

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

Via Webex
December 2, 2021 – 12:00 p.m. to 2:00 p.m.

12:00	Welcome and Approval of Minutes		Tab 1	Judge Harmond
	Committee Business			Judge Harmond Staff
	HB2003 – Pretrial Amendments Review		Tab 2	Staff
2:00	Adjourn			

COMMITTEE WEB PAGE: <https://www.utcourts.gov/utc/pretrial-release/>

UPCOMING MEETING SCHEDULE:

Meetings are held via Webex on the first Thursday of each month from 12:00 noon to 2:00 p.m. (unless otherwise specifically noted):

January 6, 2022
February 3, 2022
March 3, 2022
April 7, 2022

May 5, 2022
June 2, 2022
July 7, 2022
August 4, 2022

September 1, 2022
October 6, 2022
November 3, 2022
December 1, 2022

TAB 1

Minutes – July 1, 2021 Meeting

Minutes – October 7, 2021 Meeting

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

Via WebEx
July 1, 2021 – 12:00 p.m. to 2:00 p.m.

DRAFT

COMMITTEE MEMBER:	ROLE:	PRESENT	EXCUSED	STAFF:
Judge George Harmond, <i>Chair</i>	District Court Judge	•		Keisa Williams Michael Drechsel
Judge William Kendall	District Court Judge		•	
<i>vacant</i>	Juvenile Court Judge		--	
Judge Brendan McCullagh	Justice Court Judge	•		
Judge Jeanne Robison	Justice Court Judge	•		
Josh Graves	Prosecutor	•		
Cara Tangaro	Defense Attorney	•		
Captain Corey Kiddle	County Sheriff	•		
Commissioner Lorene Kamalu	County Representative	•		
Andrea Jacobsen	Pretrial Services		•	
<i>vacant</i>	Insurance Dept.		--	
Tom Ross	CCJJ		•	
Wayne Carlos	Commercial Surety		•	
<i>vacant</i>	Senator		--	
Representative Karianne Lisonbee	Representative	•		
Richard Mauro	IDC	•		
Keisa Williams	Court General Counsel	•		

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Harmond welcomed the committee to the meeting.
The committee considered the minutes from the May 6, 2021 meeting.
Judge Robison moved to approve the draft minutes; Judge McCullagh seconded the motion.
The committee voted unanimously in support of the motion. The motion passed.

(2) UPDATE – SALT LAKE COUNTY TIME-TO-FILE AND INITIAL APPEARANCE PROCEDURES:

Mr. Graves provided an update to the committee regarding this project. He reported that they had worked out some remaining issues. A standing order was finalized in early June. All non-DV misdemeanors are being processed under a two-day filing period, and that seems to have been operationalized well. The Salt Lake County jail has provided good training. The hope is to do some analysis because there has been an uptick in the

numbers on the daily failure-to-file reports from the jail. There are still a significant number of cases where prosecutors haven't received police reports in time to file charges.

Mr. Mauro explained two positives that he has observed from this process. First, lower level offenses are more frequently being handled with summonses. Second, this has resulted in smaller in-custody calendars for those lower-level offenses.

Captain Kiddle explained things have been going well for the jail in this process, and thanked the relevant people for the constant communication and collaboration.

(3) UPDATE – DATA COLLECTION SUBCOMMITTEE:

Mr. Samuelson provided an update on subcommittee efforts. The subcommittee has been meeting regularly. They continue to work toward two products. One is the integrated pretrial dashboard for public consumption. The other is focused on functional data directed toward practitioners. There has been incremental progress.

Mr. Hutchings explained that he continues to work on securing funding for the PSA updates that have previously been discussed and approved by the committee. He expressed a desire to continue working with other counties (specifically mentioning Washington and Davis counties). He continues to coordinate with CCJJ and GOPB. If he needs additional information from the courts as part of these requests, he was directed to contact Mr. Drechsel, who will be staffing this committee moving forward. He is hopeful that funding could be secured in the coming months, possibly during a special session.

Mr. Samuelson explained that there will be a need for a data analyst in each jurisdiction that engages in this work. One of the products that is being worked on is a very technical document specifically for data analysts so that the work can be replicated in other areas around the state, with confidence that the efforts can result in "apples-to-apples" data comparisons.

Commissioner Kamalu expressed commitment to have Davis County be involved in the effort to identify and understand this pretrial data in her county.

(4) UPDATE – LEGISLATIVE PRETRIAL REFORM WORKGROUP:

Judge Harmond informed the committee that Mr. Drechsel will be staffing this committee moving forward. Judge Harmond asked Mr. Drechsel to provide an update to the committee members regarding the most recent work performed by the legislative pretrial reform workgroup. Mr. Drechsel pointed out that the legislative workgroup has involved Rich Mauro, Josh Graves, Judge Harmond, Representative Lisonbee, Ranae Cowley, and others in attendance at the meeting today. As a result, any report on the workgroups efforts should be a group report. Mr. Drechsel reported that the workgroup will not be meeting in July or August. This will allow for groups to consider all that has been discussed so far, and for conversations about the work to be had among the various groups involved in the work.

Mr. Drechsel explained that the workgroup had just been provided with the first working draft. Mr. Drechsel emphasized that this is very much a rough draft and that the committee members should expect significant changes. Mr. Drechsel explained that there were a number of topics that have been discussed or are on the workgroup's radar, but are not included anywhere in the current working draft, but may possibly be included in a future draft, including: proceedings related to citations, identification of appropriate pretrial release conditions, expansion of collecting SIDs and other data tracking for reporting and analysis, revisions related to bond forfeiture processes, and clarification on motions for detention. Mr. Drechsel also reported that the Office of Legislative Research and General Counsel has indicated they will be conducting research on the use of bail

schedules, ability-to-pay issues, and related issues. With the previous disclaimer and caution (also echoed by Mr. Mauro), Mr. Drechsel then shared with the committee the working draft (dated June 22, 2021), walking through the various provisions included in that document. Feedback from committee members included:

- having definitions of core terms in statute are appreciated and assist in common understanding;
- the statutes should address (and harmonize with jail policies) how to handle the situation where an arrested person who is court-ordered to be released is still under the influence, and therefore continues to pose a danger to others or themselves;
- the “own recognizance” release authority granted to sheriffs from HB1006 in the June 2021 special session (codified in 77-20-3.2) may need to be revised:
 - to accommodate booking practices in several (all?) jails because there is no meaningful window of time between the individual being booked into the jail and submission of the PC statement from the arresting officer;
 - to apply the subsection (4) exception language (re: agreements regarding release to pretrial, etc.) to the justice courts; and
- It is important that the statutes accurately differentiate between the role of magistrate and the role of judge and use both terms when it is relevant.

After reviewing the working draft, and soliciting any additional insights or feedback from committee members, Mr. Drechsel identified one other issue that has been a topic of conversation within the legislative workgroup. Mr. Drechsel explained that there have been questions and concerns raised regarding the number of \$0 recommendations indicated on the matrix (for FTA 1, FTA 2, and FTA 3). In total, half of the matrix is populated with \$0 recommendations for all income levels, even for FTA risk that is squarely in the “B” grade range (80%-90% appearance). This has been a topic of concern for some members of the workgroup. Mr. Drechsel suggested that the committee may consider whether, based upon this feedback, it would be wise to revisit the recommended amounts. Judge Harmond suggested that the committee should include further discussion on the ability-to-pay matrix at a future meeting, hopefully informed by any relevant data that is available. Mr. Drechsel suggested that it may be possible to secure data on how judges are using the ability-to-pay matrix, including how frequently the recommended amounts are utilized and the rate of deviation from the recommendations (both higher and lower amounts). It would also be possible to look at how the imposed monetary amounts correlate with FTA risk levels identified in the PSA (for cases where a PSA was generated). This could help with an assessment of how the matrix as a tool is designed compared with how it is used. If the design is of concern to some stakeholders AND the matrix is regularly being used in a way that deviates from that design, perhaps that is cause for further reason to consider further refinements to the tool.

Ms. Williams noted that no tool is perfect (including the ability-to-pay matrix) and that continuing adjustments and refinements should be expected along the way. Part of the discussion should always include careful consideration of the many research studies on the costs associated with incarcerating low-risk individuals, and how those costs are often higher to the citizens of the state than the costs associated with failure to appear (which costs are typically measured in delay of court proceedings and law enforcement efforts to arrest on warrants). Costs of incarcerating a low-risk individual for even a few days include driving up short-term and long-term recidivism rates, as well as the loss of housing, employment, custody of children, etc.

Mr. Mauro suggested that it may be premature to look at the ability-to-pay matrix because there is a pending discussion in the workgroup about a bail schedule. Some of the important, as-of-yet-unanswered questions include if there is both a bail schedule and an ability-to-pay matrix, which one controls and when does each one apply? He suggested that we look at some data regarding the matrix and wait to see what will happen legislatively.

Judge Harmond noted that this is partly a question of perception. The costs of incarcerating an individual who cannot afford to pay a monetary condition of release are typically more amorphous than seeing an individual

released on a monetary amount that is perceived as being too low. There appears to be a fundamental misunderstanding in the workgroup. Courts across the nation (both state and federal) have concluded that in imposing a monetary condition, courts are mandated to assess an individual's ability to pay. As an example, in the workgroup there were recent references to the California bail schedule, without recognition that that bail schedule had recently been the subject of a California Supreme Court opinion that took issue with how that bail schedule had been used / applied in California. It is important that the committee to continue to discuss the ability-to-pay matrix and the concerns that are out there.

Mr. Drechsel shared that Ms. Liu and Mr. Samuelson had recently presented to the legislative workgroup. During that presentation, Mr. Samuelson had been asked to identify what number of individuals were presently being held pretrial in Salt Lake County Jail solely on a monetary condition. He was able to identify that there were around 80 individuals being held on a monetary condition that should have permitted them to be released for a few hundred dollars. Mr. Drechsel couldn't remember the specific numbers that had been shared during that presentation, but noted that using this method, there may be a way to determine if there is a threshold or cutoff where people no longer continue to be held. Consideration of that data may also inform the design of the matrix.

(5) ADJOURN

Before adjourning, Judge Harmond pointed out that he had intended to mention at the beginning of the meeting that Representative Karianne Lisonbee was recommended by the Speaker of the House (Brad Wilson) and was appointed by the Judicial Council as a member of the committee. He looked forward to having her involvement in this committee and welcomed her publicly. The meeting adjourned at approximately 1:50 p.m. The next meeting is scheduled to be held on August 5, 2021, starting at 12:00 noon.

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

Via Webex
October 7, 2021 – 12:00 p.m. to 2:00 p.m.

DRAFT

COMMITTEE MEMBER:	ROLE:	PRESENT	EXCUSED	GUESTS:	
Judge George Harmond, <i>Chair</i>	District Court Judge	•		Arnold Butcher Clay Carlos Eric Hutchings Heidi Anderson Jessica Thayer Jojo Liu Jon Puente Kelly Sparks Paul Barron Renaë Cowley Tucker Samuelson Yvette Rodier-Whitby	
Judge William Kendall (<i>at 1:00 p.m.</i>)	District Court Judge	•			
<i>proposed to remove</i>	Juvenile Court Judge		•		
Judge Brendan McCullagh	Justice Court Judge	•			
Judge Jeanne Robison	Justice Court Judge	•			
Josh Graves (<i>at 1:00 p.m.</i>)	Prosecutor	•			
Cara Tangaro	Defense Attorney	•			
Captain Corey Kiddle	County Sheriff	•			
Commissioner Lorene Kamalu	County Representative		•		
Andrea Jacobsen	Pretrial Services		•		STAFF: Michael Drechsel
<i>proposed to remove</i>	Insurance Dept.		•		
Tom Ross	CCJJ		•		
Wayne Carlos	Commercial Surety		•		
<i>vacant</i>	Senator		•		
Representative Karianne Lisonbee	Representative		•		
Richard Mauro	IDC	•			
<i>proposed to create</i>	Victims' Council	--	--		
<i>proposed to create</i>	Community Organization	--	--		
<i>proposed to create</i>	Chief of Police	--	--		
Keisa Williams	Court General Counsel		•		

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Harmond welcomed the committee to the meeting. The committee did not have a quorum at the start of the meeting. The July 1, 2021 meeting minutes will be considered at the next meeting.

(2) COMMITTEE BUSINESS:

The committee reviewed upcoming committee meeting dates, as outlined at the bottom of the agenda for today's meeting. Mr. Drechsel noted that historically the committee cancels several of these meeting dates. But

the committee members should have these dates on their radar moving into 2022. Judge Robison noted that she has a calendar that conflicts with the last 30 minutes of the committee's meetings, but that it has been workable for her up to this point. No other committee members expressed any concerns with the proposed meeting schedule.

Mr. Drechsel then reviewed changes to committee membership. He explained that the Judicial Council recently approved (effective November 1, 2021) the elimination of the Insurance Department position and the Juvenile Court Judge position. It was Mr. Drechsel's understanding that in each of these instances, the underlying bodies had requested that their member be removed from the committee. In addition, the Judicial Council also created three new positions for the committee's membership: a representative from the Utah Victim's Council (noting that Yvette Rodier-Whitby has been attending committee meetings for some time as an individual focused on victim rights), a representative who is a chief of police, and a representative from a community organization engaged in pretrial justice. Mr. Drechsel asked committee members to contact him with any suggestions of individuals who may be a good fit for these new committee positions. He noted the committee would benefit from individuals who challenge, and thereby strengthen, the committee's work.

(3) UPDATES:

The committee turned its attention to updates related to the committee's work.

Data Collection Subcommittee

The subcommittee has not met since the committee's last meeting. Eric Hutching provided an update on other efforts that are being made to coordinate with the subcommittee's assignments, including coordinating between Salt Lake County and the legislature on data collection and analysis projects, including efforts with Sen. Anderegg. He intends to reconvene the subcommittee and address these developments, and next steps, in greater detail.

Mr. Drechsel noted that after a recent legislative workgroup meeting, Rep. Schultz and Rep. Lisonbee asked what could be done to help judges receive additional information when making decisions regarding pretrial release. Mr. Drechsel reported that he shared with them the February 2021 proposal generated by this committee for providing judges with additional information, including the estimated funding to implement the necessary systems changes at the courts, DPS, and Utah / Washington County. There is no promise that the proposal will be embraced, or funding secured, but the proposal has now been more widely disseminated.

Rules of Procedure Subcommittee

Mr. Drechsel explained that his understanding is that the subcommittee had passed its work along to the Advisory Committee on the Rules of Criminal Procedure and that body was grappling with possible changes to Rules 7, 9, and a possible new Rule 7.5 (re: motions for pretrial detention). No committee members had any further updates to provide on this matter.

SLCo. / 3rd District 48-Hour IA Program

Rich Mauro shared that they are seeing more individuals being brought to court on summons, and fewer individuals appearing in custody. Cpt. Kiddle noted that the program is working fairly well. The Salt Lake County jail has been working proactively with the presiding judges in the 3rd District to address issues. He confirmed that the jail is also working proactively to get the right individuals in front of a judge (district and justice), particularly when there are unresolved warrants pending. Josh Graves had a prior commitment that necessitated joining the meeting late and was not present to provide his input.

Federal Lawsuit

Mr. Drechsel noted for the committee that a lawsuit was recently filed in federal court. The lawsuit alleges that certain individuals' rights were violated because of pretrial judicial decision-making. Mr. Mauro noted that the

lawsuit speaks to several issues that this committee has been considering and the committee should pay careful attention to what happens with the lawsuit.

Legislative Pretrial Workgroup

Mr. Drechsel provided an update on the pretrial workgroup's efforts on pretrial reform. He explained that most recently the workgroup had been focused on reinvigorating bail commissioner authority in jails. There is an effort underway to create a statutory bail schedule for bail commissioners to use to release a certain subgroup of individuals on a financial condition. This would be in addition to the sheriffs' relatively recent "own recognizance" release authority (created in the May 2021 special session). Mr. Drechsel noted that, importantly, those individuals who are not able to meet the statutory bail schedule financial condition imposed by the bail commissioner will still have their arrest reviewed by a magistrate within 24 hours of arrest, where the magistrate will consider conditions of release, including financial conditions, and will make an individualized ability-to-pay determination. Mr. Drechsel noted that if this is implemented appropriately, this could result in benefits for a significant number of individuals and stakeholders. It could allow jails to efficiently process those who have been booked, individuals who can quickly meet the financial condition to be released without waiting for judicial review, winnowing down on the number of arrests that required judges to make a review and allowing law enforcement and judges more time for those cases that really matter. Mr. Drechsel noted that legislation may be presented on this topic during a special session in November.

Public Safety Assessment Rescore Process

Mr. Drechsel explained to the committee members that the most common reason a public safety assessment (PSA) is not able to be provided to a magistrate at the probable cause review has been because the individual has had out-of-state criminal history matching that individual's SID. Due to variations in how that out-of-state data is reported to the connected databases, that out-of-state data often cannot be reliably interpreted by the system to score the PSA. Mr. Drechsel explained that to incorporate that out-of-state data into the PSA, the courts have contracted with Salt Lake County Criminal Justice Services to have its jail screening unit manually review the out-of-state criminal history and supplement the PSA score with any relevant data from that review. Under the contract, Salt Lake County Criminal Justice Services conducts the rescoring process for all warrantless arrests across the state where there is out-of-state criminal history data. Once rescored, the rescored PSA is then submitted to the magistrate with the probable cause statement to help inform the decision-making process. Mr. Drechsel shared data regarding the first month of operations under this PSA rescore process, noting that the average time for doing the rescore work averages 33 minutes (with a median time of closer to 20 minutes). In the first month, this process resulted in over 900 rescoring and a PSA provided to the magistrate. Previously, all those cases would not have been able to have a PSA for the magistrate (due to the unprocessed out-of-state criminal history match). This process appears to be operating successfully to provide a PSA to the magistrate much more frequently. Cpt. Kiddle noted that the most common reason for not having an SID (which is required to run a PSA and get to the point where a rescore is even possible) is that the jail booking is a first-time arrest in Utah and there isn't sufficient time to get the SID generated at BCI.

(4) PUBLIC SAFETY ASSESSMENT – ANNUAL REVIEW:

Judge Harmond turned the committee's attention to the next agenda item. Mr. Drechsel explained that this agenda item is an effort to help the committee to stay aware of relevant and current information related to the public safety assessment. This information includes critical assessment of Risk Assessment Instruments (RAIs) generally, as well as continuing best practice guidance for responsible use of the PSA.

Mr. Drechsel pointed the committee's attention to the Pretrial Justice Institute's criticism memo — *The Case Against Pretrial Risk Assessment Instruments* — issued in November 2020 (included in the meeting materials). Mr. Drechsel displayed the memo to the committee and walked the committee through some of the key criticisms of RAIs outlined in that memo: 1) RAIs do not differentiate between "flight" and "failure to appear"; 2) RAIs does not reliably predict "violent" crime; 3) RAIs perpetuate structural racism because the underlying data is skewed by

historically inequitable law enforcement and criminal justice practices; 4) RAs focus on “risk” of failure rather than highlighting the numbers of individuals who succeed on pretrial release; 5) RAs can result in over-supervision of individuals, leading to significant consequences to those who are deemed “high risk.” Mr. Drechsel noted that PJI has a vision for how these issues could be better addressed. That vision “prioritizes upfront investments in community programs and social services, including additional resources for education, housing, employment, health care, social-emotional supports, while protecting the pretrial rights of people and requiring collection of pretrial data relating to release, detention and race to empower communities to make change.” Committee members commented generally regarding the issues outlined in the memo, including a desire to better understand how the PSA is operating in Utah. Mr. Drechsel noted that Harvard has finished the first phase of its study, and is now working to study outcome data on the cases identified in the first phase of the study.

Based on time constraints, Mr. Drechsel pointed the committee members’ attention to the “Open Letter” response endorsed by a 21 separate academics and researchers who are well-versed with the studies and literature on this topic (included in the meeting materials). From that body of research, this group of academics responded to PJI’s criticisms of RAs, noting the failures and shortcomings of the approach used to support PJI’s claims. Mr. Drechsel encouraged the committee members to review this response to PJI to better understand the criticisms from both sides. Judge Harmond suggested that the committee will need to undertake a more detailed review to determine if there are any resulting recommendations the committee should make to the Judicial Council.

Mr. Drechsel also directed the committee members’ attention to the most recent best practice guidance to entities using the PSA — *Responsible Use of the Public Safety Assessment*, June 2021 (included in the meeting materials). In this document, published by Advancing Pretrial Policy & Research (APPR), four best practices are identified: 1) do not include recommendations for detention in any matrix; 2) do not include recommendations of financial release conditions in any matrix; 3) avoid using provocative colors in any matrix; and 4) replace “decision-making framework” with “release conditions matrix” and eliminate charge-based “bump-ups.” Mr. Drechsel provided a brief overview of each of these recommended best practices. Mr. Drechsel suggested that the committee should probably consider how these best practices might be incorporated into our use of the PSA. The committee had no comments on this information.

(5) ABILITY-TO-PAY MATRIX – ANNUAL REVIEW:

Judge Harmond turned the committee’s attention to the final agenda item. Mr. Drechsel explained that it was time for the committee to begin an annual review of the ability-to-pay matrix and consider whether, based upon that review, the committee should make recommendations to the Judicial Council for possible revision. Based upon feedback and questions from stakeholders, possible topics for detailed review may include how the matrix is being used by judges, whether the design /content of the matrix is confusing to stakeholders (i.e., why are there so many zeroes on the matrix?), and whether the recommended amounts are appropriately accomplishing the purposes for which they were established. Answers to these topics may result in recommended revisions by the Judicial Council or additional outreach and education on the design and use of the matrix.

Ms. Tangaro commented about her experience that money is not usually the reason people appear in court, but rather the reminders and follow-up from bail bond people / attorneys / court reminders that are more effective. She also noted that in her experience judges have not typically been using the recommended amounts from the matrix, though that may be tied to her clients not being among those that qualify for public defender representation.

Mr. Mauro recollected that the process of creating and adopting the matrix was thoughtful and done with fidelity, though perhaps that wasn’t adequately communicated externally. He observed that most people appear in court. And the purpose of monetary bail should be to secure an individual’s appearance in court.

Because most individuals appear in court, lower monetary amounts are probably appropriate. Mr. Mauro agreed that it would be interesting to better understand how the matrix is being used. The committee has a responsibility to review the matrix to ensure it is fulfilling its intended role.

Mr. Graves stated that he isn't seeing a lot of ability-to-pay determinations being made at initial appearance. What the matrix has done, though, is set some guardrails on what the appropriate starting point for setting a financial condition in the case. Prosecutors are using the matrix as a starting point in the case initiation phase to get the individual into court. At that point, additional information can be obtained from the individual. He agreed that further investigation and review is warranted.

Ms. Tangaro noted that she has seen a lot of no bail determinations initially, with a subsequent release not relying on a financial condition as much as other supervision conditions.

Judge Harmond noted that more than one judge at the annual judicial conference indicated they may still not be entirely aware of the purpose of the ability-to-pay matrix, which indicates a need for ongoing educational efforts, both internally and externally.

Mr. Drechsel stated that, based on the comments during the meeting, he would attempt to begin gathering additional data on these issues and bring it back to the committee at a future meeting.

(6) ADJOURN

The meeting adjourned at approximately 2:00 p.m. The next meeting is scheduled for November 4, 2021, starting at 12:00 noon.

TAB 2

HB2003 – Pretrial Amendments

NOTES:

The committee will discuss HB2003 – Pretrial Amendments, which passed during a special session on November 10, 2021. The bill was signed by the governor on November 16, 2021, and has been in effect since that date.

The materials under this tab include:

- a link to HB2003 – Pretrial Amendments (104-page enrolled version of bill):
<https://le.utah.gov/~2021S2/bills/hbillenr/HB2003.pdf>
- a November 26, 2021 memo summarizing HB2003.



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Ronald B. Gordon, Jr.
State Court Administrator

Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

To: All Judicial
From: Michael C. Drechsel, Assistant State Court Administrator
Date: Friday, November 26, 2021
Re: HB2003 – Pretrial Amendments (codified in Utah Code, Title 77, Chapter 20)

On November 10, 2021, the legislature passed HB2003 “Pretrial Amendments,” a bill ostensibly designed to address perceived friction points in the pretrial period of criminal cases. The bill was passed with an immediate effective date, upon the governor’s signature. On November 16, 2021, the governor signed HB2003. This memo summarizes the statutory changes made in HB2003.¹

DEFINITIONS²

HB2003 adds several new definitions to Utah Code, including:

- “Exonerate”
- “Financial Condition / Monetary Bail”
- “Forfeiture”
- “Own Recognizance” (O.R.)³
- “Pretrial Detention Hearing”
- “Pretrial Release / Bail”⁴
- “Pretrial Risk Assessment”
- “Pretrial Services Program”
- “Pretrial Status Order”
- “Temporary Pretrial Status Order”
- “Unsecured Bond”

¹ HB2003 (<https://le.utah.gov/~2021S2/bills/static/HB2003.html>) recodified Utah Code, Title 77, Chapters 20 (Bail) and 20b (Bail Surety) into a single renumbered chapter — Title 77, Chapter 20 (https://le.utah.gov/xcode/Title77/Chapter20/77-20.html?v=C77-20_2021111020211116). All statutory citations and hyperlinks in this memo point to the newly recodified sections of Utah Code. This memo only addresses statutes that HB2003 changed.

² Utah Code § 77-20-102: https://le.utah.gov/xcode/Title77/Chapter20/77-20-S102.html?v=C77-20-S102_2021111020211116.

³ The concept of “own recognizance” release has existed in Utah since territorial times and has existed in statute for many decades. To our knowledge, this is the first time the term has been defined in Utah statute. The definition may be somewhat different than some individual’s understanding. “Own recognizance” means release without any condition other than promising to appear and to not commit any criminal offense. Court systems (i.e., the probable cause system) and judicial practice may need to be revised to ensure consistency with this definition.

⁴ Note that this definition now makes clear that “bail” means “pretrial release.”

**The mission of the Utah judiciary is to provide an open, fair, efficient,
and independent system for the advancement of justice under the law.**

RIGHT TO BAIL⁵

The statute regarding the right to bail has been recodified from Utah Code § 77-20-1(2) to 77-20-201. This is the statutory compliment to Utah Constitution, Article I, Section 8, which describes Utah's constitutional right to bail.⁶ The statutory language in Utah Code section 77-20-201 is nearly identical to the previous language found in Utah Code section 77-20-1(2). In general, the reasons an individual may be denied bail continue to include all the same reasons that existed prior to HB2003, including:

- (a) a **capital felony** when there is substantial evidence to support the charge;
- (b) a **felony committed while on parole, on probation, or on bail for a previous felony** when there is substantial evidence to support the charge;⁷
- (c) a **felony when** there is substantial evidence to support the charge and clear and convincing evidence that the individual would constitute **a substantial danger** to any other individual or the community **or is likely to flee** if released;
- (d) a **felony when** there is substantial evidence to support the charge and clear and convincing evidence that the **individual violated a material condition of release**;
- (e) a **domestic violence offense** if there is substantial evidence to support the charge and clear and convincing evidence the individual would constitute a substantial danger to an alleged victim;
- (f) a **DUI / driving with measurable controlled substance (DMCS) offense** where there is **serious bodily injury or death**, there is substantial evidence to support the charge, and clear and convincing evidence the individual would constitute a substantial danger to the community;
- (g) a **felony riot offense** if there is substantial evidence to support the charge and clear and convincing evidence that the individual is likely to not appear for court.

PRETRIAL DETENTION PROCESS OVERVIEW

Under the new statutory scheme, the process for pretrial detention determinations has been modified to recognize:

- 1) sheriff authority to release an arrested individual on that individual's own recognizance;
- 2) bail commissioner authority to release an arrested individual by fixing a financial condition;
- 3) magistrate authority to determine probable cause for an arrest, and to issue a "temporary pretrial status order" or a "pretrial status order" setting the condition(s) of release (if any) or ordering detention; and
- 4) a statutory detention hearing process.

⁵ Utah Code § 77-20-201: https://le.utah.gov/xcode/Title77/Chapter20/77-20-S201.html?v=C77-20-S201_2021111020211116.

⁶ Utah Const. Art. I, Sec. 8: https://le.utah.gov/xcode/ArticleI/Article_I_Section_8.html?v=UC_AI_S8_1800010118000101.

⁷ Other than a few seemingly non-substantive comma insertions and deletions found elsewhere in this section of code, the only actual language change is found in Utah Code section 77-20-201(1)(b). This language change is a clarification of the statute intended to reflect the holding in *Scott v. Ryan*, 548 P.2d 235 (Utah 1976).

Up to this point in time, the language describing one of the exceptions to the right to bail has been where the individual is arrested for "a felony committed while on probation or parole." HB2003 changed that specific language to say, "a felony committed while on parole or on probation for a felony conviction."

The Utah Constitution identifies this same exception as applying to an individual "charged with a felony while on probation or parole." In *Scott v. Ryan*, the Utah Supreme Court addressed the constitutional language, concluding that the exception only applies where the individual "is accused of the commission of a felony while on probation or parole, because of a previous felony conviction." *Id.* at 236 (emphasis added).

These processes are intended to run sequentially. The sheriff and bail commissioner must act before submitting a probable cause statement to a magistrate. If a sheriff intends to O.R. release an individual, that authority must be used before law enforcement submits a probable cause statement to a magistrate. Similarly, in many circumstances a bail commissioner may act only if the individual does not first qualify for O.R. release, and must act before law enforcement submits a probable cause statement to a magistrate. Once a magistrate begins reviewing the probable cause statement, release on a financial condition previously fixed by the bail commissioner is no longer available and the individual must wait for the magistrate’s decision. The details are outlined in the following four sections of this memo.

1) SHERIFF O.R. RELEASE⁸

Sheriff O.R. Release	<ul style="list-style-type: none"> • Applies only to a warrantless arrest where the offense is: <ul style="list-style-type: none"> Not a “violent felony”; Not a “qualifying offense”; Not a DUI/DMCS with serious bodily injury / death; Not a felony riot offense; • No probable cause statement has been submitted to magistrate; • Individual must sign a promise to appear for any future criminal proceedings; and • Individual qualifies for O.R. release under written county policy.
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Note that this authority was first created through HB1006, a special session bill that went into effect on May 28, 2021.⁹ HB2003 revised only one line of the original language, clarifying that the individual’s promise to appear is related to “any future criminal proceedings related to the arrest” (as opposed to “pending criminal charges”).¹⁰ Because this authority only applies to a warrantless arrest, a sheriff is not authorized to use this authority to O.R. release an individual booked into jail on a warrant. If the sheriff exercises this authority and releases an individual O.R., a probable cause statement will not be submitted.

Before exercising O.R. release authority, a sheriff must adopt a written policy that governs O.R. release, describing the criteria an individual must meet to be O.R. released.¹¹ A sheriff may not O.R. release an individual after a probable cause statement has been submitted to the magistrate.¹² The sheriff’s O.R. release authority extends to any misdemeanor or felony offense, except for a “violent felony” and a “qualifying offense”:

- a “violent felony” refers to any offense listed in Utah Code section 76-3-203.5;¹³

⁸ Utah Code § 77-20-203: https://le.utah.gov/xcode/Title77/Chapter20/77-20-S203.html?v=C77-20-S203_2021111020211116.

When originally enacted, this statute contained language recognizing that “a district court” and a county might enter into an agreement regarding release. This language was intended to ensure that the new sheriff O.R. release authority did not interfere with an agreement like the one that the Third District Court and Salt Lake County Criminal Justice Services has made regarding pretrial release authority. In HB2003, this language is broadened to recognize an agreement between “a court” (generally, which would then include a justice court) and a county.

⁹ HB1006: <https://le.utah.gov/~2021S1/bills/static/HB1006.html>.

¹⁰ Utah Code § 77-20-203(2)(d): https://le.utah.gov/xcode/Title77/Chapter20/77-20-S203.html?v=C77-20-S203_2021111020211116.

¹¹ Utah Code § 77-20-203(3): https://le.utah.gov/xcode/Title77/Chapter20/77-20-S203.html?v=C77-20-S203_2021111020211116.

¹² Utah Code § 77-20-203(2)(c): https://le.utah.gov/xcode/Title77/Chapter20/77-20-S203.html?v=C77-20-S203_2021111020211116.

¹³ [https://le.utah.gov/xcode/Title76/Chapter3/76-3-S203.5.html?v=C76-3-S203.5_1800010118000101#76-3-203.5\(1\)\(c\)\(i\)](https://le.utah.gov/xcode/Title76/Chapter3/76-3-S203.5.html?v=C76-3-S203.5_1800010118000101#76-3-203.5(1)(c)(i)).

- a “qualifying offense” means: “domestic violence”; child abuse;¹⁴ commission of domestic violence in the presence of a child;¹⁵ abuse or neglect of a child with a disability;¹⁶ abuse, neglect, or exploitation of a vulnerable adult;¹⁷ or sexual battery.¹⁸

2) BAIL COMMISSIONER FINANCIAL CONDITION RELEASE¹⁹

<p>Bail Commissioner Financial Condition Release</p>	<p><u>For a misdemeanor offense:</u></p> <ul style="list-style-type: none"> • Must be a misdemeanor offense; • Only applies if the individual does not qualify for sheriff’s O.R. release; • Individual must sign a promise to appear for any future criminal proceedings; • No probable cause statement has been submitted to magistrate; and • Financial condition may not exceed total of: <ul style="list-style-type: none"> \$1,950, if highest offense is MA; \$680, if highest offense is MB (\$150 if MB is an ordinance); \$340, if highest offense is MC (\$80 if MC is an ordinance). <p><u>For an “eligible felony offense”:</u></p> <ul style="list-style-type: none"> • Must be an “eligible felony offense”; • Individual is: <ul style="list-style-type: none"> Not on pretrial release for a separate criminal offense; and Not on probation or parole; • Individual’s primary risk is for “failure to appear”; • Individual must sign a promise to appear for any future criminal proceedings; • No probable cause statement has been submitted to magistrate; and • Financial condition may not exceed total of \$5,000.
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A bail commissioner is authorized to fix a financial condition, and to release an individual upon payment of that financial condition, for a misdemeanor or for an “eligible felony offense.”²⁰ In fixing the financial condition, a bail commissioner may not fix an amount that exceeds the caps outlined in a new statutory bail schedule (see table above for amounts).²¹ When fixing the amount, a bail commissioner must fix a single monetary amount that does not exceed the statutory bail schedule amount for the highest level of offense for which the individual has been booked.²²

After a bail commissioner fixes the financial condition, law enforcement must submit the probable cause statement to the magistrate.²³ Once a probable cause statement has been submitted to the magistrate,

¹⁴ Utah Code § 76-5-109: https://le.utah.gov/xcode/Title76/Chapter5/76-5-S109.html?v=C76-5-S109_2017050920170509.

¹⁵ Utah Code § 76-5-109.1: https://le.utah.gov/xcode/Title76/Chapter5/76-5-S109.1.html?v=C76-5-S109.1_1800010118000101.

¹⁶ Utah Code § 76-5-110: https://le.utah.gov/xcode/Title76/Chapter5/76-5-S110.html?v=C76-5-S110_2021050520210901.

¹⁷ Utah Code § 76-5-111: https://le.utah.gov/xcode/Title76/Chapter5/76-5-S111.html?v=C76-5-S111_2019051420190514.

¹⁸ Utah Code § 76-9-702.1: https://le.utah.gov/xcode/Title76/Chapter9/76-9-S702.1.html?v=C76-9-S702.1_2015051220150512.

¹⁹ Utah Code § 77-20-204: https://le.utah.gov/xcode/Title77/Chapter20/77-20-S204.html?v=C77-20-S204_2021111020211116.

²⁰ An “eligible felony offense” is any third degree felony offense located in specific chapters and parts of Utah Code. For a complete list of these offenses as they currently exist, see [Appendix A](#) at the end of this memo.

²¹ *Id.* at subsection (3).

²² *Id.* at subsection (4).

²³ *Id.* at subsection (6).

the bail commissioner may not thereafter fix a financial condition.²⁴ Once the magistrate begins reviewing the probable cause submission, the individual may not be released on the bail commissioner’s financial condition, but must instead wait for the magistrate’s order.²⁵

3) JUDICIAL DETERMINATION²⁶

<p>Judicial Determination and Condition Setting</p>	<p><u>At probable cause review for an arrest / for issuing arrest warrant:</u></p> <p>Magistrate shall issue a “<u>temporary</u> pretrial status order” authorizing: O.R. release; release on condition(s); or detention.</p> <p><u>At first appearance:</u></p> <p>Magistrate or judge shall do one of the following:</p> <p>(1) Without any deference to the “<u>temporary</u> pretrial status order,” issue a “pretrial status order” authorizing: O.R. release; release on condition(s); or detention;</p> <p style="text-align: center;">OR</p> <p>(2) Delay issuing pretrial status order if:</p> <ul style="list-style-type: none"> • prosecuting attorney makes motion for pretrial detention; OR • a party requests delay; OR • court finds good cause for delay
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When a magistrate reviews probable cause (either based upon a warrantless arrest or in connection with issuing an arrest warrant for new criminal charges), the magistrate shall issue a “temporary pretrial status order.”²⁷ That order may:

- release the individual on the individual’s “own recognizance”;
- designates a condition, or a combination of conditions, to be imposed upon the individual; or
- detain the individual.

In addition, a magistrate “may” issue a temporary pretrial status order when issuing a summons, so that the conditions contained therein can attach to the individual upon service of the summons (obviously, such an order may not contain any provision to detain the individual).²⁸ This may be a good area for Rules of Criminal Procedure. For conditions to attach, should personal service be required?

²⁴ *Id.* at subsections (2)(a)(iv) and (2)(b)(vi).

²⁵ *Id.* at subsection (7)(b). This subsection will require a probable cause system update to show a new status (e.g., “under review”) to the booking officers at the jail so that, when checked, the system will indicate judicial review has commenced.

Once that system update is completed: if a bail commissioner has fixed a financial condition, and the individual arranges to pay the financial condition and be released, the jail booking staff should first check the electronic probable cause system to ensure that the probable cause submission is not “under review.” If it is not yet “under review,” the jail should recall that probable cause submission, removing it from the judicial review queue, and release the individual on the financial condition. If the submission is already “under review,” the jail should stop processing the individual under the bail commissioner financial condition and wait for the magistrate’s order.

Until that system update is completed: jail booking officers should attempt to contact the magistrate to determine if a judicial review has commenced.

²⁶ Utah Code § 77-20-205: https://le.utah.gov/xcode/Title77/Chapter20/77-20-S205.html?v=C77-20-S205_2021111020211116.

²⁷ *Id.* at subsection (1)(a). “Temporary pretrial status order” is defined as “an order issued by a magistrate ... until a pretrial status order is issued” (see “Definitions” section, above). The electronic probable cause system will be modified in January 2022 to identify the order issued in connection with a probable cause review as a “temporary pretrial status order.”

²⁸ *Id.* at subsection (1)(b). A court may require the prosecuting attorney to establish the need for such conditions.

At first appearance, the magistrate or judge must issue a “pretrial status order”²⁹ or must delay issuing that order for one of three reasons: a motion for pretrial detention is pending, a party requests delay, or the court finds good cause to delay the order.³⁰ The temporary order must be extended until a pretrial status order is issued.³¹

In a temporary pretrial status order / pretrial status order, a magistrate or judge “shall impose only conditions of release that are **reasonably available and necessary to reasonably ensure**” appearance, witness/victim safety, safety/welfare of the public, and process integrity.³² The statute further refines the concept of “reasonably available” conditions by prohibiting a magistrate or judge from imposing a condition of release that would require the county or municipality to provide a service that is not currently available.³³

If a financial condition is to be ordered (other than an unsecured bond), the magistrate or judge must first consider the individual’s ability to pay when determining the amount.³⁴ Note that, by statute, the statutory bail schedule used by a bail commissioner is not relevant to any judicial determination and must not be relied upon by a magistrate or judge in determining the amount of a financial condition.³⁵ Instead the Ability-to-Pay Matrix adopted by the Judicial Council should be used to set any financial condition.³⁶

An individual is automatically relieved of any condition of pretrial release if a prosecuting attorney does not file an information within 120 days of the day the condition was imposed unless the prosecuting attorney is granted an extension.³⁷

Importantly, HB2003 also removes the statutory limitation that prevented a justice court judge ^{acting as a magistrate} from ordering that an individual be detained pretrial. A justice court judge may now (once again) exercise the authority of a magistrate, subject only to the following limitations:

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

²⁹ *Id.* at subsection (2). “Pretrial status order” is also a defined term (see “Definitions” section above). Unlike a “temporary pretrial status order,” this order is intended to persist throughout the pretrial portion of the case and is only subject to modification upon a showing that there has been a material change in circumstances.” See Utah Code § 77-20-207.

³⁰ *Id.* at subsection (2)(c). Note that delay is mandatory under these subsections. The reasons for delay are so broad that it is unfortunately possible that, for individuals who are detained, a pretrial status order will rarely issue at first appearance.

³¹ *Id.* at subsection (2)(d).

³² *Id.* at subsection (3). The statute includes a non-exhaustive list of possible conditions that the magistrate or judge might consider imposing. See *id.* at subsection (4). Note that this list was imported into this statute from a different statute that described conditions for post-conviction release pending appeal (previously Utah Code § 77-20-10, renumbered in HB2003 as Utah Code § 77-20-302). Note that some of these conditions may be more appropriate in the post-conviction context than in the pretrial context (e.g., “complete a substance abuse evaluation and comply with any recommended treatment,” “participate in inpatient or outpatient medical, behavioral, psychological, or psychiatric treatment,” etc.).

³³ *Id.* at subsection (5). During the working group meetings that resulted in this legislation, sheriffs expressed concern that judges were ordering them to provide supervision and services that were not previously identified by the sheriff as available through the sheriffs’ offices. This language is intended to prevent that from happening in the future.

³⁴ *Id.* at subsection (6).

³⁵ *Id.* at subsection (6)(b)

³⁶ Code of Judicial Administration, Appendix J – Ability-to-Pay Matrix (most recent version adopted November 2020): https://www.utcourts.gov/resources/rules/ucja/append/j_matrix/Appendix_J.pdf

³⁷ Utah Code § 77-20-208: https://le.utah.gov/xcode/Title77/Chapter20/77-20-S208.html?v=C77-20-S208_2021111020211116. The previous version of this statute required the individual to request to be relieved from conditions of release.

- a justice court judge may not perform any act or function in a capital felony case.³⁸

4) DETENTION HEARING³⁹

Detention Hearing	<p>Where a pretrial status order is not issued at first appearance and the individual remains detained:</p> <ul style="list-style-type: none"> • a pretrial detention hearing shall be held “at the next available court hearing that is no sooner than seven days ... and no later than fourteen days from the day on which the individual was arrested.”
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HB2003 creates a statutory right for detained individuals to have a pretrial detention hearing “at the next available court hearing that is no sooner than seven days ... and no later than fourteen days from the day on which the individual was arrested.”⁴⁰ The statute outlines the right to be represented by counsel, to appointed counsel if indigent, to appear, to be heard, and to subpoena witnesses.⁴¹ At the conclusion of the pretrial detention hearing, the judge shall issue a pretrial status order.⁴² The judge may order detention if “based upon the totality of the circumstances” the individual is accused of committing a detention-eligible offense and the prosecuting attorney demonstrates substantial evidence to support the charge and meets all statutory and constitutional evidentiary burdens.⁴³

EXONERATION

Nearly all the exoneration statutes have now been combined into a single location.⁴⁴ Although HB2003 relocated these statutes, no substantive changes were made to any of these statutes. This is simply reorganization as part of the recodification.

NOTICE OF FAILURE TO APPEAR AND TIME TO PRODUCE DEFENDANT

If an individual fails to appear for a required appearance, the court shall provide notice to the surety of the defendant’s failure to appear. Prior to HB2003, this notice must have been provided within 30 days of the day on which the individual failed to appear. HB2003 changes this requirement to notice within 28 days of the day on which the individual failed to appear.⁴⁵ A surety continues to have 180 days to bring the defendant to court or surrender the defendant into the sheriff’s custody. The court may extend that 180-day period by no more than 30 days (prior to HB2003, this extension was for no more than 60 days).⁴⁶

³⁸ Utah Code § 78A-2-220: https://le.utah.gov/xcode/Title78A/Chapter2/78A-2-S220.html?v=C78A-2-S220_2021111020211116.

³⁹ Utah Code § 77-20-206: https://le.utah.gov/xcode/Title77/Chapter20/77-20-S206.html?v=C77-20-S206_2021111020211116.

⁴⁰ *Id.* at subsection (2). Note that the statutory scheme contemplates a pretrial detention hearing at the outset of the criminal case, but contains no provision for a pretrial detention motion, or the resulting detention hearing, made later in the case (*i.e.*, a motion to detain made as a request to modify a pretrial status order based upon a material change in circumstances, pursuant to Utah Code § 77-20-207).

⁴¹ *Id.* at subsections (3) and (4).

⁴² *Id.* at subsection (4)(c).

⁴³ *Id.* at subsection (5).

⁴⁴ Utah Code § 77-20-504: https://le.utah.gov/xcode/Title77/Chapter20/77-20-S504.html?v=C77-20-S504_2021111020211116.

⁴⁵ Utah Code § 77-20-501(2): https://le.utah.gov/xcode/Title77/Chapter20/77-20-S501.html?v=C77-20-S501_2021111020211116.

⁴⁶ Utah Code § 77-20-502(3): https://le.utah.gov/xcode/Title77/Chapter20/77-20-S502.html?v=C77-20-S502_2021111020211116.

COLLECTION OF PRETRIAL INFORMATION

Starting in May 2022, statute will require an employee at the jail or at a pretrial services program to collect additional information about the arrested individual (when the information is “reasonably available”) and submit the information to the court with the probable cause statement.⁴⁷ The information broadly falls into the following four categories:

- **identification** information (much of which the courts already receive);
- **criminal justice system involvement** information (i.e., other pending criminal charges / warrants, probation / parole status, and pretrial release status);
- **financial** information (i.e., current employer, monthly income / expenses, assets, dependents, government benefits, etc.); and
- **community involvement** information (i.e., length at current address, educational enrollment, contact info of family / friend that the individual believes would supervise, if released).

This information is only admissible for determining pretrial release or indigency in the case, or in a separate prosecution for providing false information under this section.⁴⁸

INDIGENCY – DETERMINATION AND VERIFICATION

The final issue addressed in HB2003 is the determination and, in some instances, verification of indigency for appointment of counsel in a criminal case. Nothing in this section applies to minors.⁴⁹

Starting on January 1, 2022, the bill requires an individual who is seeking appointment of counsel to submit an affidavit of indigency.⁵⁰ The statute requires the Judicial Council (or Supreme Court) to adopt an affidavit of indigency form that is to be used in determining indigency.⁵¹ The statute outlines the information that must be included in the form.⁵² Importantly, an individual’s inability to submit or provide the information required in the affidavit does not preclude a court from: 1) making an indigency determination; or 2) appointing an indigent defense service provider to represent the individual.⁵³

⁴⁷ Utah Code § 77-20-202: https://le.utah.gov/xcode/Title77/Chapter20/77-20-S202.html?v=C77-20-S202_2021111020211116. This one of several section of the bill that create a fiscal impact on the courts, which was reflected in the bill’s fiscal note. No money was appropriated to the courts in the special session; the courts will have to wait to see if funding is appropriated during the 2022 general session as part of the FY2022 supplemental appropriations bill. The lack of funding creates an impediment to the courts implementing the necessary changes to make providing this information possible by May 2022.

⁴⁸ *Id.* at subsection (3).

⁴⁹ Utah Code §§ 78B-22-201.5(5) (https://le.utah.gov/xcode/Title78B/Chapter22/78B-22-S201.5.html?v=C78B-22-S201.5_2021111020211116), 78B-22-1001(5) (https://le.utah.gov/xcode/Title78B/Chapter22/78B-22-S1001.html?v=C78B-22-S1001_2021111020211116), and 78B-22-1002(2) (https://le.utah.gov/xcode/Title78B/Chapter22/78B-22-S1002.html?v=C78B-22-S1002_2021111020211116).

⁵⁰ Utah Code § 78B-22-201.5: https://le.utah.gov/xcode/Title78B/Chapter22/78B-22-S201.5.html?v=C78B-22-S201.5_2021111020211116. The statute fails to recognize that this is largely already happening around the state.

⁵¹ *Id.* at subsection (4). In October 2020, a legislative audit recommended that “the Judicial Council develop and implement uniform processes for determining indigency.” *A Performance Audit of Court Fines and Surcharges (October 2020)*, Chapter III, recommendation 1 (pg. 29). Since that time, the Administrative Office of the Courts has been working to develop a standardized affidavit of indigency form to present to the Judicial Council. Due to these various legislative directives and recommendations, the Judicial Council may do well to carefully consider process-related standardization in this area.

⁵² *Id.* at subsections (2) and (3).

⁵³ Utah Code § 78B-22-202(3)(b): https://le.utah.gov/xcode/Title78B/Chapter22/78B-22-S202.html?v=C78B-22-S202_2021111020211116.

In addition to the indigency determination process, HB2003 also created new sections of code related to verification of indigency information.⁵⁴ Starting on July 1, 2022, and continuing through June 30, 2025, a three-year pilot program will operate in four counties: Cache, Davis, Duchesne, and San Juan. The “indigent defense system” in each county is required “to verify the indigency of individuals who were provided indigent defense services by the indigent defense system” by reviewing and verifying financial information in a “statistically significant sample of cases for each calendar year.”⁵⁵ The indigent defense system must report to both the Judiciary Interim Committee and the Law Enforcement and Criminal Justice Interim Committee each year.⁵⁶

Separate from the pilot program, if an indigent defense system provides proof to the court that an individual who was provided indigent defense services “is not indigent,” the court shall order the individual to pay for the costs of those services.⁵⁷

QUESTIONS OR FEEDBACK

If there are any questions about, or feedback regarding, this memo, please contact Michael Drechsel, Assistant State Court Administrator at michaelcd@utcourts.gov.



⁵⁴ Utah Code § 78B-22-1001: https://le.utah.gov/xcode/Title78B/Chapter22/78B-22-S1001.html?v=C78B-22-S1001_2021111020211116.

⁵⁵ *Id.* at subsections (1) and (2).

⁵⁶ *Id.* at subsection (4).

⁵⁷ Utah Code § 78B-22-1002(1): https://le.utah.gov/xcode/Title78B/Chapter22/78B-22-S1002.html?v=C78B-22-S1002_2021111020211116.

APPENDIX A

The following table lists each third degree felony offense that is an “eligible felony offense” under Utah Code § 77-20-204(1) (as of Friday, November 26, 2021):

Statute	Title
23-19-15	Wildlife license agent violation
23-20-4	Wanton destruction of protected wildlife
23-20-4.7	Habitual wanton destruction of protected wildlife
76-6-404.5	Wrongful appropriation
76-6-409.3	Theft of utility or cable television services
76-6-409.6	Use of telecommunication device to avoid lawful charge for service
76-6-409.7	Possession of any unlawful telecommunication device
76-6-409.8	Sale of an unlawful telecommunication device
76-6-409.9	Manufacture of an unlawful telecommunication device
76-6-412	Theft
76-6-413	Release of fur-bearing animals
76-6-501	Forgery and producing false identification
76-6-502	Possession of forged writing or device for writing
76-6-503.5	Wrongful liens and fraudulent handling of recordable writings
76-6-503.7	Records filed with intent to harass or defraud
76-6-505	Issuing a bad check or draft
76-6-506.3	Financial transaction card offenses -- Unlawful acquisition, possession, or transfer of card
76-6-506.6	Financial transaction card offenses
76-6-506.7	Obtaining encoded information on a financial transaction card with the intent to defraud
76-6-509	Bribery of labor official
76-6-510	Bribe receiving by labor official
76-6-512	Acceptance of deposit by insolvent financial institution
76-6-513	Unlawful dealing of property by a fiduciary
76-6-514	Bribery or threat to influence contest
76-6-516	Conveyance of real estate by married man without wife's consent
76-6-518	Criminal simulation
76-6-520	Criminal usury
76-6-522	Equity skimming of a vehicle
76-6-523	Obstruction of the leasing of real property for natural resource or agricultural production
76-6-602	Retail theft

76-6-703	Computer crimes – Interfering with critical infrastructure
76-6-801 et al.	Library theft
76-6-902	Cultural sites violation
76-6-1002	Damage to mail receptacle
76-6-1003	Mail theft
76-6-1102	Identify fraud crime
76-6-1105	Unlawful possession of another’s identification documents
76-6-1203	Mortgage fraud
76-6-1303	Possession, sale, or use of automated sales suppression device
76-6a-4	Operation of pyramid scheme
76-7-101	Bigamy
76-7-102	Incest
76-7-201	Criminal nonsupport
76-7-203	Sale of child
76-7-310.5	Specified abortion procedures violation
76-7-314	Abortion laws violation
76-7-402	Genetic material misuse
76-9-202	False emergency reporting
76-9-203	Online impersonation – second or subsequent offense
76-9-301	Animal cruelty – torturing companion animal
76-9-301.1	Dog fighting
76-9-301.3	Game fowl fighting – third or subsequent offense
76-9-304	Allowing vicious animal to go at large
76-9-306	Causing injury to police service canine