

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

Matheson Courthouse
Café Meeting Room (formerly Executive Dining Room), W18A
450 South State Street
Salt Lake City, Utah 84111
March 17, 2019
12:00 p.m. - 2:00 p.m.

AGENDA

1. Welcome and approval of minutes - Doug Thompson
2. Update on restitution rule - Doug Thompson
3. Update on probation consolidation - Doug Thompson
4. URCrP 16 - Doug Thompson
5. Legislative update - Doug Thompson/Brent Johnson
6. Follow-up on URCrP 9 and 9A - Brent Johnson
7. Other business - Doug Thompson
8. Adjourn

Rules of Criminal Procedure 2020 meeting dates. Meeting times are from 12 – 2 pm, unless otherwise noted:

January 21	July 21
March 17	September 15
May 19	November 17

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

MEETING MINUTES

Café Meeting Room (W18A), Matheson Courthouse
450 South State Street, Salt Lake City, Utah 84114
January 21, 2020 – 12:00 p.m. to 2:00 p.m.

DRAFT

MEMBERS:

PRESENT EXCUSED

	PRESENT	EXCUSED
Douglas Thompson, <i>Chair</i>	•	
Jensie Anderson		•
Judge Patrick Corum		
Jeffrey S. Gray	•	
Judge Elizabeth Hruby-Mills		•
Blake Hills	•	
Craig Johnson		•
Joanna Landau		•
Keri Sargent	•	
Judge Kelly Schaeffer-Bullock		•
Ryan Stack	•	
Cara Tangaro	•	

GUESTS:

None

STAFF:

Brent Johnson
Minhvan Brimhall (recording secretary)

1. Welcome and approval of minutes:

Douglas Thompson welcomed the committee members to the meeting. The Committee discussed the November 19, 2019 minutes. There being no changes to the minutes, Blake Hills moved to approve the minutes. Ryan Stack seconded the motion. The motion was unanimously approved.

2. Investigative Subpoenas, Utah Code 77-22:

Mr. Thompson received an email from Mike Brown, Utah County Public Defender Association, following the November meeting. Mr. Brown presented proposed amendments to rule 14 and rule 40. Mr. Brown suggests that when a case is filed with the court, the requesting party should make the first attempt to request a search warrant with the court in which the case was filed. This suggestion stems from a case involving a dispute over discovery. Rather than allowing the judge to resolve the discovery dispute issue, a search warrant was issued and executed by a signing judge. The defense counsel felt this allowed the prosecutor to go around the discovery process.

The proposed language in rule 14 directs parties seeking a search warrant or an investigative subpoena in a pending case to do so in the manner outlined in rule 40. The idea is to cut down on “forum shopping.”

Mr. Thompson reviewed Mr. Brown’s proposed language and created a subsection (d). The section reads as:

“If you are seeking investigation that relates to an ongoing case that proceeds to authorize testimony related to a crime that has already been charged, or a crime in a single episode as defined by code, that application must be submitted to the magistrate of the court to which the case is assigned. The application to another magistrate or court may only occur if the assigned court is unavailable and the applicant demonstrates that waiting for the assigned court could result in a loss or destruction of evidence.”

Mr. Thompson noted that there may be times when timing is of the essence. The amendment would place the burden on the filing party to define why the warrant is necessary to be filed that day. The subpoenas would be filed on on-going cases. The proposed language would be the same for rule 40.

The committee discussed that the language may not apply to rule 14 as any subpoenas made by deuces tecum must be in filed in the assigned court. The current process requires that all subpoenas be submitted through e-file in which any judge is able to sign for the warrant, thus eliminating the process of going behind a judge’s back in seeking a warrant. Mr. Thompson states that the amendments would not apply to any case that has not been filed. Following further discussions, the committee was unable to come to a consensus on the proposed language. Mr. Thompson would like to have judges weigh in on the proposed amendments and recommends holding this item over for further discussions at another meeting. Jeff Gray suggests that language to the proposed amendment should include language from any rules in which a warrant would apply.

With no further discussions, and no motions made, this item will be tabled over to a future meeting for further discussion.

3. Rule 4, 6, 38 – back from public comment: no comments received

Rules 4, 6, and 38 are back from public comment. No comments were received for these rules. The rules are ready to move forward to the Supreme Court for final approval.

With no further discussions, Cara Tangaro moved to approve the rules as proposed and forward to the Supreme Court for final approval. Mr. Stack seconded the motion. All those in attendance preliminarily approved the motion. A final vote for approval will be sought via email from those who were unable to attend the meeting.

4. Rule 22:

In a recent meeting with the clerks of court, the clerks expressed concerns that law enforcement officers are not complying with the rule on commitment orders. They are not filing returns when defendants are committed to jail or otherwise incarcerated. The clerks suggest a language change to reflect current practices with the court sending commitment order to the jail and nothing that in the docket.

With no further discussions, Ms. Tangaro moved to approve the updated language to rule 22 as proposed and send to Supreme Court for approval to post for public comment. Mr. Gray seconded the motion. All those in attendance preliminarily approved the motion. A final vote for approval will be sought via email from those who were unable to attend the meeting.

5. Rule 9 and 9A – back from public comment:

Rules 9 and 9A have returned from public comment. One comment was received for these rules. The received comment reflects concerns that have previously been addressed by the committee. The subcommittee on rules 9 and 9A has met to discuss concerns about the rules. The subcommittee made substantial recommendations to amend the rule in an attempt to avoid a complete revision of the rules. The rules are currently effective subject to any changes that may be made at a future time.

Mr. Thompson states that the Board of District Court Judges expressed concerns regarding the impact these rules will have on rural areas. Rural areas do not hold regular first appearance calendars and do not meet as often as suburban locations. A major challenge for rural areas is getting pre-trial services to defendants who are not in close proximity to a courthouse, or are arrested in a county that is different from the county in which the warrant was issued.

The committee discussed the use of “magistrate.” A magistrate in a county other than where the warrant was issued may be able to determine if a person is eligible for pre-trial services, but would not be able to determine a bail amount or conduct the initial hearing. The committee expressed concerns of potential confusion this may cause. Mr. Johnson will review and provide clarification of the responsibility of a judge and a magistrate, and create new language to be presented at a future meeting. Mr. Thompson noted that protection in (b)(1) is good if it is determined who is supposed to conduct the review, or good if it is determined the type of review being held. If just a paper review there should be no reason it cannot be the issuing judge that completes the review. Mr. Thompson also notes that (d) protects the defendant from being held longer in detention than necessary.

Mr. Johnson states that the intent of rules 9 and 9A stems from the pre-trial risk assessment tools that are generated when a defendant has been arrested on a warrant. The original intention of the tool was to give judges a way to determine the level of risk

of a defendant and set an appropriate bail amount. Only the judge at the pre-trial hearing would see the assessment after the person has been arrested and awaiting the initial court appearance. Ms. Tangaro expressed concerns that some counties may deem this to be the other county's problem and kick it back to the issuing county to hear the matter. Ms. Tangaro suggests that the rules provide direction and clarification as to which county is responsible to hear the matter, and review the arrest warrant and pre-trial risk assessment.

Following further discussions, and because of the sensitive nature of these rules, Mr. Johnson recommends any decision and further discussion be held over for a future meeting to allow more committee members to voice their concerns. The committee could make proposed changes and then distribute those changes to committee members to vote via email in the interim.

With no motion or vote, this item will be tabled over to a future meeting for further discussion.

6. Other business – SB 23:

The Legislature is considering SB 23. The Judicial Council has asked the committee to review the bill and determine whether there are matters that should be addressed in rule rather than in statute. Mr. Thompson recalls that section (b) is a repeat of rule 14 and that the committee had previously made amendments to that section.

The committee discussed implementing a mechanism by which the defense on the case could see the records of the victim. The bill appears to address information gathered from a national drug database. Mr. Thompson clarified that the changes the committee made to rule 14 were meant to say that any party seeking that type of information would still need to go through the process outlined in the rule. And any information in the drug database may be covered by rule 14 as privileged. If the information is privileged it will require review by the court, but if not, the party will at least get notice of the subpoena. Mr. Johnson does not believe the information is privileged because it is in a database. Rule 14 would need to be amended to account for this type of information. This would also create a new substantive right for the victim.

Mr. Thompson recommends that the committee's response to the bill's sponsor be that subsections (b), (c), and (d) overlaps with rule 14 and belong better in a rule. The committee also recommends that procedural steps be incorporated into the rule.

Mr. Thompson states that the court is reviewing the committee's proposals to rule 16 tomorrow.

Mr. Johnson will communicate with the court's legislative liaison, Michael Drechsel, the committee's response to the bill and its connection to rule 14, and that the committee will work with the legislature to address any concerns.

6. Adjourn:

With no other business, the meeting adjourned without a motion. The meeting adjourned at 1:20 pm. The next meeting is scheduled for March 17 at 12 pm (noon) in the Café Meeting room (formerly Executive Dining Room).

1 **Rule 16. Discovery.**

2 (a) **Disclosures by prosecutor.**

3 ~~(a)(1) Mandatory disclosures. Except as otherwise provided, The~~ prosecutor ~~shall~~ must disclose
4 to the defense ~~upon request~~ the following material or information related to the case of which the
5 prosecutor team has knowledge and control:

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

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

10 (a)(1)(C) reports and results of any physical or mental examination, of any identification
11 procedure, and of any scientific test or experiment;

12 (a)~~(3)~~(1)(D) physical and electronic evidence, including any warrants, warrant affidavits, books,
13 papers, documents, photographs, and digital media recordings seized from the defendant or
14 codefendant;

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

16 (a)(1)(F) reports and notes prepared by law enforcement officials;

17 (a)~~(4)~~(1)(G) evidence ~~known to the prosecutor~~ that must be disclosed under the United States and
18 Utah constitutions, including all evidence favorable to the defendant that is material to ~~tends to~~
19 ~~negate the~~ guilt of the accused, mitigate the guilt of the defendant, or mitigate the degree of the
20 ~~offense for reduced~~ 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 upon request. Upon request, the prosecutor must obtain and disclose to the
24 defense any of the material or information listed above which is possessed by another
25 governmental agency and may be shared with the prosecutor under Title 63G, Chapter 2,
26 Government Records Access and Management Act.

27 ~~(b)(a)~~(3) Timing of ~~prosecutor's~~ mandatory disclosures. The prosecutor's duty to disclose under
28 subsection (a)(1) is a continuing duty as the material or information becomes known to the
29 prosecutor. The prosecutor's shall-make-all disclosures must be made as soon as practicable

30 following the filing of an Information charges and before the defendant is required to plead or go
31 to trial. ~~The prosecutor has a continuing duty to make disclosure.~~

32 (a)(4) Trial disclosures. The prosecutor must also disclose to the defense the following
33 information and material no later than 14 days, or as soon practicable, before trial:

34 (a)(4)(A) Unless otherwise prohibited by statute or rule, a written list of the names, current
35 contact information, and criminal records, if any, of all persons whom the prosecution intends to
36 call as witnesses at trial; and

37 (a)(4)(B) Any exhibits that the prosecution intends to introduce at trial.

38 (a)(5) Information not subject to disclosure. Unless otherwise ordered by the court on a showing
39 of constitutional, statutory, or regulatory right, the prosecution's disclosure obligations do not
40 include:

41 (a)(5)(A) privileged information and material; and

42 (a)(5)(B) attorney work product.

43 ~~(e)(b)~~ **Disclosures by defense.**

44 (b)(1) Mandatory disclosures. Except as otherwise provided or as privileged, The defense shall
45 must disclose to the prosecutor such information as required by statute relating to alibi or
46 insanity and any other item of evidence which the court determines on good cause shown should
47 be made available to the prosecutor in order for the prosecutor to adequately prepare the
48 prosecutor's case for trial.

49 (b)(2) Other disclosures required by statute. The defense shall disclose to the prosecutor such
50 information as required by statute relating to alibi or insanity.

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

53 (b)(3)(A) A written list of the names and current contact information of all persons, except for
54 the defendant, whom the defense intends to call as witnesses at trial; and

55 (b)(3)(B) Any exhibits that the defense intends to introduce at trial.

56 (b)(4) Information not subject to disclosure. The defendant's disclosure obligations do not
57 include:

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

59 (b)(4)(B) attorney work product.

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

63 ~~(e)(c) **Methods of disclosure.**~~ When convenience reasonably requires, the prosecutor or defense
64 may make disclosure by notifying the opposing party that material and information may be
65 inspected, tested or copied at specified reasonable times and places.

66 (d) **Disclosure limitations and restrictions.**

67 (d)(1) The prosecutor or defense may impose reasonable limitations on the further dissemination
68 of sensitive information otherwise subject to discovery to prevent improper use of the
69 information or to protect victims and witnesses from harassment, abuse, or undue invasion of
70 privacy, including limitations on the further dissemination of ~~videotaped~~ recorded interviews,
71 photographs, or psychological or medical reports.

72 ~~(f)(d)(2) **Restrictions on disclosure.**~~ Upon a sufficient showing the court may at any time order
73 that discovery or inspection be denied, restricted, or deferred, that limitations on the further
74 dissemination of discovery be modified or make such other order as is appropriate. Upon motion
75 by a party, the court may permit the party to make such showing, in whole or in part, in the form
76 of a written statement to be inspected by the judge alone. If the court enters an order granting
77 relief following such an ex parte showing, the entire text of the party's statement shall be sealed
78 and preserved in the records of the court to be made available to the appellate court in the event
79 of an appeal.

80 ~~(g)(e) **Relief and sanctions for failing to disclose.**~~

81 ~~(e)(1) If at any time during the course of the proceedings it is brought to the attention of the court~~
82 ~~that~~ When a party fails ~~has failed~~ to comply with the disclosure requirements of this rule, a court
83 may, subject to constitutional limitations and the rules of evidence, take the measures or impose
84 the sanctions provided in this subsection that ~~order such party to permit the discovery or~~
85 ~~inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or~~
86 ~~it may enter such other order as~~ it deems just appropriate under the circumstances. If a party has
87 failed to comply with this rule, the court may take one or more of the following actions:

88 (e)(1)(A) order such party to permit the discovery or inspection of the undisclosed material or
89 information;

90 (e)(1)(B) grant a continuance of the proceedings;

91 (e)(1)(C) prohibit the party from introducing evidence not disclosed; or

92 (e)(1)(D) order such other relief as the court considers just under the circumstances.

93 (e)(2) If after a hearing the court finds that a party has knowingly and willfully failed to comply
94 with an order of the court compelling disclosure under this rule, the nondisclosing party or
95 attorney may be held in contempt of court and subject to the penalties thereof.

96 **(f) Identification evidence.**

97 (f)(1) Subject to constitutional limitations and upon good cause shown, the trial court may order
98 the defendant to appear in a lineup; speak for identification; submit to fingerprinting or the
99 making of other bodily impressions; pose for photographs not involving reenactment of the
100 crime; try on articles of clothing or other items of disguise; permit the taking of samples of
101 blood, hair, fingernail scrapings, and other bodily materials which can be obtained without
102 unreasonable intrusion; provide specimens of handwriting; submit to reasonable physical or
103 medical inspection of the accused's body; and cut hair or allow hair to grow to approximate
104 appearance at the time of the alleged offense.

105 ~~(h) **Additional requirements that may be imposed on the accused.** Subject to constitutional~~
106 ~~limitations, the accused may be required to:-~~

107 ~~(h)(1) appear in a lineup;-~~

108 ~~(h)(2) speak for identification;-~~

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

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

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

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

114 ~~(h)(7) provide specimens of handwriting;-~~

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

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

117 ~~(f)(2)~~ Whenever the personal appearance of the ~~accused-defendant~~ is required for the foregoing
118 purposes, reasonable notice of the time and place of such appearance ~~shall~~must be given to the
119 ~~accused defendant~~ and the ~~accused's defendant's~~ counsel.

120 ~~(f)(3) Unless relieved by order of the court, failure of the accused-defendant to appear or to~~
121 ~~comply with the requirements of this rule-subsection, unless relieved by order of the court,~~
122 without reasonable excuse shall be grounds for revocation of pretrial release and will subject the
123 defendant to such further consequences or sanctions as the court may deem appropriate,
124 including allowing the prosecutor to offer as evidence at trial the defendant's failure to comply
125 with this subsection may be offered as evidence in the prosecutor's case in chief for consideration
126 along with other evidence concerning the guilt of the accused and shall be subject to such further
127 sanctions as the court should deem appropriate.

1 **Rule 16. Discovery.**

2 (a) **Disclosures by prosecutor.**

3 (a)(1) Mandatory disclosures. The prosecutor must disclose to the defense the following material
4 or information related to the case of which the prosecutor team has knowledge and control:

5 (a)(1)(A) written or recorded statements of the defendant and any codefendants, and the
6 substance of any unrecorded oral statements made by the defendant and any codefendants to law
7 enforcement officials;

8 (a)(1)(B) the criminal record of the defendant and any co-defendants;

9 (a)(1)(C) reports and results of any physical or mental examination, of any identification
10 procedure, and of any scientific test or experiment;

11 (a)(1)(D) physical and electronic evidence, including any warrants, warrant affidavits, books,
12 papers, documents, photographs, and digital media recordings;

13 (a)(1)(E) written or recorded statements of witnesses;

14 (a)(1)(F) reports and notes prepared by law enforcement officials;

15 (a)(1)(G) evidence that must be disclosed under the United States and Utah constitutions,
16 including all evidence favorable to the defendant that is material to guilt or punishment; and

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

19 (a)(2) Disclosures upon request. Upon request, the prosecutor must obtain and disclose to the
20 defense any of the material or information listed above which is possessed by another
21 governmental agency and may be shared with the prosecutor under Title 63G, Chapter 2,
22 Government Records Access and Management Act.

23 (a)(3) Timing of mandatory disclosures. The prosecutor's duty to disclose under subsection
24 (a)(1) is a continuing duty as the material or information becomes known to the prosecutor. The
25 prosecutor's disclosures must be made as soon as practicable following the filing of an
26 Information and before the defendant is required to plead or go to trial.

27 (a)(4) Trial disclosures. The prosecutor must also disclose to the defense the following
28 information and material no later than 14 days, or as soon practicable, before trial:

29 (a)(4)(A) Unless otherwise prohibited by statute or rule, a written list of the names, current

30 contact information, and criminal records, if any, of all persons whom the prosecution intends to
31 call as witnesses at trial; and

32 (a)(4)(B) Any exhibits that the prosecution intends to introduce at trial.

33 (a)(5) Information not subject to disclosure. Unless otherwise ordered by the court on a showing
34 of constitutional, statutory, or regulatory right, the prosecution's disclosure obligations do not
35 include:

36 (a)(5)(A) privileged information and material; and

37 (a)(5)(B) attorney work product.

38 (b) **Disclosures by defense.**

39 (b)(1) Mandatory disclosures. The defense must disclose to the prosecutor any item of evidence
40 which the court determines on good cause shown should be made available to the prosecutor in
41 order for the prosecutor to adequately prepare the prosecutor's case for trial.

42 (b)(2) Other disclosures required by statute. The defense shall disclose to the prosecutor such
43 information as required by statute relating to alibi or insanity.

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

46 (b)(3)(A) A written list of the names and current contact information of all persons, except for
47 the defendant, whom the defense intends to call as witnesses at trial; and

48 (b)(3)(B) Any exhibits that the defense intends to introduce at trial.

49 (b)(4) Information not subject to disclosure. The defendant's disclosure obligations do not
50 include:

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

52 (b)(4)(B) attorney work product.

53 (c) **Methods of disclosure.** When convenience reasonably requires, the prosecutor or defense
54 may make disclosure by notifying the opposing party that material and information may be
55 inspected, tested or copied at specified reasonable times and places.

56 (d) **Disclosure limitations and restrictions.**

57 (d)(1) The prosecutor or defense may impose reasonable limitations on the further dissemination
58 of sensitive information otherwise subject to discovery to prevent improper use of the

59 information or to protect victims and witnesses from harassment, abuse, or undue invasion of
60 privacy, including limitations on the further dissemination of recorded interviews, photographs,
61 or psychological or medical reports.

62 (d)(2) Upon a sufficient showing the court may at any time order that discovery or inspection be
63 denied, restricted, or deferred, that limitations on the further dissemination of discovery be
64 modified or make such other order as is appropriate. Upon motion by a party, the court may
65 permit the party to make such showing, in whole or in part, in the form of a written statement to
66 be inspected by the judge alone. If the court enters an order granting relief following such an ex
67 parte showing, the entire text of the party's statement shall be sealed and preserved in the records
68 of the court to be made available to the appellate court in the event of an appeal.

69 **(e) Relief and sanctions for failing to disclose.**

70 (e)(1) When a party fails to comply with the disclosure requirements of this rule, a court may,
71 subject to constitutional limitations and the rules of evidence, take the measures or impose the
72 sanctions provided in this subsection that it deems appropriate under the circumstances. If a
73 party has failed to comply with this rule, the court may take one or more of the following
74 actions:

75 (e)(1)(A) order such party to permit the discovery or inspection of the undisclosed material or
76 information;

77 (e)(1)(B) grant a continuance of the proceedings;

78 (e)(1)(C) prohibit the party from introducing evidence not disclosed; or

79 (e)(1)(D) order such other relief as the court considers just under the circumstances.

80 (e)(2) If after a hearing the court finds that a party has knowingly and willfully failed to comply
81 with an order of the court compelling disclosure under this rule, the nondisclosing party or
82 attorney may be held in contempt of court and subject to the penalties thereof.

83 **(f) Identification evidence.**

84 (f)(1) Subject to constitutional limitations and upon good cause shown, the trial court may order
85 the defendant to appear in a lineup; speak for identification; submit to fingerprinting or the
86 making of other bodily impressions; pose for photographs not involving reenactment of the
87 crime; try on articles of clothing or other items of disguise; permit the taking of samples of

88 blood, hair, fingernail scrapings, and other bodily materials which can be obtained without
89 unreasonable intrusion; provide specimens of handwriting; submit to reasonable physical or
90 medical inspection of the accused's body; and cut hair or allow hair to grow to approximate
91 appearance at the time of the alleged offense.

92 (f)(2) Whenever the personal appearance of the defendant is required for the foregoing purposes,
93 reasonable notice of the time and place of such appearance must be given to the accused
94 defendant and the defendant's counsel.

95 (f)(3) Unless relieved by order of the court, failure of the defendant to comply with the
96 requirements of this subsection without reasonable excuse shall be grounds for revocation of
97 pretrial release and will subject the defendant to such further consequences or sanctions as the
98 court may deem appropriate, including allowing the prosecutor to offer as evidence at trial the
99 defendant's failure to comply with this subsection.

1 **Rule 9. Proceedings for persons arrested without a warrant on suspicion of a crime.**

2 (a)(1) Probable cause determination. A magistrate must determine whether there was
3 probable cause for an arrest without a warrant within 24 hours after the arrest. A person
4 arrested and delivered to a correctional facility without a warrant for an offense must be
5 presented without unnecessary delay before a magistrate for the determination of
6 probable cause and whether the suspect qualifies for pretrial release under Utah Code §
7 77-20-1, and if so, what if any conditions of release are warranted. The arrestee need not
8 be present at the probable cause determination.

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

16 (a)(2)(B) If available, the magistrate should also be presented the results of a validated
17 pretrial risk assessment tool.

18 (a)(2)(C) The magistrate must review the information provided and determine if probable
19 cause exists to believe the defendant committed the offense or offenses described. If the
20 magistrate finds there is probable cause, the magistrate must determine if the person is
21 eligible for pretrial release pursuant to Utah Code § 77-20-1, and what if any conditions
22 on that release are reasonably necessary to:

23 (a)(2)(C)(i) ensure the appearance of the accused at future court proceedings;

24 (a)(2)(C)(ii) ensure the integrity of the judicial process;

25 (a)(2)(C)(iii) prevent direct or indirect contact with witnesses or victims by the accused,
26 if appropriate; and

27 (a)(2)(C)(iv) ensure the safety of the public and the community.

28 (a)(2)(D) If the magistrate finds the statement does not support probable cause to support
29 the charges filed, the magistrate may determine what if any charges are supported, and
30 proceed under subsection (a)(2)(C).

31 (a)(2)(E) If probable cause is not articulated for any charge, the magistrate must return
32 the statement to the submitting authority indicating such.

33 (a)(3) A statement that is verbally communicated by telephone must be reduced to a
34 sworn written statement prior to presentment to the magistrate. The statement must be

35 retained by the submitting authority and as soon as practicable, a copy shall be delivered
36 to the magistrate who made the determination.

37 (a)(4) The arrestee need not be present at the probable cause determination.

38 (b) Magistrate availability.

39 (b)(1) The information required in subsection (a)(2) may be presented to any magistrate,
40 although if the judicial district has adopted a magistrate rotation, the presentment should
41 be in accord with that schedule or rotation. If the arrestee is charged with a capital
42 offense, the magistrate may not be a justice court judge.

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

46 (c) Time for review.

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

50 (c)(2) During the 24 hours after arrest, for good cause shown an arresting officer,
51 custodial authority, or prosecutor with authority over the most serious offense for which
52 defendant was arrested may request an additional 24 hours to hold a defendant and
53 prepare the probable cause statement or request for release conditions.

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

56 (c)(4)(A) If no information has been filed by 3:00~~pm~~ p.m. on the fourth calendar day
57 after the defendant was ~~booked~~ arrested, the release conditions set under subsection
58 (a)(2)(B) shall revert to recognizance release.

59 (c)(4)(B) The four day period in this subsection may be extended upon application of the
60 prosecutor for a period of three more days, for good cause shown.

61 (c)(4)(C) If the time periods in this subsection (c)(4) expire on a weekend or legal
62 holiday, the period expires at 3:00~~pm~~ p.m. on the next business day.

63 (d) Other processes. Nothing in this rule is intended to preclude the accomplishment of
64 other procedural processes at the time of the determination referred to in subsection
65 (a)(2).

66 Effective November 18, 2019

67

1 **Rule 9A Procedures for persons arrested pursuant to an arrest warrant.**

2 (a)(1) For purposes of this rule an “arrest warrant” means a warrant issued by a judge
3 pursuant to Rule 6(c), or after a defendant’s failure to appear at an initial appearance or
4 arraignment after having been summoned.

5 (a)(2) An “arrest warrant” does not include a warrant issued for failing to appear for a
6 subsequent court proceeding or for reasons other than those described in subsection
7 (a)(1).

8 (b)(1) When a peace officer or other person arrests a defendant pursuant to an arrest
9 warrant and the arrested person cannot provide any condition or security required by the
10 judge or magistrate issuing the arrest warrant, ~~the person arrested must be presented to a~~
11 ~~magistrate~~ within 24 48 hours after arrest the court issuing the arrest warrant must review
12 the pretrial release conditions. The information provided to the ~~magistrate~~ court must
13 include the case number, and the results of any validated pretrial risk assessment.

14 (e b)(2) With the results of ~~the a~~ a pretrial risk assessment, and having considered the
15 factors that caused the court to issue an arrest warrant in the first place, the magistrate
16 may modify the release conditions.

17 (b)(23) If the time periods in this subsection (b) expire on a weekend or legal holiday, the
18 period expires at 5:00p.m. on the next business day.

19 ~~(d)~~ Any defendant who remains in custody after the review process must be seen by the
20 court issuing the arrest warrant no later than the third day after the arrest.

21 ~~(e)~~ If the arrested person meets the conditions, or provides the security required by the
22 arrest warrant, the person must be released and instructed to appear as required in the
23 issuing court.

24 ~~(f)~~ Any posted security must be forwarded to the court issuing the arrest warrant.

25 (gf)(1) If the charge against the defendant is a misdemeanor for which a voluntary
26 forfeiture of bail may be entered as a conviction under Utah Code 77-7-21(1), the person

27 arrested may state in writing a desire to forfeit bail, waive trial in the district in which the
28 case is pending, and consent to disposition of the case.

29 (g)(2) Upon receipt of the defendant's consent, the court in which the case is pending
30 may enter the conviction and forfeit bail in accordance with Section 77-7-21.