

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

Administrative Office of the Courts
Council Room
450 South State Street
Salt Lake City, Utah 84111
January 15, 2019
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 22 - Brent Johnson
4. Rule 14 - Douglas Thompson
5. Rule 7B Update - Craig Johnson
6. URE 804 Update - Blake Hills
7. Committee note review
 - Rule 11 - Craig Johnson
 - Rule 14 - Ryan Stack
 - Rule 18 - Jeffrey Gray
 - Rule 40 - Judge Elizabeth Hruby-Mills
8. Rule 9A Subcommittee report - Douglas Thompson
9. State v. Ogden and new restitution rule - Douglas Thompson
10. Rule 7D - Brent Johnson
11. Other business
 - Statute/rule project - Douglas Thompson
 - Rule 28A - Brent Johnson
 - Rule 16
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

November 20, 2018
12:00 p.m. – 2:00 p.m.

Attendees

Douglas Thompson, Chair
Judge Patrick Corum
Jeffrey S. Gray
Blake Hills
Craig Johnson
Keri Sargent
Ryan Stack
Cara Tangaro

Excused

Professor Jensie Anderson
Judge Elizabeth Hruby-Mills
Brent Johnson
Joanna Landau
Judge Kelly Schaeffer-Bullock

Staff

Jeni Wood – recording secretary

Guests

Heidi Nestel
Patricia Owen

I. WELCOME/APPROVAL OF MINUTES

Douglas Thompson welcomed the committee members to the meeting. Mr. Thompson noted Joanna Landau was approved by the Supreme Court to fill a defense attorney position on the committee. Craig Johnson introduced Heidi Nestel from the Utah Victims Crime Division.

The Committee discussed the September 18, 2018 minutes. There being no changes to the minutes, Judge Patrick Corum moved to approve the September 18, 2018 minutes. Craig Johnson seconded the motion. The motion carried unanimously.

II. RULE 14(b)

Ryan Stack presented amendments to rule 14 clarifying who is entitled to compel records. An addition explains that the provisions in the rule do not alter or supersede other rules, privileges, or statute. Mr. Thompson searched nationally for similarities to rule 14. Judge Corum stated the phrase “non-public” is problematic. Mr. Stack said the goal in changing “non-public” to “privileged” information was to narrow the scope of records.

Ms. Nestel would like the committee to review all types of victim's records and noted school records are not privileged. Jeffrey Gray said the rule amendments will allow victim's the chance to know what records have been requested. Mr. Thompson said one possibility would be to require the party requesting the records to serve the subject of the records. Cara Tangaro said it would be difficult for defense counsel to locate victims' contact information.

Blake Hills recommended tabling this rule until further research can be conducted on what records are considered privileged, protected or non-public and whether they are covered by statute or caselaw.

III. RULE 7B

Craig Johnson reviewed the proposed amendment to rule 7B. Ms. Nestel noted with regards to victims testifying the goal is to limit the amount of times they are required to testify. Mr. Gray recommended waiting to make a decision on this rule because there are active cases that may change the course of the rule.

The committee agreed to table the rule. Mr. Thompson requested updates on the current cases.

IV. URE RULE 804

Mr. Thompson said this rule proposal is from the Rules of Evidence Committee (URE). Mr. Hills said the URE Committee tabled the rule and requested input from this Committee. After brief discussion, Mr. Hills volunteered to contact the Committee to notify them that this Committee will not take a position on the rule.

V. COMMITTEE NOTE REVIEW

Rule 11 – Mr. C. Johnson would like to amend the comment to change 11(f) to 11(b)(3).

Mr. Thompson moved to approve the recommended change to rule 11 committee note. Mr. Gray seconded the motion. The motion carried unanimously.

Rule 14 – Mr. Stack recommended removing language in the committee note that was already referenced in the rule. A motion was not made.

Rule 16 – There is no committee note.

Rule 17 – Ms. Tangaro recommended removing the entire committee note. The first sentence is already in the rule and the remaining sentences only provide a history.

Mr. Thompson moved to approve the recommended change to rule 17 committee note. Mr. C. Johnson seconded the motion. The motion carried unanimously.

Rule 18 – Mr. Gray felt the note may be useful, however, he would like additional time for research.

Rule 40 – Mr. Thompson stated Judge Elizabeth Hruby-Mills noted the committee note in rule 40 has a primary purpose to cite former statutes. Judge Hruby-Mills stated the rule may benefit from further context and examples. The Committee agreed not to change the note.

VI. RULE 9A SUBCOMMITTEE REPORT

Mr. Thompson said the subcommittee has not been formed yet.

VII. STATE V. OGDEN AND NEW RESTITUTION RULE

Mr. Thompson would like more time on this issue. Ms. Tangaro said there are cases that are waiting for rules on restitution.

VIII. RULE 22

This item was tabled. Mr. Thompson would like further explanation from Ms. Landau. Mr. Gray noted Ms. Landau recommended forming a subcommittee. Mr. Gray suggested inviting Drew Peterson to the subcommittee.

IX. RULE 7D

This item was tabled.

X. OTHER BUSINESS

There was no additional business discussed.

XI. ADJOURN

The meeting adjourned at 1:34 p.m.

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 established by the United States Supreme Court,
39 the Utah Supreme Court, or the Utah Court of Appeals after sentence was imposed, and the rule
40 was not dictated by precedent existing at the time the defendant's conviction or sentence became
41 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 later
43 than one year from the date the facts supporting the claim could have been discovered through
44 the exercise of due diligence. A motion under the other provisions may be filed at any time.
45 **(f) Sentencing and mentally ill offenders.** Upon a verdict or plea of guilty and mentally ill, the
46 court shall impose sentence in accordance with Title 77, Chapter 16a, Utah Code. If the court
47 retains jurisdiction over a mentally ill offender committed to the Department of Human Services
48 as provided by Utah Code § 77-16a-202(1)(b), the court shall so specify in the sentencing order.

1 **URCrP 14**

2 **Advisory Committee Note**

3 ~~The adoption of subsection (b) is not intended to change existing rules, privileges, statutes, or~~
4 ~~caselaw pertaining to the release or admissibility of an individual's medical, psychological,~~
5 ~~school, or other records.~~ Subsection (b) is intended only to adopt a procedure consistent with
6 current applicable law that balances a victim's state constitutional right "[t]o be treated with
7 fairness, respect, and dignity, and to be free from harassment and abuse throughout the criminal
8 justice process," with a defendant's constitutional right to due process. Utah Const. art. I, §
9 28(1)(a). Requiring a defendant to apply to the court for the production of a victim's records
10 ensures that a victim or his or her representative will have an opportunity to assert any privileges
11 or reasons why the records should not be subject to either release or in camera review. It also
12 avoids the problem presented in *State v. Gonzales*, 2005 UT 72, 125 P.3d 878, in which the
13 victim's mental health records holder mistakenly released privileged records directly to the
14 defense in response to a subpoena that had not been served on either the victim or the
15 prosecution.

16 ~~Subsection (b)(4) provides that once the defendant has made the threshold showing under~~
17 ~~subsection (b)(1), records must be sent directly to the court for an in camera review by the court,~~
18 ~~whereupon the court will release any information material to the defense. This is consistent with~~
19 ~~current caselaw, which requires a defendant to make a threshold showing that no privilege~~
20 ~~applies and of materiality before obtaining even an in camera review. See *State v. Blake*, 2002~~
21 ~~UT 113, 63 P.3d 56; *State v. Gomez*, 2002 UT 120, 63 P.3d 72; *State v. Cardall*, 1999 UT 51,~~
22 ~~982 P.2d 79; *Ritchie v. Pennsylvania*, 480 U.S. 39 (1987).~~

23 ~~Subsection (b)(5) permits the court, if it releases any records to the parties, to issue reasonable~~
24 ~~orders to further protect the victim's right to privacy.~~

25 The adoption of subsection (c) clarifies the applicability of Rule 45, Utah Rules of Civil
26 Procedure, as addressed in *State v. Gonzales*, 2005 UT 72, 125 P.3d 878.

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

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)⁴ 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 . . ." ⁵ *Id.* § 77-38a-401(1).

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

⁵ 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

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 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.

Rule 28A. Probation.

(a)

(a)(1) Probation may be modified as is consistent with the supervision length guidelines and the graduated sanctions and incentives developed by the Utah Sentencing Commission under Section 63M-7-404.

(a)(2) The length of probation may not be extended, except upon waiver of a hearing by the probationer or upon a hearing and a finding in court that the probationer has violated the conditions of probation.

(a)(3) Probation may not be revoked except upon a hearing in court and a finding that the conditions of probation have been violated.

(b)

(b)(1) Upon the filing of an affidavit alleging with particularity facts asserted to constitute violation of the conditions of probation, the court that authorized probation shall must determine if the affidavit establishes probable cause to believe that revocation, modification, or extension of probation is justified.

(b)(2) If the court determines there is probable cause, it must cause to be served on the defendant a warrant for the defendant's arrest or a copy of the affidavit and an order to show cause why the defendant's probation should not be revoked, modified, or extended.

(c)

(c)(1)The order to show cause must specify a time and place for the hearing and shall must be served upon the defendant at least five days prior to the hearing.

(c)(?) The defendant must show good cause for a continuance.

(c)(3) The order to show cause must inform the defendant of a right to be represented by counsel at the hearing and to have counsel appointed if the defendant is indigent.

(c)(4)The order shall must also inform the defendant of a right to present evidence.

(d)

(d)(1) At the hearing, if the defendant denies the allegations of the affidavit, the prosecuting attorney shall present evidence on the allegations.

(d)(2) The persons who have given adverse information on which the allegations are based shall must be presented as witnesses subject to questioning by the defendant unless the court for good cause otherwise orders.

(d)(3) The defendant may call witnesses, appear and speak in the defendant's own behalf, and present evidence.

(e)

(e)(1) After the hearing the court must make findings of fact.

(e)(2) Upon a finding that the defendant violated the conditions of probation, the court may order the probation revoked, modified, continued, or reinstated for all or a portion of the original term of probation.

Effective 5/8/2018

77-18-1 Suspension of sentence -- Pleas held in abeyance -- Probation -- Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic monitoring.

(1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea in abeyance agreement, the court may hold the plea in abeyance as provided in Title 77, Chapter 2a, Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

(2)

(a) On a plea of guilty, guilty with a mental illness, no contest, or conviction of any crime or offense, the court may, after imposing sentence, suspend the execution of the sentence and place the defendant:

(i) on probation under the supervision of the Department of Corrections except in cases of class C misdemeanors or infractions;

(ii) on probation under the supervision of an agency of local government or with a private organization; or

(iii) on court probation under the jurisdiction of the sentencing court.

(b)

(i) The legal custody of all probationers under the supervision of the department is with the department.

(ii) The legal custody of all probationers under the jurisdiction of the sentencing court is vested as ordered by the court.

(iii) The court has continuing jurisdiction over all probationers.

(iv) Court probation may include an administrative level of services, including notification to the court of scheduled periodic reviews of the probationer's compliance with conditions.

(c) Supervised probation services provided by the department, an agency of local government, or a private organization shall specifically address the offender's risk of reoffending as identified by a validated risk and needs screening or assessment.

(3)

(a) The department shall establish supervision and presentence investigation standards for all individuals referred to the department based on:

(i) the type of offense;

(ii) the results of a risk and needs assessment;

(iii) the demand for services;

(iv) the availability of agency resources;

(v) public safety; and

(vi) other criteria established by the department to determine what level of services shall be provided.

(b) Proposed supervision and investigation standards shall be submitted to the Judicial Council and the Board of Pardons and Parole on an annual basis for review and comment prior to adoption by the department.

(c) The Judicial Council and the department shall establish procedures to implement the supervision

and investigation standards.

(d) The Judicial Council and the department shall annually consider modifications to the standards based upon criteria in Subsection (3)(a) and other criteria as they consider appropriate.

(e) The Judicial Council and the department shall annually prepare an impact report and submit it to the appropriate legislative appropriations subcommittee.

(4) Notwithstanding other provisions of law, the department is not required to supervise the probation of an individual convicted of a class B or C misdemeanor or an infraction or to conduct presentence investigation reports on a class C misdemeanor or infraction. However, the department may supervise the probation of a class B misdemeanor in accordance with department standards.

(5)

(a) Before the imposition of any sentence, the court may, ~~with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of time for the purpose of obtaining~~ a presentence investigation report from the department or information from other sources about the defendant.

(b) The presentence investigation report shall include:

(i) a victim impact statement according to guidelines set in Section 77-38a-203 describing the effect of the crime on the victim and the victim's family;

(ii) a specific statement of pecuniary damages, accompanied by a recommendation from the department regarding the payment of restitution with interest by the defendant in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act;

(iii) findings from any screening and any assessment of the offender conducted under Section 77-18-1.1;

(iv) recommendations for treatment of the offender; and

(v) the number of days since the commission of the offense that the offender has spent in the custody of the jail and the number of days, if any, the offender was released to a supervised release or alternative incarceration program under Section 17-22-5.5.

(c) The contents of the presentence investigation report are protected and are not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or for use by the department.

(6)

(a) The department shall provide the presentence investigation report to the defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review, three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation report, which have not been resolved by the parties and the department prior to sentencing, shall be brought to the attention of the sentencing judge, and the judge may grant an additional 10 working days to resolve the alleged inaccuracies of the report with the department. If after 10 working days the inaccuracies cannot be resolved, the court shall make a determination of relevance and accuracy on the record.

(b) If a party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, that matter shall be considered to be waived.

~~(7) At the time of sentence, the court shall receive any testimony, evidence, or information the defendant or the prosecuting attorney desires to present concerning the appropriate sentence. This testimony, evidence, or information shall be presented in open court on record and in the presence of the defendant.~~

(8) While on probation, and as a condition of probation, the court may require that a defendant perform any or all of the following:

- (a) provide for the support of others for whose support the defendant is legally liable;
- (b) participate in available treatment programs, including any treatment program in which the defendant is currently participating, if the program is acceptable to the court;
- (c) if on probation for a felony offense, serve a period of time, not to exceed one year, in a county jail designated by the department, after considering any recommendation by the court as to which jail the court finds most appropriate;
- (d) serve a term of home confinement, which may include the use of electronic monitoring;
- (e) participate in compensatory service restitution programs, including the compensatory service program provided in Section 76-6-107.1;
- (f) pay for the costs of investigation, probation, and treatment services;
- (g) make restitution or reparation to the victim or victims with interest in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act; and
- (h) comply with other terms and conditions the court considers appropriate to ensure public safety or increase a defendant's likelihood of success on probation.

(9) The department shall collect and disburse the accounts receivable as defined by Section 77-32a-101, with interest and any other costs assessed under Section 64-13-21 during:

- (a) the parole period and any extension of that period in accordance with Subsection 77-27-6(4); and
- (b) the probation period in cases for which the court orders supervised probation and any extension of that period by the department in accordance with Subsection (10).

(10)

(a)

(i) Except as provided in Subsection (10)(a)(ii), probation of an individual placed on probation after December 31, 2018:

- (A) may not exceed the individual's maximum sentence;
- (B) shall be for a period of time that is in accordance with the supervision length guidelines established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the guidelines are consistent with the requirements of the law; and
- (C) shall be terminated in accordance with the supervision length guidelines established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the guidelines are consistent with the requirements of the law.

(ii) Probation of an individual placed on probation after December 31, 2018, whose maximum sentence is one year or less may not exceed 36 months.

(iii) Probation of an individual placed on probation on or after October 1, 2015, but before January 1, 2019, may be terminated at any time at the discretion of the court or upon completion without violation of 36 months probation in felony or class A misdemeanor cases, 12 months in cases of class B or C misdemeanors or infractions, or as allowed pursuant to Section 64-13-21 regarding earned credits.

(b)

(i) If, upon expiration or termination of the probation period under Subsection (10)(a), there remains an unpaid balance upon the accounts receivable as defined in Section 77-32a-101, the court may

retain jurisdiction of the case and continue the defendant on bench probation for the limited purpose of enforcing the payment of the account receivable. If the court retains jurisdiction for this limited purpose, the court may order the defendant to pay to the court the costs associated with continued probation under this Subsection (10).

(ii) In accordance with Section 77-18-6, the court shall record in the registry of civil judgments any unpaid balance not already recorded and immediately transfer responsibility to collect the account to the Office of State Debt Collection.

(iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its own motion, the court may require the defendant to show cause why the defendant's failure to pay should not be treated as contempt of court.

(c)

(i) The department shall notify the sentencing court, the Office of State Debt Collection, and the prosecuting attorney in writing in advance in all cases when termination of supervised probation is being requested by the department or will occur by law.

(ii) The notification shall include a probation progress report and complete report of details on outstanding accounts receivable.

(11)

(a)

(i) Any time served by a probationer outside of confinement after having been charged with a probation violation and prior to a hearing to revoke probation does not constitute service of time toward the total probation term unless the probationer is exonerated at a hearing to revoke the probation.

(ii) Any time served in confinement awaiting a hearing or decision concerning revocation of probation does not constitute service of time toward the total probation term unless the probationer is exonerated at the hearing.

(iii) Any time served in confinement awaiting a hearing or decision concerning revocation of probation constitutes service of time toward a term of incarceration imposed as a result of the revocation of probation or a graduated sanction imposed under Section 63M-7-404.

(b) The running of the probation period is tolled upon the filing of a violation report with the court alleging a violation of the terms and conditions of probation or upon the issuance of an order to show cause or warrant by the court.

(12)

(a)

~~(i) Probation may be modified as is consistent with the supervision length guidelines and the graduated sanctions and incentives developed by the Utah Sentencing Commission under Section 63M-7-404.~~

~~(ii) The length of probation may not be extended, except upon waiver of a hearing by the probationer or upon a hearing and a finding in court that the probationer has violated the conditions of probation.~~

~~(iii) Probation may not be revoked except upon a hearing in court and a finding that the conditions of probation have been violated.~~

(b)

~~(i) Upon the filing of an affidavit alleging with particularity facts asserted to constitute violation of~~

~~the conditions of probation, the court that authorized probation shall determine if the affidavit establishes probable cause to believe that revocation, modification, or extension of probation is justified.~~

~~(ii) If the court determines there is probable cause, it shall cause to be served on the defendant a warrant for the defendant's arrest or a copy of the affidavit and an order to show cause why the defendant's probation should not be revoked, modified, or extended.~~

~~(e)~~

~~(i) The order to show cause shall specify a time and place for the hearing and shall be served upon the defendant at least five days prior to the hearing.~~

~~(ii) The defendant shall show good cause for a continuance.~~

~~(iii) The order to show cause shall inform the defendant of a right to be represented by counsel at the hearing and to have counsel appointed if the defendant is indigent.~~

~~(iv) The order shall also inform the defendant of a right to present evidence.~~

~~(d)~~

~~(i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.~~

~~(ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney shall present evidence on the allegations.~~

~~(iii) The persons who have given adverse information on which the allegations are based shall be presented as witnesses subject to questioning by the defendant unless the court for good cause otherwise orders.~~

~~(iv) The defendant may call witnesses, appear and speak in the defendant's own behalf, and present evidence.~~

~~(e)~~

~~(i) After the hearing the court shall make findings of fact.~~

~~(ii) Upon a finding that the defendant violated the conditions of probation, the court may order the probation revoked, modified, continued, or reinstated for all or a portion of the original term of probation.~~

~~(iii)~~

~~(A) Except as provided in Subsection (10)(a)(ii), the court may not require a defendant to remain on probation for a period of time that exceeds the length of the defendant's maximum sentence.~~

~~(B) Except as provided in Subsection (10)(a)(ii), if a defendant's probation is revoked and later reinstated, the total time of all periods of probation the defendant serves, relating to the same sentence, may not exceed the defendant's maximum sentence.~~

~~(iv) If a period of incarceration is imposed for a violation, the defendant shall be sentenced within the guidelines established by the Utah Sentencing Commission pursuant to Subsection 63M-7-404(4), unless the judge determines that:~~

~~(A) the defendant needs substance abuse or mental health treatment, as determined by a validated risk and needs screening and assessment, that warrants treatment services that are immediately available in the community; or~~

~~(B) the sentence previously imposed shall be executed.~~

~~(v) If the defendant had, prior to the imposition of a term of incarceration or the execution of the previously imposed sentence under this Subsection (12), served time in jail as a condition of~~

probation or due to a violation of probation under Subsection (12)(e)(iv), the time the probationer served in jail constitutes service of time toward the sentence previously imposed.

(13) The court may order the defendant to commit the defendant to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of sentence, only after the superintendent of the Utah State Hospital or the superintendent's designee has certified to the court that:

- (a) the defendant is appropriate for and can benefit from treatment at the state hospital;
- (b) treatment space at the hospital is available for the defendant; and
- (c) individuals described in Subsection 62A-15-610(2)(g) are receiving priority for treatment over the defendants described in this Subsection (13).

(14) Presentence investigation reports are classified protected in accordance with Title 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a presentence investigation report. Except for disclosure at the time of sentencing pursuant to this section, the department may disclose the presentence investigation only when:

- (a) ordered by the court pursuant to Subsection 63G-2-202(7);
- (b) requested by a law enforcement agency or other agency approved by the department for purposes of supervision, confinement, and treatment of the offender;
- (c) requested by the Board of Pardons and Parole;
- (d) requested by the subject of the presentence investigation report or the subject's authorized representative; or
- (e) requested by the victim of the crime discussed in the presentence investigation report or the victim's authorized representative, provided that the disclosure to the victim shall include only information relating to statements or materials provided by the victim, to the circumstances of the crime including statements by the defendant, or to the impact of the crime on the victim or the victim's household.

(15)

- (a) The court shall consider home confinement as a condition of probation under the supervision of the department, except as provided in Sections 76-3-406 and 76-5-406.5.
- (b) The department shall establish procedures and standards for home confinement, including electronic monitoring, for all individuals referred to the department in accordance with Subsection (16).

(16)

- (a) If the court places the defendant on probation under this section, it may order the defendant to participate in home confinement through the use of electronic monitoring as described in this section until further order of the court.
- (b) The electronic monitoring shall alert the department and the appropriate law enforcement unit of the defendant's whereabouts.
- (c) The electronic monitoring device shall be used under conditions which require:
 - (i) the defendant to wear an electronic monitoring device at all times; and
 - (ii) that a device be placed in the home of the defendant, so that the defendant's compliance with the court's order may be monitored.
- (d) If a court orders a defendant to participate in home confinement through electronic monitoring as a condition of probation under this section, it shall:

- (i) place the defendant on probation under the supervision of the Department of Corrections;
 - (ii) order the department to place an electronic monitoring device on the defendant and install electronic monitoring equipment in the residence of the defendant; and
 - (iii) order the defendant to pay the costs associated with home confinement to the department or the program provider.
- (e) The department shall pay the costs of home confinement through electronic monitoring only for an individual who is determined to be indigent by the court.
- (f) The department may provide the electronic monitoring described in this section either directly or by contract with a private provider.

Amended by Chapter 334, 2018 General Session

Rule 41. Expungement.

(a) A person seeking expungement under Title 77, Chapter 40 shall file the petition in the appropriate court and serve or hand-deliver a copy of the petition and certificate of eligibility to the appropriate prosecuting agency.

(b) Upon receipt of a petition for expungement of a conviction, the prosecuting attorney must provide notice of the expungement request by first-class mail to the victim at the most recent address of record on file.

(b)(1) The notice shall:

(b)(1)(A) include a copy of the petition, certificate of eligibility, statutes, and rules applicable to the petition;

(b)(1)(B) state that the victim has a right to object to the expungement; and

(b)(1)(C) provide instructions for registering an objection with the court.

(c) The prosecuting attorney and the victim, if applicable, may respond to the petition by filing a recommendation or objection with the court within 35 days after receipt of the petition.

(d)

(d)(1) The court may request a written response to the petition from the Division of Adult Probation and Parole within the Department of Corrections.

(d)(2) If requested, the response prepared by the Division of Adult Probation and Parole shall must include:

(d)(2)(A) the reasons probation was terminated; and

(d)(2)(B) certification that the petitioner has completed all requirements of sentencing and probation or parole.

(d)(3) The Division of Adult Probation and Parole shall provide a copy of the response to the petitioner and the prosecuting attorney.

(e) The petitioner may respond in writing to any objections filed by the prosecutor or the victim and the response prepared by the Division of Adult Probation and Parole within 14 days after receipt.

(f)

(f)(1) If the court receives an objection concerning the petition from any party, the court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the date set for the hearing. The prosecuting attorney shall notify the victim of the date set for the hearing.

(f)(2) The petitioner, the prosecuting attorney, the victim, and any other person who has relevant information about the petitioner may testify at the hearing.

(f)(3) The court shall review the petition, the certificate of eligibility, and any written responses submitted regarding the petition.

(g) If no objection is received within 60 days from the date the petition for expungement is filed with the court, the expungement may be granted without a hearing.

Effective 5/8/2018

**77-40-107 Petition for expungement -- Prosecutorial responsibility -- Hearing -- Standard of proof -
- Exception.**

(1) The petitioner shall file a petition for expungement and the certificate of eligibility in the court specified in Section 77-40-103 ~~and deliver a copy of the petition and certificate to the prosecuting agency.~~ If the certificate is filed electronically, the petitioner or the petitioner's attorney shall keep the original certificate until the proceedings are concluded. If the original certificate is filed with the petition, the clerk of the court shall scan it and return it to the petitioner or the petitioner's attorney, who shall keep it until the proceedings are concluded.

(2)

(a) ~~Upon receipt of a petition for expungement of a conviction, the prosecuting attorney shall provide notice of the expungement request by first-class mail to the victim at the most recent address of record on file.~~

(b) The notice shall:

(i) ~~include a copy of the petition, certificate of eligibility, statutes, and rules applicable to the petition;~~

(ii) ~~state that the victim has a right to object to the expungement; and~~

(iii) ~~provide instructions for registering an objection with the court.~~

(3) ~~The prosecuting attorney and the victim, if applicable, may respond to the petition by filing a recommendation or objection with the court within 35 days after receipt of the petition.~~

(4)

(a) ~~The court may request a written response to the petition from the Division of Adult Probation and Parole within the Department of Corrections.~~

(b) ~~If requested, the response prepared by the Division of Adult Probation and Parole shall include:~~

(i) ~~the reasons probation was terminated; and~~

(ii) ~~certification that the petitioner has completed all requirements of sentencing and probation or parole.~~

(c) ~~The Division of Adult Probation and Parole shall provide a copy of the response to the petitioner and the prosecuting attorney.~~

(5) ~~The petitioner may respond in writing to any objections filed by the prosecutor or the victim and the response prepared by the Division of Adult Probation and Parole within 14 days after receipt.~~

(6)

(a) ~~If the court receives an objection concerning the petition from any party, the court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the date set for the hearing. The prosecuting attorney shall notify the victim of the date set for the hearing.~~

(b) ~~The petitioner, the prosecuting attorney, the victim, and any other person who has relevant information about the petitioner may testify at the hearing.~~

(c) ~~The court shall review the petition, the certificate of eligibility, and any written responses submitted regarding the petition.~~

(7) ~~If no objection is received within 60 days from the date the petition for expungement is filed with the~~

~~court, the expungement may be granted without a hearing.~~

~~(8)(2)~~ The court shall issue an order of expungement if the court finds by clear and convincing evidence that:

- (a) the petition and certificate of eligibility are sufficient;
- (b) the statutory requirements have been met;
- (c) if the petitioner seeks expungement after a case is dismissed without prejudice or without condition, the prosecutor provided written consent and has not filed and does not intend to refile related charges;
- (d) if the petitioner seeks expungement of drug possession offenses allowed under Subsection 77-40-105(6), the petitioner is not illegally using controlled substances and is successfully managing any substance addiction; and
- (e) it is not contrary to the interests of the public to grant the expungement.

~~(9)~~ (3)

- (a) If the court denies a petition described in Subsection (8)(c) because the prosecutor intends to refile charges, the person seeking expungement may again apply for a certificate of eligibility if charges are not refiled within 180 days of the day on which the court denies the petition.
- (b) A prosecutor who opposes an expungement of a case dismissed without prejudice or without condition shall have a good faith basis for the intention to refile the case.
- (c) A court shall consider the number of times that good faith basis of intention to refile by the prosecutor is presented to the court in making the court's determination to grant the petition for expungement described in Subsection (8)(c).

(10) A court may not expunge a conviction of an offense for which a certificate of eligibility may not be or should not have been issued under Section 77-40-104 or 77-40-105.

Amended by Chapter 266, 2018 General Session

1 **Rule 16. Discovery.**

2 (a) **Disclosures by prosecutor.** ~~Except as otherwise provided,~~

3 (a)(1) *Mandatory disclosures.* As soon as practicable following the filing of an Information and
4 before the defendant is required to plead, or if applicable, before the preliminary hearing, the
5 prosecutor shall ~~must~~ disclose to the defense ~~upon request~~ the following material or information
6 of which the prosecutor has knowledge ~~and control or government access~~:

7 (a)(1)(A) relevant written or recorded statements of the defendant ~~or~~ and codefendants, and the
8 substance of any unrecorded oral statements made by the defendant and codefendants to law
9 enforcement officials, before or after arrest;

10 (a)(~~2~~)(1)(B) the criminal record of the defendant and co-defendants;

11 (a)(1)(C) reports and results of any physical or mental examination, of any identification
12 procedure, and of any scientific test or experiment performed in connection with the case;

13 (a)(~~3~~)(1)(D) physical evidence, including any books, papers, documents, photographs, and digital
14 media recordings, seized from the defendant or codefendant related to the case;

15 (a)(1)(E) written or recorded statements of witnesses in the case;

16 (a)(1)(F) reports and notes prepared by law enforcement officials in connection with the case;

17 (a)(~~4~~)(1)(G) evidence ~~known to the prosecutor that tends to negate the guilt of the accused,~~
18 mitigate the guilt of the defendant, or mitigate the degree of the offense for reduced must be
19 disclosed under the United States and Utah constitutions, including all evidence favorable to the
20 defendant that is material to guilt or punishment; and

21 (a)(~~5~~)(1)(H) any other item of evidence which the court determines on good cause shown should
22 be made available to the defendant in order for the defendant to adequately prepare a defense.

23 (a)(2) *Disclosures required by statute or rule of evidence.* The prosecutor must comply with all
24 other disclosure requirements imposed by statute or the rules of evidence.

25 (a)(3) *Trial disclosures.* The prosecutor must also disclose to the defense the following
26 information and material no later than 14 days, or as soon as practicable, before trial:

27 (a)(3)(A) a written list of the names, addresses, and criminal records, if any, of all persons whom
28 the prosecution intends to call as witnesses at trial; and

29 (a)(3)(B) any exhibits that the prosecution intends to introduce at trial.

30 (a)(4) Information not subject to disclosure. Unless otherwise ordered by the court on a showing
31 of constitutional, statutory or regulatory right, the prosecution's disclosure obligations do not
32 include:

33 (a)(4)(A) privileged information and material; and

34 (a)(4)(B) attorney work product, except as otherwise provided under rule 26(b)(5) of the Utah
35 Rules of Civil Procedure.

36 ~~(b) **Timing of prosecutor's disclosures.** The prosecutor shall make all disclosures as soon as~~
37 ~~practicable following the filing of charges and before the defendant is required to plead. The~~
38 ~~prosecutor has a continuing duty to make disclosure.~~

39 ~~(c)(b) **Disclosures by defense.** Except as otherwise provided or as privileged,~~

40 (b)(1) *Mandatory disclosures.* The defense shall must disclose to the prosecutor ~~such~~
41 information as required by statute relating to alibi or insanity and any other item of evidence
42 which the court determines on good cause shown should be made available to the prosecutor in
43 order for the prosecutor to adequately prepare the prosecutor's case for trial.

44 (b)(2) *Disclosures required by statute or rule of evidence.* The defense must comply with all
45 other disclosure requirements imposed by statute or the rules of evidence.

46 (b)(3) *Trial disclosures.* The defense must also disclose to the prosecutor the following
47 information and material no later than 14 days, or as soon as practicable, before trial:

48 (b)(3)(A) a written list of the names, addresses, telephone numbers, and dates of birth of all
49 persons, except for the defendant, whom the defense intends to call as witnesses at trial; and

50 (b)(3)(B) any exhibits the defense intends to introduce at trial.

51 (b)(4) *Information not subject to disclosure.* The defendant's disclosure obligations do not
52 include:

53 (b)(4)(A) privileged information and material; and

54 (b)(4)(B) attorney work product, except as otherwise provided under rule 26(b)(5) of the Utah
55 Rules of Civil Procedure.

56 ~~(d) **Timing of defense disclosures.** Unless otherwise provided, the defense attorney shall make~~
57 ~~all disclosures at least 14 days before trial or as soon as practicable. The defense has a continuing~~
58 ~~duty to make disclosure.~~

59 ~~(c)(c) **Methods of disclosure.** When convenience reasonably requires, the prosecutor or defense~~
60 ~~may make disclosure by notifying the opposing party that material and information may be~~

61 inspected, tested or copied at specified reasonable times and places. The prosecutor or defense
62 may impose reasonable limitations on the further dissemination of sensitive information
63 otherwise subject to discovery to prevent improper use of the information or to protect victims
64 and witnesses from harassment, abuse, or undue invasion of privacy, including limitations on the
65 further dissemination of ~~videotaped~~ recorded interviews, photographs, or psychological or
66 medical reports.

67 (d) **Continuing duty to disclose.** The prosecutor and defense have a continuing duty to promptly
68 disclose additional evidence subject to this rule that is discovered after any disclosures already
69 made.

70 ~~(f)(e)~~ **Court-imposed Restrictions and limitations on disclosure.** Upon a sufficient showing
71 the court may at any time order that discovery or inspection be denied, restricted, or deferred,
72 that limitations on the further dissemination of discovery be modified or make such other order
73 as is appropriate. Upon motion by a party, the court may permit the party to make such showing,
74 in whole or in part, in the form of a written statement to be inspected by the judge alone. If the
75 court enters an order granting relief following such an ex parte showing, the entire text of the
76 party's statement shall be sealed and preserved in the records of the court to be made available to
77 the appellate court in the event of an appeal.

78 ~~(g)(f)~~ **Relief and sanctions for failing to disclose.** When a party fails to comply with the
79 disclosure requirements of this rule, a court may, subject to constitutional limitations, take the
80 measures or impose the sanctions provided in this subsection that it deems appropriate under the
81 circumstances.

82 ~~(f)(1) If at any time during the course of the proceedings it is brought to the attention of the court~~
83 ~~that a party has failed to comply with this rule, the court may~~

84 ~~(f)(1)(A) order such party to permit the discovery or inspection;~~ of the undisclosed material or
85 information;

86 ~~(f)(1)(B) grant a continuance;~~ of the proceedings;

87 ~~(f)(1)(C) or prohibit the party from introducing evidence not disclosed;~~

88 ~~(f)(1)(D) grant a mistrial;~~ or

89 ~~(f)(1)(E) it may enter such other order~~ such other relief as it deems the court considers just under
90 the circumstances.

91 (f)(2) If the court also finds that a party has knowingly and willfully failed to comply with the
92 disclosure requirements of this rule, the nondisclosing party or attorney may be held in contempt
93 of court and subject to the penalties therefor.

94 ~~(h)(g)~~ **Additional requirements that may be imposed on the accused Identification**
95 **evidence.**

96 ~~(h)(g)(1)~~ Subject to constitutional limitations and upon good cause shown, the trial court may
97 order the defendant to ~~accused may be required to:~~

98 ~~(h)(1)~~ appear in a lineup;

99 ~~(h)(2)~~ speak for identification;

100 ~~(h)(3)~~ submit to fingerprinting or the making of other bodily impressions;

101 ~~(h)(4)~~ pose for photographs not involving reenactment of the crime;

102 ~~(h)(5)~~ try on articles of clothing or other items of disguise;

103 ~~(h)(6)~~ permit the taking of samples of blood, hair, fingernail scrapings, and other bodily
104 materials which can be obtained without unreasonable intrusion;

105 ~~(h)(7)~~ provide specimens of handwriting;

106 ~~(h)(8)~~ submit to reasonable physical or medical inspection of the accused's body; and

107 ~~(h)(9)~~ cut hair or allow hair to grow to approximate appearance at the time of the alleged offense.

108 (g)(2) Whenever the personal appearance of the ~~accused~~ defendant is required for the foregoing
109 purposes, reasonable notice of the time and place of such appearance shall be given to the
110 ~~accused~~ defendant and the ~~accused's~~ defendant's counsel.

111 (g)(3) **Unless relieved by order of the court.** ~~F~~failure of the ~~accused~~ defendant ~~to appear or to~~
112 ~~comply with the requirements of this subsection rule, unless relieved by order of the court,~~
113 ~~without reasonable excuse shall be grounds for revocation of pre-trial pretrial release, may be~~
114 ~~offered as evidence in the prosecutor's case in chief for consideration along with other evidence~~
115 ~~concerning the guilt of the accused and shall will be subject~~ the defendant to such further
116 sanctions as the court ~~should~~ may deem appropriate, including allowing the prosecutor to offer as
117 evidence at trial the defendant's failure to comply with this subsection.