

PRETRIAL RELEASE DECISION PROCEDURES

Utah Code §77-20-1 / Effective October 1, 2020

Pretrial Status Order (77-20-1(3)(a))

- ✓ A pretrial status order (PSO) is required every time a court makes a pretrial release decision, including during an initial probable cause (PC) review, at initial appearance, and bail hearings.
- ✓ A PSO sets the terms and conditions of pretrial release or detention.
- ✓ The court shall issue a PSO without unnecessary delay.

Presumption of own recognizance release (77-20-1(4)(a))

- 1. Court shall order own recognizance release (with the condition that the arrestee not fail to appear), unless court finds that additional conditions are necessary to reasonably ensure:**
- the individual's appearance in court when required;
 - the safety of any witnesses or victims;
 - the safety and welfare of the public; and
 - that the individual will not obstruct or attempt to obstruct justice

Presumption of detention (77-20-1(8)(a))

- 2. There is a presumption of detention if individuals are charged with one or more of the following offenses:**
- criminal homicide as defined in 76-5-201, and
 - any offense for which the term of imprisonment may include life
- ✓ The offense must still qualify for a no-bail hold under 77-20-1(2)
 - ✓ The presumption is rebuttable (see "Detention Hearing" below)
 - ✓ The intent expressed during the legislative drafting process was for the presumption to apply at the outset (including at PC review). It doesn't override judicial discretion to release and doesn't negate the findings required for a no-bail hold under 77-20-1(2).

Least restrictive, reasonably available conditions (77-20-1(3)(b))

- 3. If Own Recognizance release is insufficient, court must impose the least restrictive, reasonably available conditions necessary to reasonably ensure:**
- the individual's appearance in court when required;
 - the safety of any witnesses or victims;
 - the safety and welfare of the public; and
 - that the individual will not obstruct or attempt to obstruct justice

Ability-to-Pay financial condition of release (77-20-1(4)(c))

- 4. Court may set a financial condition of release (monetary bail) only upon finding that a financial condition is least restrictive and reasonably necessary.**

- ✓ Must consider an individual's ability to pay the amount set, unless issuing an unsecured bond (see below)
- ✓ Must find:
 - that the individual does (or does not) have the ability to pay the amount set; and
 - that the monetary amount is the least restrictive, reasonably available condition necessary to reasonably ensure:
 - the individual's appearance in court when required;
 - the safety of any witnesses or victims;
 - the safety and welfare of the public; and
 - that the individual will not obstruct or attempt to obstruct justice
- ✓ If individual's financial information not available, could presume indigence and make the least restrictive, reasonably available findings above when setting an amount.

Ability-to-Pay Matrix

- The new Ability-to-Pay matrix assists court in determining affordable monetary bail amounts. Judges have discretion to deviate.
- The matrix incorporates the poverty guidelines and recommends affordable monetary bail amounts using an individual's:
 - gross household income;
 - number of dependents; and
 - PSA failure to appear risk score (if available)

Unsecured Bonds:

- An unsecured bond is a "written undertaking without sureties" and has been an option for judges for many years (77-20-4(1)(b)(iii)). **Not a change in HB206*
- Judges do not have to conduct an ability-to-pay analysis if they are issuing an Unsecured Bond (77-20-1(4)(c)).
- Defendants would not have to pay money upon release from custody, but if they failed to appear in court the bond may be forfeited and a judgment issued.

Detention Hearings (77-20-1(3)(c)(ii), (6), (7), and (8))

- 5. After (or upon) the filing of charges, the State may file a motion for detention if one or more of the offenses qualify for a no-bail hold under 77-20-1(2).**
- ✓ If a prosecutor files a motion for detention, judges may delay issuing a PSO and hold a defendant in custody until after a hearing, if the court finds:
 - the prosecutor's motion states a reasonable case for detention; and
 - detaining the defendant until after the motion is heard is in the interests of justice and public safety.
 - ✓ Upon filing of a detention motion, the court shall set a hearing on the matter as soon as practicable.
 - ✓ The defendant has the right to counsel at the detention hearing, and the court shall give both parties the opportunity to make arguments and to present relevant evidence.
 - ✓ There is a presumption of detention if individuals are charged with one or more of the following offenses:
 - Criminal homicide as defined in 75-5-201; and
 - any offense for which the term of imprisonment may include life
 - ✓ The presumption is rebuttable if the defendant demonstrates, by a preponderance of the evidence, that specified conditions of release will reasonably ensure:
 - the individual's appearance in court when required;
 - the safety of any witnesses or victims;
 - the safety and welfare of the public; and
 - that the individual will not obstruct or attempt to obstruct justice.
 - ✓ After the hearing, the court may detain the individual if:
 - at least one of the charged offenses qualifies for a no-bail hold under 77-20-1(2);
 - there is substantial evidence to support the charge and the State meets all additional evidentiary burdens required under 77-20-1(2)(e.g., "clear and convincing"); and
 - the court finds that no conditions of release will reasonably ensure:
 - the individual's appearance in court when required;
 - the safety of any witnesses or victims;
 - the safety and welfare of the public; and
 - that the individual will not obstruct or attempt to obstruct justice.