

1 (a) **Probable cause determination.**

2 ~~(a)~~(1) A person arrested and delivered to a correctional facility without a warrant
3 for an offense must be presented without unnecessary delay before a magistrate
4 for the determination of probable cause and eligibility for pretrial release pursuant
5 to Utah Code § 77-20-~~1205~~.

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

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

15 ~~(a)~~(4) The magistrate must review the information provided and determine if
16 probable cause exists to believe the defendant committed the offense or offenses
17 described. If the magistrate finds there is probable cause, the magistrate must
18 determine if the person is eligible for pretrial release pursuant to Utah Code § 77-
19 20-~~1205~~. The magistrate will impose the least restrictive reasonably available
20 conditions of release reasonably necessary to:

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

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

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

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

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

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

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

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

37 **(b) Magistrate availability.**

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

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

46 **(c) Time for review.**

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

50 ~~(e)~~(2) During the 24 hours after arrest, for good cause shown an arresting officer,
51 custodial authority, or prosecutor with authority over the most serious offense for

52 which defendant was arrested may request an additional 24 hours to hold a
53 defendant and prepare the probable cause statement or request for release
54 conditions.

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

58 ~~(e)~~(4)(A) If no information has been filed by 3:00pm on the fourth calendar day
59 after the defendant was booked, the release conditions set under subsection (a)(4)(
60 shall revert to recognizance release.

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

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

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

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