

**Supreme Court's Advisory Committee on the  
Rules of Criminal Procedure**

Administrative Office of the Courts  
450 South State Street  
Salt Lake City, Utah 84111  
Council room  
November 20, 2018  
12:00 p.m. - 2:00 p.m.

**Agenda**

- |     |   |   |                             |
|-----|---|---|-----------------------------|
| 1.  | Welcome and approval of minutes         | - | Douglas Thompson            |
| 2.  | Introduction of new member              | - | Douglas Thompson            |
| 3.  | Rule 14(b)                              | - | Douglas Thompson            |
| 4.  | Rule 7B                                 | - | Craig Johnson               |
| 5.  | URE 804                                 | - | Douglas Thompson            |
| 6.  | Committee note review                   | - | Douglas Thompson            |
|     | - Rule 11                               | - | Craig Johnson               |
|     | - Rule 14                               | - | Ryan Stack                  |
|     | - Rule 16                               | - | Blake Hills                 |
|     | - Rule 17                               | - | Cara Tangaro                |
|     | - Rule 18                               | - | Jeff Gray                   |
|     | - Rule 40                               | - | Judge Elizabeth Hruby-Mills |
| 7.  | Rule 9A Subcommittee report             | - | Douglas Thompson            |
| 8.  | State v. Ogden and new restitution rule | - | Douglas Thompson            |
| 9.  | Rule 22                                 | - | Brent Johnson               |
| 10. | Rule 7D                                 | - | Brent Johnson               |
| 11. | Other business                          | - | Douglas Thompson            |
|     | - statute/rule project                  | - | Brent Johnson               |
| 12. | Adjourn                                 |   |                             |



MINUTES

**Supreme Court's Advisory Committee  
on the Rules of Criminal Procedure**

Administrative Office of the Courts  
450 South State Street  
Salt Lake City, Utah 84111  
Council room

September 18, 2018  
12:00 p.m. – 2:00 p.m.

**Attendees**

Douglas Thompson, Chair  
Judge Patrick Corum  
Jeffrey S. Gray  
Blake Hills  
Judge Elizabeth Hruby-Mills  
Craig Johnson  
Keri Sargent  
Judge Kelly Schaeffer-Bullock  
Ryan Stack  
Cara Tangaro

**Excused**

Professor Jensie Anderson

**Staff**

Brent Johnson  
Pam Johns – recording secretary

**Guests**

**I. WELCOME/APPROVAL OF MINUTES**

Cara Tangaro welcomed the committee members to the meeting, as Douglas Thompson was running late.

The Committee discussed the May 18, 2018 minutes. There being no changes to the minutes, Blake Hills moved to approve the May 18, 2018 minutes. Judge Patrick Corum seconded the motion. The motion carried unanimously.

**II. RULE 7C – COMMENTS RECEIVED**

Blake Hills addressed the comments received. The proposed changes to rule 7C(a) would require a party to submit an affidavit when requesting a material witness warrant. There was a comment received that showed concern about the additional step of an affidavit if a trial had

already begun. Mr. Hills does not believe this would be a common occurrence because counsel normally knows prior to trial the witnesses that are scheduled to testify.

Mr. Thompson noticed an error in subsection (c), line 19. The word “and” should be deleted.

Mr. Hills moved to approve 7C with the correction in subsection (c) to be sent to the Supreme Court for final approval. Judge Corum seconded the motion. The motion passed unanimously.

### **III. RULE 8 – COMMENTS RECEIVED**

Mr. Thompson said Joanna Landau was concerned that the rule uses the phrase “indigent defendant” because this limits the rule to only defendants, whereas, there may be other people involved, such as indigent witnesses. Ms. Landau preferred the rule be amended to “indigent individual.” Judge Corum felt the rule should be consistent.

Blake Hills moved to approve rule 8 as presented by Ms. Landau, to be sent to the Supreme Court for final approval. Ryan Stack seconded the rule. The motion passed unanimously.

### **IV. RULE 16 SUBCOMMITTEE**

Ms. Tangaro stated the subcommittee consisted of herself, Judge Hogan, Jeff Gray, John Nielson, Ryan Peters, and Tara Issacson. The subcommittee reviewed each state’s comparable rule. And the committee reviewed the proposed rule.

Ms. Tangaro noted Senator Todd Weiler would like to see attorneys reprimanded for noncompliance with the court rules. Judge Corum stated that a violation of the rule will subject the person to contempt, therefore his concern is addressed.

Judge Corum moved to approve rule 16 to go out for public comment. Mr. Stack seconded the motion. The motion passed unanimously.

### **V. RULE 14(b)**

Mr. Thompson said there was a suggestion to remove section (b)(6). Mr. B. Johnson noted rule 4-202.02 describes the rules relating to GRAMA requests.

### **VI. RULE 8**

The committee agreed to delay the implementation of this rule to address new proposed amendments.

### **VII. RULE 9A**

Judge Kelly Schaeffer-Bullock said smaller jurisdictions have difficulty meeting the requirements of this rule because they do not have the staff available to research when a person that has an outstanding warrant has been arrested. Judge Schaeffer-Bullock noted that even if the

jails had the capability to distinguish between multiple warrants, the justice courts are not notified when someone is apprehended on a justice court warrant.

Judge Schaeffer-Bullock said jails have scheduled times for video court appearances. This makes it difficult when a person has multiple warrants through multiple courts. Judge Schaeffer-Bullock recommended amending the rule to allow a judge to handle arrests within 72 hours for all the warrants a person has. Judge Schaeffer-Bullock questioned how bail is determined when there are many warrants with many courts. Mr. Stack said it is important to notify the courts when a person has been arrested on a warrant. Judge Schaeffer-Bullock would like the rule amended to state that within 24 hours a court date is set. It was noted the system would need to be adjusted to allow jails to be able to view all outstanding warrants when a person is arrested.

Judge Schaeffer-Bullock noted none of the comments received addressed multiple warrants. Mr. B. Johnson noted technology has not been created that would allow for the courts to quickly view all warrants issued throughout the state. Mr. Johnson stated rule 9A has been suspended by the Supreme Court for 180 days.

The committee agreed to create a subcommittee to review rule 9A. Mr. B. Johnson will staff the subcommittee.

#### **VIII. STATE V. OGDEN AND NEW RESTITUTION RULE**

Doug Thompson said he and Emily Adams, attorney, created a new restitution rule that will be addressed at the next meeting. Mr. Thompson stated that if anyone has suggestions to please contact him. Ms. Tangaro said there are a couple of restitution cases in the appellate courts awaiting an opinion.

#### **IX. OLD RULE 7(d)**

Ryan Stack said language from old rule 7(d) was not included when the rules were rewritten. Mr. Stack suggested the language contained in the rule could be added to one of the other rules or made a separate rule. The proposal was briefly discussed.

Mr. Stack moved to create a new rule 7D to include language from former rule 7(d). The new rule will include verbatim language from the old rule. Judge Corum seconded the motion. The motion carried unanimously.

#### **X. RULE 14 AND RULE 27**

Mr. Thompson noted Ann Marie Taliaferro recommended amending rule 14 to state service of subpoenas on law enforcement officers can occur by leaving the subpoena with an agent, similar to rules of civil procedure. She also recommended adding a process that would allow for a request to release a defendant after conviction but prior to sentencing.

Mr. Thompson next addressed rule 27. Mr. Thompson recommended subsection (c) be titled “conditions of release” and subsection (d) be titled “amended conditions of release.”

Mr. Thompson moved to approve rules 14 and 27 as amended to include the two suggestions from Ms. Taliaferro and to add the two titles to subsections (c) and (d), to be published for public comment. Judge Corum seconded the motion. The motion carried unanimously.

**XI. RULE 7B MOTIONS TO QUASH BINDOVERS**

Mr. B. Johnson reviewed Judge Lyle Anderson's recommendation to clarify that when a defendant files a motion to quash a bindover, the judge assigned to that case shall rule on the motion.

Judge Corum moved to approve rule 7B as presented, and to send it for public comment. Mr. Hills seconded the motion. The motion carried unanimously.

**XII. OTHER BUSINESS**

Mr. Thompson addressed a letter from the Supreme Court dated June 27, 2018. The Supreme Court recommended committees review language used in their rules to determine if the wording can be simplified for self-represented litigants. The Supreme Court would also like the committees to review their committee advisory notes to ensure they are accurate, provide an explanation of intent, and provide a historical context of the rule. Mr. Thompson will review the rules with comments and send out committee assignments.

**XIII. ADJOURN**

The meeting adjourned at 1:47 p.m.

1 **Rule 14. Subpoenas**

2  
3 **(a) Subpoenas requiring the attendance of a witness or interpreter and production or**  
4 **inspection of records, papers, or other objects.**

5  
6 (a)(1) A subpoena to require the attendance of a witness or interpreter before a court, magistrate  
7 or grand jury in connection with a criminal investigation or prosecution may be issued by the  
8 magistrate with whom an information is filed, the prosecuting attorney on his or her own  
9 initiative or upon the direction of the grand jury, or the court in which an information or  
10 indictment is to be tried. The clerk of the court in which a case is pending shall issue in blank to  
11 the defendant, without charge, as many signed subpoenas as the defendant may require. An  
12 attorney admitted to practice in the court in which the action is pending may also issue and sign a  
13 subpoena as an officer of the court.

14  
15 (a)(2) A subpoena may command the person to whom it is directed to appear and testify or to  
16 produce in court or to allow inspection of records, papers or other objects, other than those  
17 records pertaining to a victim covered by Subsection (b). The court may quash or modify the  
18 subpoena if compliance would be unreasonable.

19  
20 (a)(3) A subpoena may be served by any person over the age of 18 years who is not a party.  
21 Service shall be made by delivering a copy of the subpoena to the witness or interpreter  
22 personally and notifying the witness or interpreter of the contents. A peace officer shall serve any  
23 subpoena delivered for service in the peace officer's county.

24  
25 (a)(4) Written return of service of a subpoena shall be made promptly to the court and to the  
26 person requesting that the subpoena be served, stating the time and place of service and  
27 by whom service was made.

28  
29 (a)(5) A subpoena may compel the attendance of a witness from anywhere in the state.

30  
31 (a)(6) When a person required as a witness is in custody within the state, the court may order the  
32 officer having custody of the witness to bring the witness before the court.

33  
34 (a)(7) Failure to obey a subpoena without reasonable excuse may be deemed a contempt of the  
35 court responsible for its issuance.

36  
37 (a)(8) Whenever a material witness is about to leave the state, or is so ill or infirm as to afford  
38 reasonable grounds for believing that the witness will be unable to attend a trial or hearing, either  
39 party may, upon notice to the other, apply to the court for an order that the witness be examined  
40 conditionally by deposition. Attendance of the witness at the deposition may be compelled by  
41 subpoena. The defendant shall be present at the deposition and the court shall make whatever  
42 order is necessary to affect such attendance.

43  
44 **(b) Subpoenas for the production of records of victim.**

45 (b)(1) No subpoena or court order compelling the production of medical, mental health, school,  
46 or other non-public records pertaining to a victim shall be issued by or at the request of ~~the~~  
47 ~~defendant~~ any party unless the court finds after a hearing, upon notice as provided below, that the  
48 ~~defendant~~ party is entitled to production of the records sought under applicable state and federal  
49 law.

50 (b)(2) The request for the subpoena or court order shall identify the records sought with  
51 particularity and be reasonably limited as to subject matter.

52 (b)(3) The request for the subpoena or court order shall be filed with the court as soon as  
53 practicable, but no later than 28 days before trial, or by such other time as permitted by the court.  
54 The request and notice of any hearing shall be served on counsel for the victim or victim's  
55 representative and on the ~~prosecutor~~ opposing party. Service on an unrepresented victim shall be  
56 ~~made on~~ facilitated through the prosecutor.

57 (b)(4) If the court makes the required findings under subsection (b)(1), it shall issue a subpoena  
58 or order requiring the production of the records to the court. The court shall then conduct an in  
59 camera review of the records and disclose to the defense and prosecution only those portions that  
60 the ~~defendant~~ requesting party has demonstrated a right to inspect.

61 (b)(5) The court may, in its discretion or upon motion of either party or the victim or the victim's  
62 representative, issue any reasonable order to protect the privacy of the victim or to limit  
63 dissemination of disclosed records.

64 (b)(6) For purposes of this rule, "victim" and "victim's representative" are used as defined in  
65 Utah Code ~~Ann.~~ § 77-38-2(2).  
66

67 **(c) Applicability of Rule 45, Utah Rules of Civil Procedure.**  
68

69 The provisions of Rule 45, Utah Rules of Civil Procedure, shall govern the content, issuance, and  
70 service of subpoenas to the extent that those provisions are consistent with the Utah Rules of  
71 Criminal Procedure.





Jeni Wood <jeniw@utcourts.gov>

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## Re: NEW AGENDA ITEM: Proposed Change to URCrP 7B

1 message

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Douglas Thompson <doug@utcpd.com>

Thu, Nov 1, 2018 at 11:23 AM

To: Craig Johnson <craigj@utahcounty.gov>

Cc: Blake Hills <bhills@summitcounty.org>, Brent Johnson <brentj@utcourts.gov>, Cara Tangaro <cara@tangarolaw.com>, Jeff Gray <jgray@agutah.gov>, Judge Elizabeth Hruby <ehruby@utcourts.gov>, Judge Kelly Schaeffer-Bullock <ksbullock@utcourts.gov>, Judge Patrick Corum <pcorum@utcourts.gov>, Keri Sargent <keris@utcourts.gov>, Patricia Owen <powen@le.utah.gov>, Professor Jensie Anderson <jensie.anderson@law.utah.edu>, Ryan Stack <rstack@summitcounty.org>, "pamelaj@utcourts.gov" <pamelaj@utcourts.gov>, Jeni Wood <jeniw@utcourts.gov>

Craig (and everyone else),

It seems like it would be helpful if you prepared the relevant documents to distribute regarding the unresolvable conflict. Can you put that stuff together and send it to me?

Jeni, please put this on the agenda.

On Nov 1, 2018, at 10:30 AM, Craig Johnson <craigj@UtahCounty.gov> wrote:

Doug,

Can we please put an additional item on an upcoming meeting agenda? I would like to propose we amend Rule 7B (Preliminary Hearings) due to recent problems we've had in the 4<sup>th</sup> District with defense attorneys subpoenaing victims to testify at prelims, despite the State proceeding without the victim's live testimony & with 1102 witness statements instead. Without an amendment, we have divergent opinions by 4<sup>th</sup> District judges who see an unresolvable conflict balancing current Rule 7B with Utah Rule of Evidence 1102 and the Victims' Rights Statute.

In sum, my proposal would be to amend as follows:

(a) **Burden of proof.** At the preliminary examination, the state has the burden of proof and proceeds first with its case. At the conclusion of the state's case, the defendant may testify under oath, call witnesses (*except a victim as defined in 77-37-2*), and present evidence. The defendant *or state* may also cross-examine adverse witnesses *that have appeared and testified under oath at the preliminary hearing*.

Thank you kindly,

Craig

--

Craig R. Johnson



1 **RULE 7B. Preliminary Examinations**

2 (a) **Burden of proof.** At the preliminary examination, the state has the burden of proof and  
3 proceeds first with its case. At the conclusion of the state's case, the defendant may testify under  
4 oath, call witnesses, and present evidence. The defendant may also cross-examine adverse  
5 witnesses.

6 (b) **Probable cause determination.** If from the evidence the magistrate finds probable cause to  
7 believe that the crime charged has been committed and that the defendant has committed it, the  
8 magistrate must order that the defendant be bound over for trial. The findings of probable cause  
9 may be based on hearsay, in whole or in part. Objections to evidence on the ground that it was  
10 acquired by unlawful means are not properly raised at the preliminary examination.

11 (c) **If no probable cause.** If the magistrate does not find probable cause to believe the crime  
12 charged has been committed or the defendant committed it, the magistrate must dismiss the  
13 information and discharge the defendant. The magistrate may enter findings of fact, conclusions  
14 of law, and an order of dismissal. The dismissal and discharge do not preclude the state from  
15 instituting a subsequent prosecution for the same offense.

16 (d) **Witnesses.** At a preliminary examination, the magistrate, upon request of either party, may  
17 exclude witnesses from the courtroom and may require witnesses not to converse with each other  
18 until the preliminary examination is concluded.

19 (e) **Written findings.** If the magistrate orders the defendant bound over for trial, the magistrate  
20 must execute a bind-over order and include any written findings in the case record.

21 (f) **Assignment on motion to quash.** If a defendant files a motion to quash a bind-over order,  
22 the motion shall be decided by the judge assigned to the case after bind-over, regardless of  
23 whether the judge conducted the preliminary examination in the judge's role as a magistrate.



1 **Rule 804. Exceptions to the Rule Against Hearsay – When the Declarant is Unavailable as a**  
2 **Witness**

3  
4 **(a) Criteria for Being Unavailable.** A declarant is considered to be unavailable as a witness  
5 if the declarant:

- 6  
7 (1) is exempted from testifying about the subject matter of the declarant’s statement  
8 because the court rules that a privilege applies;  
9  
10 (2) refuses to testify about the subject matter despite a court order to do so;  
11  
12 (3) testifies to not remembering the subject matter;  
13  
14 (4) cannot be present or testify at the trial or hearing because of death or a then-existing  
15 infirmity, physical illness, or mental illness; or  
16  
17 (5) is absent from the trial or hearing and the statement’s proponent has not been able, by  
18 process or other reasonable means, to procure the declarant’s attendance.  
19

20 But this subdivision (a) does not apply if the statement’s proponent procured or wrongfully  
21 caused the declarant’s unavailability as a witness in order to prevent the declarant from  
22 attending or testifying.  
23

24 **(b) The Exceptions.** The following are not excluded by the rule against hearsay if  
25 the declarant is unavailable as a witness:

26  
27 **(1) Former Testimony. Testimony that:**

28  
29 (A) was given as a witness at a trial, hearing, or lawful deposition, whether given  
30 during the current proceeding or a different one; and

31  
32 **(B)(i)** ~~in a criminal case,~~ is now offered against a party who had ~~—or, in a civil case,~~  
33 ~~whose predecessor in interest had~~— an opportunity ~~and similar motive~~ to  
34 develop it by direct, cross-, or redirect examination; or  
35

36                   (ii) in a civil case, is now offered against a party who had – or whose predecessor in  
37                   interest had – an opportunity and similar motive to develop it by direct, cross-,  
38                   or redirect examination.  
39

40           (2) **Statement Under the Belief of Imminent Death.** In a civil or criminal case, a  
41           statement made by the declarant while believing the declarant’s death to be imminent,  
42           if the judge finds it was made in good faith.  
43

44           (3) **Statement Against Interest.** A statement that:  
45

46           (A) a reasonable person in the declarant’s position would have made only if the  
47           person believed it to be true because, when made, it was so contrary to  
48           the declarant’s proprietary or pecuniary interest or had so great a tendency to  
49           invalidate the declarant’s claim against someone else or to expose  
50           the declarant to civil or criminal liability; and  
51

52           (B) is supported by corroborating circumstances that clearly indicate its  
53           trustworthiness, if it is offered in a criminal case as one that tends to expose  
54           the declarant to criminal liability.  
55

56           (4) **Statement of Personal or Family History.** A statement about:  
57

58           (A) the declarant’s own birth, adoption, legitimacy, ancestry, marriage, divorce,  
59           relationship by blood or marriage, or similar facts of personal or family history,  
60           even though the declarant had no way of acquiring personal knowledge about  
61           that fact; or  
62

63           (B) another person concerning any of these facts, as well as death, if  
64           the declarant was related to the person by blood, adoption, or marriage or was so  
65           intimately associated with the person’s family that the declarant’s information is  
66           likely to be accurate.  
67  
68  
69

STATE *v.* OGDEN  
Opinion of the Court

court abused its discretion in its calculation of complete restitution because Victim's damages were impermissibly speculative. We "will not disturb a district court's [restitution] determination unless the court exceeds the authority prescribed by law or abuses its discretion." *State v. Laycock*, 2009 UT 53, ¶ 10, 214 P.3d 104.

ANALYSIS

I. The Crime Victims Restitution Act Permits  
Recovery of Costs the Defendant Has Proximately  
Caused the Victim to Suffer

¶26 The Crime Victims Restitution Act (CVRA)<sup>4</sup> requires courts to order restitution "[w]hen a defendant enters into a plea disposition or is convicted of criminal activity that has resulted in pecuniary damages . . ." UTAH CODE § 77-38a-302(1). The CVRA requires the district court to calculate two types of restitution: complete restitution and court-ordered restitution. *See id.* § 77-38a-302(2).

¶27 "Complete restitution" means the "restitution necessary to compensate a victim for all losses caused by the defendant." *Id.* § 77-38a-302(2)(a). The court determines complete restitution based solely on the losses the victim has suffered, without regard to the defendant's ability to pay. *See id.* § 77-38a-302(5)(b). Once the district court determines "that a defendant owes restitution, the clerk of the court . . . enter[s] an order of complete restitution . . . on the civil judgment docket . . ." <sup>5</sup> *Id.* § 77-38a-401(1).

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<sup>4</sup> Crime Victims Restitution Act, UTAH CODE §§ 77-38a-101-77-38a-601.

<sup>5</sup> If the victim chooses to pursue a civil action to recover damages *in addition to* those in a complete restitution order, "[e]vidence that the defendant has paid or been ordered to pay restitution . . . may not be introduced in any [related] civil action . . . . However, the court shall credit any restitution [already] paid . . . against any judgment in favor of the victim in the civil action." *Id.* § 77-38a-403(1).

During the proceedings below, the district court questioned "[w]hat, if any, is the collateral effect of this Court's ruling on the civil matter or other matters that may be out there?" The court further stated that "what happens here doesn't have any effect on what has to be proven in [the] civil action," because "there are no  
(continued . . .)

Opinion of the Court

¶28 “Court-ordered restitution,” on the other hand, “means the restitution the court having criminal jurisdiction orders the defendant to pay as a part of the criminal sentence.” *Id.* § 77-38a-302(2)(b). Unlike complete restitution, courts consider the effect on the defendant to set the amount of court-ordered restitution, including the defendant’s “financial resources,” “other obligations,” “the rehabilitative effect,” and “other circumstances . . . .” *Id.* § 77-38a-302(5)(c). The district court then orders the defendant to pay the restitution as “part of the criminal sentence.” *Id.* § 77-38a-302(2)(b).

¶29 Ogden argues that the CVRA requires a defendant to only pay for losses that he proximately caused and that the district court applied the wrong causation standard. As an initial matter, it is not entirely clear what causation standard the district court used. It may have been but-for causation, or the “modified but for” test that our

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rules of evidence, very limited rules of evidence in this matter that would take place in the civil action. So . . . I can see why this would not have a binding effect in the . . . civil action.”

The district court correctly identified a number of problems with the restitution statute when it is applied to a complicated set of facts, but it misapprehended the impact of entering an award of complete restitution. The complete restitution order became a civil judgment that Victim was entitled to attempt to collect. It appears that the Legislature crafted this restitution framework to provide an efficient and less intrusive way for a victim to obtain restitution for losses a defendant has caused. And the system may work effectively when the losses are simple and clear cut. For example, if a defendant breaks a victim’s glasses during an assault, the district court is well positioned to order a defendant to pay the cost of replacing the glasses without the benefit of the procedures that would normally apply to a civil case. As this case highlights, that framework does not work as well when there are difficult issues of causation or a need to predict future expenses. That category of cases may benefit from the tools we have developed in the civil context to deal with complex questions of causation and damages. There are at least two ways to address this: the Legislature could revisit the statute or the Supreme Court Advisory Committee on the Rules of Criminal Procedure could examine what we might do within the existing statutory framework to promote a process that is fair to both victims and defendants in more complex cases.



1 **Rule 22. Sentence, judgment and commitment.**

2 (a) **Time for sentencing.** Upon the entry of a plea or verdict of guilty or plea of no contest, the  
3 court shall set a time for imposing sentence which may be not less than two nor more than 45  
4 days after the verdict or plea, unless the court, with the concurrence of the defendant, otherwise  
5 orders. Pending sentence, the court may commit the defendant or may continue or alter bail or  
6 recognizance. Before imposing sentence the court shall afford the defendant an opportunity to  
7 make a statement and to present any information in mitigation of punishment, or to show any  
8 legal cause why sentence should not be imposed. The prosecuting attorney shall also be given an  
9 opportunity to present any information material to the imposition of sentence.

10 (b) **Defendant's absence.** On the same grounds that a defendant may be tried in defendant's  
11 absence, defendant may likewise be sentenced in defendant's absence. If a defendant fails to  
12 appear for sentence, a warrant for defendant's arrest may be issued by the court.

13 (c) **Sentencing advisories.**

14 (c)(1) Upon a verdict or plea of guilty or plea of no contest, the court shall impose sentence and  
15 shall enter a judgment of conviction which shall include the plea or the verdict, if any, and the  
16 sentence. Following imposition of sentence, the court shall advise the defendant of defendant's  
17 right to appeal, the time within which any appeal shall be filed and the right to retain counsel or  
18 have counsel appointed by the court if indigent.

19 (c)(2) If the defendant is convicted of a misdemeanor crime of domestic violence, as defined in  
20 Utah Code § 77-36-1, the court shall advise the defendant orally or in writing that, if the case  
21 meets the criteria of 18 U.S.C. § 921(a)(33) or Utah Code § 76-10-503, then pursuant to federal  
22 law or state law it is unlawful for the defendant to possess, receive or transport any firearm or  
23 ammunition. The failure to advise does not render the plea invalid or form the basis for  
24 withdrawal of the plea.

25 (d) **Commitment.** When a jail or prison sentence is imposed, the court shall issue its  
26 commitment setting forth the sentence. The officer delivering the defendant to the jail or prison  
27 shall deliver a true copy of the commitment to the jail or prison and shall make the officer's  
28 return on the commitment and file it with the court.

29 (e) **Correcting the sentence.**

30 (e)(1) The court may correct a sentence when the sentence imposed:  
31 (e)(1)(A) exceeds the statutorily authorized maximums;  
32 (e)(1)(B) is less than statutorily required minimums;  
33 (e)(1)(C) violates Double Jeopardy;  
34 (e)(1)(D) is ambiguous as to the time and manner in which it is to be served;  
35 (e)(1)(E) is internally contradictory; or  
36 (e)(1)(F) omits a condition required by statute or includes a condition prohibited by statute.  
37 (e)(2) The court must correct the sentence of a defendant who can prove that execution of the  
38 sentence would be unconstitutional under [a rule OR precedent] established by the United States  
39 Supreme Court, the Utah Supreme Court, or the Utah Court of Appeals after sentence was  
40 imposed, and the [rule OR precedent] was not dictated by [precedent/other precedent/caselaw]  
41 existing at the time the defendant's conviction or sentence became final.  
42 (e) ~~(2)~~ (3) **Time for filing.** A motion under (e)(1)(C), (e)(1)(D), or (e)(1)(E) shall be filed no  
43 later than one year from the date the facts supporting the claim could have been discovered  
44 through the exercise of due diligence. A motion under the other provisions may be filed at any  
45 time.  
46 (f) **Sentencing and mentally ill offenders.** Upon a verdict or plea of guilty and mentally ill, the  
47 court shall impose sentence in accordance with Title 77, Chapter 16a, Utah Code. If the court  
48 retains jurisdiction over a mentally ill offender committed to the Department of Human Services  
49 as provided by Utah Code § 77-16a-202(1)(b), the court shall so specify in the sentencing order.

1 **Rule 7D Disposition after arrest**

2 (a) If a person is arrested in a county other than where the offense was committed the person  
3 arrested shall without unnecessary delay be returned to the county where the crime was  
4 committed and shall be taken before the proper magistrate under these rules.

5 (b) If for any reason the person arrested cannot be promptly returned to the county and the  
6 charge against the defendant is a misdemeanor for which a voluntary forfeiture of bail may be  
7 entered as a conviction under Subsection 77-7-21(1), the person arrested may state in writing a  
8 desire to forfeit bail, waive trial in the district in which the information is pending, and consent  
9 to disposition of the case in the county in which the person was arrested, is held, or is present.

10 (c) Upon receipt of the defendant's statement, the clerk of the court in which the information is  
11 pending shall transmit the papers in the proceeding or copies of them to the clerk of the court for  
12 the county in which the defendant is arrested, held, or present. The prosecution shall continue in  
13 that county.

14 (d) Forfeited bail shall be returned to the jurisdiction that issued the warrant.

15 (e) If the defendant is charged with an offense other than a misdemeanor for which a voluntary  
16 forfeiture of bail may be entered as a conviction under Subsection 77-7-21(1), the defendant  
17 shall be taken without unnecessary delay before a magistrate within the county of arrest for the  
18 determination of bail under Section 77-20-1 and released on bail or held without bail under  
19 Section 77-20-1.

20 (f) Bail shall be returned to the magistrate having jurisdiction over the offense, with the record  
21 made of the proceedings before the magistrate.