise provided, the initial order denying or fixing the amount of bail shall be issued by the magistrate or court issuing the warrant of arrest.
(b) A magistrate may set bail upon determining that there was probable cause for a warrantless arrest.
(c) A bail commissioner may set bail in a misdemeanor case in accordance with Sections 10-3-920 and 17-32-1.
(d) An individual arrested for a violation of a jail release agreement or jail release court order issued in accordance with Section 78B-7-802:
(i) may be denied pretrial release by the court under Subsection (2); and
(ii) if denied pretrial release, may not be released before the individual's initial appearance before the court.
(5) The magistrate or court may rely upon information contained in:
(a) the indictment or information;
(b) any sworn statement or sworn probable cause statement or other information provided by law enforcement;
(c) any form of pretrial services assessment;
(d) witness statements or testimony; or
(e) any other reliable record or source, including proffered evidence.
(6)
(a) Except as provided by Subsection (6)(b), the prosecution and defendant have a right to subpoena witnesses to testify at a pretrial detention hearing.
(b) If a defendant seeks to subpoena an alleged victim who did not willingly testify at a pretrial detention hearing, at the conclusion of the hearing, a defendant may issue a subpoena compelling the alleged victim to testify at a subsequent pretrial detention hearing only if the court finds that the testimony sought by the subpoena:
(i) is material to the substantial evidence or clear and convincing evidence determinations described in Subsection (2) in light of all information presented to the court; and
(ii) would not unnecessarily intrude on the rights of the victim or place an undue burden on the victim.
(c) An alleged victim has the right to be heard at a hearing on a motion for pretrial detention.
(7)
(a) A motion to modify the initial pretrial status order may be made by a party at any time upon notice to the opposing party sufficient to permit the opposing party to prepare for hearing and to permit each alleged victim to be notified and be present.
(b) Hearing on a motion to modify a pretrial status order may be held in conjunction with a preliminary hearing or any other pretrial hearing.
(c) The magistrate or court may rely on information as provided in Subsection (5) and may base its ruling on evidence provided at the hearing so long as each party is provided an opportunity to present additional evidence or information relevant to bail.
(8) Subsequent motions to modify a pretrial status order may be made only upon a showing that there has been a material change in circumstances.
(9) An appeal may be taken from an order of a court denying bail to the Utah Court of Appeals pursuant to the Utah Rules of Appellate Procedure, which shall review the determination under Subsection (2).
(10) For purposes of this section, any arrest or charge for a violation of Section 76-5-202, Aggravated murder, is a capital felony unless:
(a) the prosecutor files a notice of intent to not seek the death penalty; or

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

(11) Notwithstanding any other provisions of this section, there is a rebuttable presumption that an individual is a substantial danger to the community:

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

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