

# HB0220

## PRETRIAL DETENTION AMENDMENTS

Representative Schultz

<https://le.utah.gov/~2021/bills/static/HB0220.html>

### Legislative Synopsis:

This bill contains a partial repeal of pretrial / bail provisions enacted in HB0206 during the 2020 General Session. For pretrial release / detention purposes, the repeal is primarily accomplished in lines 193-310. In the place of the repealed language, the affected statutes are largely returned to the pre-HB206 language as it existed before October 2020. This means the bill:

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- repeals the **definitions** of “financial condition / monetary bail,” “pretrial release / bail,” and “pretrial status order” (lines 164-72); and
  - does not replace those definitions;
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- repeals the court’s obligation to **issue a pretrial status order or order that the individual be detained** (lines 193-96); and
  - restores the pre-HB0206 language that says any person who may be admitted to bail may be released by posting bail or on own recognizance on condition that the person appear in court and on any other condition imposed by the magistrate or court “in a pretrial status order setting the terms and conditions of the individual’s pretrial release” (lines 311-315; **note:** *the quoted language above is new code introduced in this bill and refers to a “pretrial status order” even though that term is no longer defined in statute*);
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- repeals the court’s obligation to impose the **“least restrictive reasonably available conditions”** of release (lines 197-98); and

- restores the discretion for the court to impose “any other condition...that will reasonably ensure” appearance, process integrity, no victim contact, and public safety (lines 314-20) (**note:** *the requirements of Rule 9 of the Utah Rules of Criminal Procedure remain in effect independent of HB0220*);

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- repeals the prosecutor’s responsibility to file a **motion for detention** and the statutory right to counsel at a pretrial detention hearing (lines 207-11 and 280-99); and
- does not replace those provisions;

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- repeals the **non-exhaustive list of additional release conditions** (lines 217-55), returning that list to its origin in Utah Code section 77-20-10 (lines 600-40); and
- restores the broad “any other condition” language to the general bail statute (lines 314-20);

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- repeals the statutory **ability-to-pay analysis** if ordering a financial condition (lines 256-59); and
- does not replace that provision (**note:** *the ability-to-pay matrix adopted by the Judicial Council in Appendix J of the Code of Judicial Administration and the requirements of Rule 6 of the Utah Rules of Criminal Procedure adopted by the Supreme Court remain in effect independent of HB0220*);

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- repeals the **list of factors / sources of information** the court may rely on in making the release / detain decision (lines 260-79); and
- replaces it with the pre-HB0206 list of sources of information (lines 334-40), with two new additions: the bill adds “or other information provided by law enforcement” (lines 336-37) and “proffered evidence” (line 340);

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- repeals the **additional requirement to detain an individual** (beyond the requirements of being eligible for detention and meeting the constitutional / statutory evidentiary burdens) that requires a court to find that “no [pretrial release] conditions will reasonably ensure” appearance, witness / victim safety, public safety, or no obstruction of justice (lines 298-99); and
- does not replace that provision; and

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- repeals the **rebuttable presumption of detention** for an individual charged with homicide or a first degree felony (lines 300-05); and
- does not replace those provisions.

The bill creates a new provision regarding **witness and victim testimony “at a pretrial detention hearing”** (lines 341-52). These lines create a right in both the state and defense to subpoena witnesses for such hearings, but limits a defendant’s ability to subpoena a victim unless the court determines that victim testimony “is material to the substantial evidence or clear and convincing evidence determinations” and “would not unnecessarily intrude on the rights of the victim or place an undue

burden on the victim” (lines 347-50 and 813-14). If those findings are made, the pretrial detention hearing may be set over to a new date so that the victim can be subpoenaed.

The bill creates a **new section of code — 77-20-3.1** — that restates that “any person who may be admitted to bail may likewise be released on the person’s own recognizance” (lines 427-28). This new section also authorizes the magistrate or court, after releasing the defendant, to impose bail, increase / decrease the amount of bail, and impose / change the conditions of release (lines 429-32).

Significantly, the bill **removes the ability of a justice court judge to deny bail while acting as a magistrate**, and restores the prohibition against setting bail in a capital felony case (lines 789-90).

The bill restores to statute a court’s **ability to authorize an individual to not appear in court and instead remit the fine** on an offense designated “mandatory appearance” on the Uniform Fine Schedule (lines 99-100).

The bill restores the **six-month period of time for the surety to surrendered the defendant after notice of nonappearance** (lines 727-28). It also returns the time period in which the court can **reinstate a bond to seven days**, down from the 30 days provided in HB0206 (lines 684-86). The bill continues to **require notices of**

**nonappearance to be emailed** rather than sent via certified mail (starting at line 659 and throughout thereafter).

Finally, the bill does not repeal the “Pretrial Release Programs Special Revenue Fund” but does modify the distribution percentages (lines 570-80).

**Practice Points:**

During the 2021 General Session, those responsible for this legislation repeatedly stated that this repeal was not a final destination, and made public commitments to continue further work on appropriate changes to these important pretrial processes during the months following the general session.

Upon signing this bill, the governor stated that he plans “to call a special session so that the Legislature may pass an improved pretrial detention bill that appropriately balances public safety and the rights of defendants who are presumed innocent.”

As a result, we are reasonably anticipating that there will be further changes to these sections of code in the coming months.