Utah Supreme Court
Rules of Criminal Procedure Committee

Meeting Agenda

Doug Thomspon, Chair

Location: WebEx Meeting: https://utcourts.webex.com/meet/brysonk

Date: September 19th, 2023

Time: 12:00 p.m. – 2:00 p.m. MST

Action: Welcome and approve July 18, 2023 Minutes (pending)		Doug Thompson
Discussion: Update on Rule 21 – Inconsistent Verdicts	Tab 1	William Carlson
Discussion: Proposed Amendment to Rule 17.5	Tab 2	David Ferguson
Discussion: Proposal for new Rule 18.5	Tab 3	David Ferguson
Discussion: Update from Probation Consolidation Sub-committee		Ryan Peters
Discussion: Proposed Amendment to Rule 6 – Justice Court Bench Warrants	Tab 4	Bryson King
Discussion: Modifications to URCrP Rules 6, 7, and 9 from Legislative Session	Tab 5	Bryson King

https://www.utcourts.gov/rules/urcrp.php

Meeting Schedule:
November 21, 2023
Rule Status:
Rule 8 – pending subcommittee report

Tab 1

(a)~~(1)~~ **Verdict options**.

(1) ~~For crimes committed on or after May 6, 2002, t~~The verdict of the jury shall be either "guilty" or "not guilty," "not guilty by reason of insanity," "guilty and mentally ill at the time of the offense," or "not guilty of the crime charged but guilty of a lesser included offense," or "not guilty of the crime charged but guilty of a lesser included offense and mentally ill at the time of the offense," provided that when the defense of mental illness has been asserted and the defendant is acquitted on the ground that the defendant was insane at the time of the commission of the offense charged, the verdict shall be "not guilty by reason of insanity."

~~(a)~~(2) For crimes committed before May 6, 2002, the defendant may elect to proceed under subsection (a)(1) or under (a)(3).

~~(a)~~(3) For crimes committed before May 6, 2002, unless the defendant elects to proceed under subsection (a)(1), the verdict of the jury shall be either "guilty," "not guilty," "not guilty by reason of insanity," "guilty and mentally ill," "not guilty of the crime charged but guilty of a lesser included offense," or "not guilty of the crime charged but guilty of a lesser included offense and mentally ill" provided that when the defense of mental illness has been asserted and the defendant is acquitted on the ground that the defendant was insane at the time of the commission of the offense charged, the verdict shall be "not guilty by reason of insanity."

(b) **Unanimity.** The verdict shall be unanimous. It shall be returned by the jury to the judge in open court and in the presence of the defendant and counsel. If the defendant is voluntarily absent, the verdict may be received in the defendant's absence.

(c) **Multiple defendants.** If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to any defendant as to whom it has agreed. If the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(d) **Multiple offenses.** When the defendant may be convicted of more than one offense charged, each offense of which the defendant is convicted shall be stated separately in the verdict.

(e) **Offenses included in charged offense.** The jury may return a verdict of guilty to the offense charged or to any offense necessarily included in the offense charged or an attempt to commit either the offense charged or an offense necessarily included therein.

(f) **Polling the jury.** When a verdict is returned and before it is recorded, the jury shall be polled at the request of any party or may be polled at the court's own instance. If, upon the poll, there is no unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged. If the verdict is unanimous, it shall be recorded.

(g) ~~**Acquittal.**~~ **Custody.** If judgment of acquittal is given on a verdict or the case is dismissed and the defendant is not detained for any other legal cause, the defendant shall be discharged as soon as the judgment is given. If a verdict of guilty is returned, the court

may order the defendant to be taken into custody to await judgment on the verdict or may permit the defendant to remain on bail.

(h) **Legally impossible verdicts.** When a defendant is charged with multiple offenses including a both a compound offense and the predicate offense involving the same conduct, the court will, sua sponte or upon the motion of any party, vacate a jury's guilty verdict for a compound offense if the jury acquitted the defendant of the predicate offense. The court will consider the elements of the crimes, the verdicts, the evidence introduced, and jury instructions, if any, when making this determination.

Advisory Note: A conviction for a compound offense combined with an acquittal for the predicate offense is one type of legally impossible verdict, but it is not the only type. Practitioners may identify other legally impossible verdicts throughout their practice. Even so, there is a difference between a legally impossible verdict, which is prohibited, and an illogical or factually inconsistent verdict, which is permissible. A jury may lawfully interpret facts in a way that leads to a verdict which appears irrational. However a jury may not acquit a defendant of an element of an offense while simultaneously convicting the defendant of that offense.

Tab 2

Draft Rule 17.5

Questions presented by the Judicial Counsel on a rule of criminal procedure for virtual court:

> 1. Should there be a rule of procedure that allows participants to request their hearing be held opposite the decision of the judicial officer?
>
> 2. Should there be a rule of procedure that provides a presumption regarding certain hearing types? (Example: non-evidentiary, status hearings, etc.)
>
> 3. Should there be a rule of procedure that provides an appeal process for challenging the decision of a judicial officer as it relates to remote vs. in-person hearings, and if so, who should consider the appeal? (Example: presiding judge)

The questions raised by the Judicial Council raise several competing concerns, particularly between the benefits of virtual court and the rights of the accused to appear in-person.

Virtual court presents tremendous improvements in access to justice. When comparing rates of in-person appearance to virtual appearance, Colorado has found that failures to appear dropped from 46% to 9%. Other jurisdictions found similar results. North Dakota saw appearances go up from 80% to nearly 100% for criminal warrant hearings. New Jersey saw failures to appear drop from 20% to 0.3% when its criminal courts went virtual.[1] Virtual appearances allow attorneys to keep costs down, it improves the diversity and quality of representation, and it allows more competition for public defender contracts in rural areas.

By the same token, courts cannot mandate that a defendant appear virtually without a waiver of in-person attendance. Art. I § 12 of the Utah Constitution specifically identifies the right of defendants in "criminal prosecutions" to "appear and defend in person[.]" This goes beyond the right of confrontation, which is identified elsewhere in that provision. The right of confrontation has specifically been recognized as requiring in-person appearance except in rare situations allowing a witness to testify outside of the presence of the accused.[2]

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[1] Colorado Access to Justice Commission, *Remote Court Proceedings: Opportunities and Challenges in Colorado* 1, 14-15 (Dec. 2022), *available at* https://www.coloradoaccesstojustice.org/_files/ugd/c659b2_a6f97bc9edc84f9294a6d415cf3aec3a.pdf?index=true

[2] *Cf. Coy v. Iowa*, 487 U.S. 1012 (1988) and *Maryland v. Craig*, 497 U.S. 836 (1990).

Moreover, waivers of fundamental rights cannot be presumed from "inaction,"[3] but waivers can be made by conduct that indicate knowing and voluntary relinquishment.[4] In conjunction with this proposal, Rules 7 and 7A should be modified to include a condition that courts notify a defendant of the right to appear in-person for court and allow the defendant to waive the right to appear in summary proceedings.

Summary

This amendment to rule 17.5 creates uniformity on when virtual access to courts is appropriate. It designates presumptions of in-person appearance for evidentiary hearings and flexible appearance in most other settings. It describes what factors a court must consider before deviating from the presumption and, when objected to, describes a review process to the presiding judge. It creates uniformity on public access to courts through virtual means and a process to continue matters through email by stipulation of the parties in lieu of written motion.

Rule 17.5. Hearings ~~with contemporaneous transmission from a different location~~.

~~(a) The court, in its discretion, may conduct the arraignment, bail hearing, and/or initial appearance with a defendant attending by contemporaneous transmission from a different location without the agreement of the parties or waiver of the defendant's attendance in person.~~
~~(b) For any other type of hearing, the court may conduct the hearing with a defendant attending by contemporaneous transmission from a different location only if the parties agree and the defendant knowingly and voluntarily waives attendance in person.~~
~~(c) For good cause and with appropriate safeguards the court may permit testimony in open court by contemporaneous transmission from a different location if the party not calling the witness waives the right to confront the witness in person.~~

(a) **Definitions.**

(1) In-Person Proceeding. A court hearing at which all parties, counsel, and other participants are physically present in the courtroom.

(2) Flexible Proceeding. A court hearing where parties, counsel, and other participants may elect to appear in person in the courtroom or appear virtually without seeking prior authorization from the court.

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[3] *Barker v. Wingo*, 407 U.S. 514, 526 (1972) ("Such an approach, by presuming waiver of a fundamental right from inaction, is inconsistent with this Court's pronouncements on waiver of constitutional rights. The Court has defined waiver as an intentional relinquishment or abandonment of a known right or privilege. Courts should indulge every reasonable presumption against waiver, and they should not presume acquiescence in the loss of fundamental rights.").
[4] *See e.g., State v. Wanosik*, 2003 UT 46.

(3) Virtual Appearance. An appearance at a court hearing by computer or electronic device that includes simultaneous video and audio transmission. Virtual appearances may include appearing by telephone without video transmission if authorized by the court.

(b) **Presumptively In-Person Proceedings.** All criminal proceedings must be presumptively held in-person. A defendant may waive the right to an in-person appearance or proceeding.

(1) The court will accept the waiver and allow a proceeding to be conducted by virtual appearance except under the following circumstances in which the court may accept the waiver:

(A) Trial in which the highest-level offense is a class B misdemeanor or lower;

(B) Detention hearing;

(C) Sentencing;

(D) Any hearing in which evidence is taken through testimony of a live witness;

(E) An evidentiary hearing to determine revocation, modification, or extension of probation;

(F) When good cause requires that the proceeding be held in-person.

(2) The defendant may not waive an in-person appearance in a trial in which the highest-level offense is a class A misdemeanor or higher.

(3) The court will not accept a waiver if a victim as described in article I section 28 of the Utah Constitution indicates a desire to be heard in-person at an important criminal justice hearing.

(4) The court will not issue a warrant for a defendant who appears virtually to an in-person proceeding unless the court determines that the defendant has willfully used the virtual appearance to evade a required in-person appearance.

(d) **Virtual Access to Courts.** A link to a virtual transmission allowing parties, counsel, other participants to participate, and the public to attend court must be prominently displayed on the court's website. The link must be accompanied by instructions that:

(1) a member of the public who records or streams any proceedings without prior authorization may be held in contempt.

(2) any individual who is a witness to a case or has personal knowledge related to a case may be required to terminate virtual attendance to protect the integrity of the proceedings and may be held in contempt if the person fails to abide by an order from the court to do so.

(3) a participant who is disruptive may be required to terminate virtual attendance and may be subject to contempt.

(5) not all proceedings are open to virtual access.

(6) by opening the link to attend court virtually, a defendant who is scheduled for court that day is waiving the right to appear in-person for that proceeding.

(e) **Proceedings That Are Not Subject to This Rule.** Appearances at proceedings conducted by a Problem Solving Court are governed by the discretion of the court and an agreement by the defendant to participate in that court.

(f) **Decision to Require an In-Person Appearance over the Defendant's Waiver.** Before the court may require a defendant to appear in-person over the defendant's waiver, and upon objection or request, the court must identify what factors it has considered in its reason to reject the waiver and must allow parties to address those factors.

(g) **Challenge of a Court's Decision to Require an In-Person Appearance over the Defendant's Waiver.** A party who contests the court's decision to deviate from a presumption in this rule must file a motion for review within seven days of the decision being made or within seven days of receipt of an audio recording of the hearing if the request is filed within seven days of the court's decision.

(1) The motion must include:

(A) the factors that the court identified in its consideration;

(B) an indication of whether any other party expressed an argument or opinion to the court as to what decision the court should take;

(C) the next court date on which the defendant is scheduled;

(D) whether the motion can be reviewed *ex parte*;

(E) a certification that the motion is not taken solely to delay proceedings.

(2) Upon receipt of the motion the court must enter an order granting the motion or must certify the motion to the presiding judge of the district in which the court is located.

(3) A motion can be reviewed *ex parte*.

(4) The presiding judge must consider whether the court's decision to deviate constitutes a burden to a party or individual that is not necessary to move the case towards a fair resolution or prejudices the rights of a party.

(5) The proceedings are stayed until the motion is decided.

(h) **Factors to determine whether good cause requires an in-person proceeding.**

(1) The following non-exhaustive list of factors may be used to determine whether good cause requires a defendant to appear in-person over the defendant's waiver.

(A) The likelihood of a resolution if the proceeding is conducted in-person;

(B) The ability for parties to efficiently conduct the hearing virtually (*e.g.,* introduce evidence, make objections, and examine witnesses virtually);

(C) Technological barriers that impede movement in the case such as the speed and quality of an internet connection;

(D) The impact a virtual appearance would have on the availability for language interpretation or communication with individuals with disabilities;

(2) The court must also consider the following if raised by a party:

(A) The agreement by the parties to hold the hearing virtually including, if applicable, an express waiver by the defendant to the right of confrontation;

(B) The cost and time savings to any party or participant including the lack of reasonably available childcare;

(C) Transportation limitations of any party or participant;

(D) Weather and safe travel;

(E) The disability of a party including any illness;

(F) The difficulty for counsel to travel to the court's jurisdiction for the proceeding;

(G) Impact on employment of a party or participant;

(H) Unavoidable scheduling conflicts of the parties or participants preventing the matter from moving forward in a timelier way;

(I) The anticipated length of the proceeding;

(i) **Continuances and scheduling by email**. For any non-evidentiary matter in which the parties stipulate to a continuance or request a sooner date, the parties may inform the court of the stipulation by email no later than 24 hours before a proceeding is set to take place in lieu of written motion. The computation of time for this part excludes weekends and holidays identified in Rule 2.

(1) Each prosecutor who is assigned to a matter must provide a personally monitored email address on the website of the entity or agency to which the prosecutor is employed.

(2) An email address for which the court may accept stipulations provided in this rule must be displayed on the court's website.

(j) **Denial of virtual attendance to the public.** The court may prohibit virtual attendance by the public for any in-person or flexible proceeding by applying similar considerations to those given in the Utah Code of Judicial Administration 4-401.01(2)(b). The court may also prohibit virtual attendance for proceedings in a Problem Solving Court, or in an evidentiary hearing in which exclusion is invoked through Utah Rule of Evidence 615 and the court determines that an admonishment to virtual attendants consistent with part (b)(2) would not adequately ensure that the order of exclusion would be followed.

(~~d~~k) Nothing in this rule precludes or affects the procedures in rule 15.5.

Tab 3

18.5 Objection to the Use of a Peremptory Challenge

Summary: The following proposal is made at the direction of the Supreme Court to investigate the appropriateness of a rule to replace the *Batson* standard. *State v. Aziakanou* 2021 UT 57, ¶ 69 n. 12. In directing the committee to investigate a rule change, the Court cited a recently created rule by Washington State, as well as the efforts of both Connecticut and New Jersey in exploring rule changes. *Id*.

Since *Aziakanou* was published, Connecticut has developed its own rule modeled off of Washington's. *Cf*. Connecticut's rule: Sec. 5-12, Objection to the Use of a Peremptory Challenge,[1] and Washington's: Wash. Gen. R. 37, Jury Selection.[2]

New Jersey is currently exploring a rule change modeled off of both Washington's and Connecticut's as well as several other reforms, including the implementation of a pilot program to permit attorney-conducted voir dire in the state as a tool to decrease discrimination and bias in jury selection (New Jersey, like Utah, is one of only a few states where judges typically control most aspects of voir dire; Washington and Connecticut both already permit attorney-conducted voir dire).[3]

The following rule is closely modeled from Connecticut's except where explained in comments.

(a) Objection. A party may object to the use of a peremptory challenge to raise a claim of improper bias. The court has an obligation to raise this objection on its own when observed. The objection will be made by simple citation to this rule, and any further discussion will be conducted outside the presence of the prospective juror.

(b) Response. Upon objection to the exercise of a peremptory challenge pursuant to this rule, the party exercising the peremptory challenge must articulate the reason that the peremptory challenge has been exercised.

(c) Determination. The court will evaluate the reason given for the challenge from the perspective of an objective observer, as defined in part (d), in light of the totality of the circumstances. If the court determines that the use of the challenge against the prospective juror, as reasonably viewed by an objective observer, legitimately raises the appearance

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[1] https://www.jud.ct.gov/lawjournal/Docs/Misc/2022/29/pblj_8402.pdf.
[2] https://www.courts.wa.gov/court_rules/pdf/GR/GA_GR_37_00_00.pdf.
[3] https://www.njcourts.gov/sites/default/files/courts/supreme/part4of4-orderauthorizingacvdpilotprogram-07-12-22.pdf.

that the prospective juror's race or ethnicity was a factor in the challenge, then the challenge will be disallowed and the prospective juror will be seated. If the court determines that the use of the challenge does not raise such an appearance, then the challenge will be permitted and the prospective juror will be excused. The court need not find purposeful discrimination to disallow the peremptory challenge. The court must explain its ruling on the record. A party whose peremptory challenge has been disallowed pursuant to this rule will not be prohibited from attempting to challenge peremptorily the prospective juror for any other reason or from conducting further voir dire of the prospective juror.

(d) Nature of Observer. For the purpose of this rule, an objective observer:

(1) is aware that purposeful discrimination, and implicit, institutional, and unconscious biases, have historically resulted in the unfair exclusion of potential jurors on the basis of their race, or ethnicity; and

(2) is deemed to be aware of and to have given due consideration to the circumstances set forth in part (e).

(e) Circumstances considered. In making its determination, the circumstances the court should consider include, but are not limited to, the following:

(1) the number and types of questions posed to the prospective juror including consideration of whether the party exercising the peremptory challenge failed to question the prospective juror about the alleged concern or the questions asked about it;

(2) whether the party exercising the peremptory challenge asked significantly more questions or different questions of the prospective juror, unrelated to his testimony, than were asked of other prospective jurors;

(3) whether other prospective jurors provided similar answers but were not the subject of a peremptory challenge by that party;

(4) whether a reason might be disproportionately associated with a race or ethnicity;

(5) if the party has used peremptory challenges disproportionately against a given race or ethnicity in the present case, or has been found by a court to have done so in a previous case;

(6) whether issues concerning race or ethnicity play a part in the facts of the case to be tried;

(7) whether the reason given by the party exercising the peremptory challenge was contrary to or unsupported by the record.

(f) Reasons Presumptively Invalid. Because historically the following reasons for peremptory challenges have been associated with improper discrimination in jury selection or may be influenced by implicit or explicit bias, the following are presumptively invalid reasons for a peremptory challenge:

(1) having prior contact with law enforcement officers;

(2) expressing a distrust of law enforcement or a belief that law enforcement officers engage in racial profiling;

(3) having a close relationship with people who have been stopped, arrested, or convicted of a crime;

(4) living in a high crime neighborhood;

(5) having a child outside of marriage;

(6) receiving state benefits;

(7) not being a native English speaker; and

(8) having been a victim of a crime.

A party may overcome the presumption of invalidity if the party demonstrates to the court's satisfaction that the reason, viewed reasonably and objectively, is unrelated to the prospective juror's race or ethnicity and legitimately bears on the prospective juror's ability to be fair and impartial in light of particular facts and circumstances at issue in the case.

(g) Reliance on Conduct. The following reasons for peremptory challenges also have historically been associated with improper discrimination in jury selection: allegations that the prospective juror was inattentive, failing to make eye contact or exhibited a problematic attitude, body language, grooming, or demeanor. If any party intends to offer one of these reasons or a similar reason as a justification for a peremptory challenge, that party must provide reasonable notice to the court and the other parties so the behavior can be verified and addressed in a timely manner. A party who intends to exercise a peremptory challenge for reasons relating to those listed above in subsection (f) will, as soon as practicable, notify

the court and the other party in order to determine whether such conduct was observed by the court or that party. If the alleged conduct is not corroborated by observations of the court or the objecting party, then a presumption of invalidity will apply but may be overcome as set forth in subsection (f).

(h) Balancing of interests. If the prosecution uses a peremptory challenge for a race neutral purpose on the last or only prospective juror from a racial or ethnic minority, the court will weigh the prosecutor's interest in eliminating the juror against the defendant's interest in a jury composed of a fair cross section of the community.

Tab 4

UTAH STATE COURTS

Bryson King <brysonk@utcourts.gov>

Re: Justice Court Bench Warrants

Keisa Williams <keisaw@utcourts.gov> Mon, Apr 3, 2023 at 7:26 AM
To: Bryson King <brysonk@utcourts.gov>, Todd Shaughnessy [redacted]
Cc: James Peters <jamesp@utcourts.gov>, Judge Paul Farr [redacted]

[redacted]

From: Todd Shaughnessy [redacted]
Date: April 3, 2023 at 5:43:14 AM MDT
To: Judge Paul Farr [redacted]
Cc: James Peters <jamesp@utcourts.gov>
Subject: Re: Justice Court Bench Warrants

[redacted]

[redacted]

On Apr 3, 2023, at 12:01 AM, Judge Paul Farr [redacted] wrote:

Thanks for including me on this. I would have said this was just a mistake on this case. However, it looks like its not even the first time it happened on just this case based on Defendant's letters to the court in 2021 and 2022, and based on your experience in other cases. I know in Sandy we receive a booking report from the SLCO jail every day. We have standing video appointments with them every Monday and Friday morning. Everyone booked on our warrants gets seen on the next calendar. While I established that practice a long time ago, I rely on the clerks to make sure it happens. If a clerk stopped checking the reports or scheduling hearings I have to admit I would probably be unaware of someone being held until I received a letter from a Defendant. [redacted]

[redacted]

[redacted]

I have some recommendations. [redacted] I thought Rule 9A URCrP required a hearing within 48 hours, but after reviewing it again, it would appear not to apply to bookings on subsequent FTA's. A rule probably would be a good idea. [redacted]

On Fri, Mar 31, 2023 at 4:58 PM Judge Todd Shaughnessy [redacted] wrote:

> Jim,
> I hope all is well. The issue of holding defendants on warrants without setting a bench warrant hearing has come up again (and a couple other times since we last exchanged emails about this). This time in the North Salt Lake Justice Court.
>
> I have a drug court participant who is ready to go to treatment and will soon lose his treatment bed because he can't get a bench warrant hearing or a hold released on a MB paraphernalia from North Salt Lake. That court has not set a bench warrant hearing, in person or virtually, despite the defendant having been booked on that warrant on January 3, 2023. The defendant is admittedly being held on much more serious charges in Salt Lake County, which I have in my drug court, but that does not, in my view, eliminate the obligation to set a bench warrant hearing. I'm happy to be corrected if I'm wrong about that, but at the district court level our clerks are trained to be rigorous about setting bench warrant hearings when we learn one of our defendants has been booked, and we have various failsafes to ensure it happens.
>
> I'm attaching a copy of the docket in this case. It shows the case having been placed on a one-year "stay" the day after he was booked; I have no idea what that means.
>
> I'm not sure what the problem is or the best way to address it. [redacted]
>
> My current thought is that we need to draft a rule to address this. Something that requires courts to set bench warrant hearings or release their holds within a specified period of time. I'm happy to work on one if that's the way to go. I'm copying Judge Farr because he always knows how best to fix these problems. I'm open to suggestions, or to being corrected if I'm wrong about the court's obligation to set a bench warrant hearing.
>
> Let me know what you think and what I can do to help.
>
> Todd

Tab 5

Rule 6. Warrant of arrest or summons.

Effective: 10/1/2020

(a) Upon the filing of an indictment, or upon the acceptance of an information by a judge, the court must set the case for an initial appearance or arraignment, as appropriate. The court must then issue a summons directing the defendant to appear for that hearing, except as described in subsection (c).

(b) The summons must inform the defendant of the date, time and courthouse location for the initial appearance or arraignment. The summons may be mailed to the defendant's last known address, or served by anyone authorized to serve a summons in a civil action.

(c) If the defendant is not a corporation, a judge may issue a warrant of arrest instead of a summons if the court finds from the information and any supporting statements or affidavits that:

(c)(1) The defendant's address is unknown or the defendant will not otherwise appear on a summons; or

(c)(2) there is substantial danger of a breach of the peace, injury to persons or property, or danger to the community.

(d) A judge may issue a warrant of arrest in cases where the defendant has failed to appear in response to a summons.

(e) Prior to issuing a warrant the judge must review the information for sufficiency. If the judge determines from the information, or from any supporting statements or affidavits, that there is probable cause to believe the offenses have been committed and that the accused committed them, the judge may issue the warrant. If the judge determines there is not probable cause the judge must notify the prosecutor. If the prosecutor does not file a sufficient information within 28 days, the judge must dismiss the case.

(e)(1) When a warrant of arrest is issued, the judge must state on the warrant:

(e)(1)(A) Whether the defendant is denied pretrial release under the authority of Utah Code § 77-20-205, and the alleged facts supporting.

(e)(1)(B) The conditions of pretrial release the court requires of the defendant in accordance with Utah Code section 77-20-205.

(e)(1)(C) As required by Utah Code section 77-20-205, if the court determines monetary bail is necessary, the judge must consider the individual's ability to pay and set the lowest amount reasonably calculated to ensure the defendant's appearance at court.

(e)(1)(D) The court must state whether the defendant's personal appearance is required or whether the defendant may remit monetary bail to satisfy any obligation to the court pursuant to Utah Code § 77-7-21.

(e)(1)(E) The geographic area from which the issuing court will guarantee transport pursuant to Utah Code § 77-7-5.

(f) The clerk of the court must enter the warrant into the court information management system.

(g) **Service, Execution and return of the warrant.**

(g)(1) The warrant must be served by a peace officer. The officer may execute the warrant at any place within the state.

(g)(2) The warrant must be executed by the arrest of the defendant. The officer need not possess the warrant at the time of the arrest. Upon request, the officer must show the warrant to the defendant as soon as practicable. If the officer does not have the warrant in possession at the time of the arrest, the officer must inform the defendant of the offense charged and of the fact that the warrant has been issued.

(g)(3) The person executing a warrant or serving a summons must make return thereof to the magistrate as soon as practicable.

(h) The court may periodically review unexecuted warrants to determine whether they should be recalled.

Rule 7. Initial proceedings for class A misdemeanors and felonies.

Effective: 10/1/2020

(a) **First appearance.** At the defendant's first appearance, the court must inform the defendant:

(a)(1) of the charge in the information or indictment and furnish a copy;

(a)(2) of any affidavit or recorded testimony given in support of the information and how to obtain them;

(a)(3) of the right to retain counsel or have counsel appointed by the court without expense if unable to obtain counsel;

(a)(4) of rights concerning pretrial release; and

(a)(5) that the defendant is not required to make any statement, and that any statement the defendant makes may be used against the defendant in a court of law.

(b) **Right to counsel.** If the defendant is present at the initial appearance without counsel, the court must determine if the defendant is capable of retaining the services of an attorney within a reasonable time. If the court determines the defendant has such resources, the court must allow the defendant a reasonable time and opportunity to retain and consult with counsel. If the court determines the defendant is indigent, the court must appoint counsel pursuant to Rule 8, unless the defendant knowingly and intelligently waives the right to counsel.

(c) **Release conditions.**

(c)(1) Except as provided in paragraph (c), the court must issue a pretrial status order pursuant to Utah Code section 77-20-205. Parties should be prepared to address this issue, including notice requirements under Utah Code section 77-37-3 and Utah Code section 77-38-3.

(c)(2) A motion to modify the pretrial status order issued at initial appearance may be made by either party at any time upon notice to the opposing party sufficient to permit the opposing party to prepare for the hearing and to permit each alleged victim to be notified and be present.

(c)(3) Subsequent motions to modify a pretrial status order may be made only upon a showing that there has been a material change in circumstances.

(c)(4) A hearing on a motion to modify a pretrial status order may be held in conjunction with a preliminary hearing or any other pretrial hearing.

(d) **Continuances.** Upon application of either party and a showing of good cause, the court may allow up to a seven day continuance of the hearing to allow for preparation, including notification to any victims. The court may allow more than seven days with the consent of the defendant.

(e) **Right to preliminary examination.**

(e)(1) The court must inform the defendant of the right to a preliminary examination and the times for holding the hearing. If the defendant waives the right to a preliminary

examination, and the prosecuting attorney consents, the court must order the defendant bound over for trial.

(e)(2) If the defendant does not waive a preliminary examination, the court must schedule the preliminary examination upon request. The examination must be held within a reasonable time, but not later than 14 days if the defendant is in custody for the offense charged and not later than 28 days if the defendant is not in custody. These time periods may be extended by the magistrate for good cause shown. Upon consent of the parties, the court may schedule the case for other proceedings before scheduling a preliminary hearing.

(e)(3) A preliminary examination may not be held if the defendant is indicted.

Rule 7A. Procedures for arraignment on class B or C misdemeanors, or infractions.

Effective: 10/1/2020

(a) **Initial appearance.** At the defendant's initial appearance, the court must inform the defendant:

(a)(1) of the charge in the information, indictment, or citation and furnish a copy;

(a)(2) of any affidavit or recorded testimony given in support of the information and how to obtain them;

(a)(3) of the right to retain counsel or have counsel appointed by the court without expense if unable to obtain counsel;

(a)(4) of rights concerning pretrial release; and

(a)(5) that the defendant is not required to make any statement, and that any statement the defendant makes may be used against the defendant in a court of law.

(b) **Right to counsel.** If the defendant is present at the initial appearance without counsel, the court must determine if the defendant is capable of retaining the services of an attorney within a reasonable time. If the court determines the defendant has such resources, the court must allow the defendant a reasonable time and opportunity to retain and consult with counsel. If the court determines defendant is indigent, the court must appoint counsel pursuant to rule 8, unless the defendant knowingly and intelligently waives such appointment.

(c) **Release conditions.** Except as provided in paragraph (d), the court must issue a pretrial status order pursuant to Utah Code section 77-20-205. Parties should be prepared to address this issue, including notice requirements under Utah Code section 77-37-3 and Utah Code section 77-38-3.

(c)(1) A motion to modify the pretrial status order issued at initial appearance may be made by either party at any time upon notice to the opposing party sufficient to permit the opposing party to prepare for the hearing and to permit each alleged victim to be notified and be present.

(c)(2) Subsequent motions to modify a pretrial status order may be made only upon a showing that there has been a material change in circumstances.

(c)(3) A hearing on a motion to modify a pretrial status order may be held in conjunction with a preliminary hearing or any other pretrial hearing.

(d) **Continuances.** Upon application of either party and a showing of good cause, the court may allow up to a seven day continuance of the hearing to allow for preparation, including notification to any victims. The court may allow more than seven days with the consent of the defendant.

(e) **Entering a plea.**

(e)(1) If defendant is prepared with counsel, or if defendant waives the right to be represented by counsel, the court must call upon the defendant to enter a plea.

(e)(2) If the plea is guilty, the court must sentence the defendant as provided by law.

(e)(3) If the plea is not guilty, the court must set the matter for trial or a pretrial conference within a reasonable time. Such time should be no longer than 30 days if defendant is in custody.

(e)(4) The court may administratively enter a not guilty plea for the defendant. If the court has appointed counsel, the defendant does not desire to enter a plea, or for other good cause, the court must then schedule a pretrial conference.

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

Effective: 10/1/2020

(a) **Probable cause determination**.

(a)(1) A person arrested and delivered to a correctional facility without a warrant for an offense must be presented without unnecessary delay before a magistrate for the determination of probable cause and eligibility for pretrial release pursuant to Utah Code § 77-20-205.

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

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

(a)(4) The magistrate must review the information provided and determine if probable cause exists to believe the defendant committed the offense or offenses described. If the magistrate finds there is probable cause, the magistrate must determine if the person is eligible for pretrial release pursuant to Utah Code § 77-20-205. The magistrate will impose the least restrictive reasonably available conditions of release reasonably necessary to:

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

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

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

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

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

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

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

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

(b) **Magistrate availability.**

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

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

(c) **Time for review.**

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

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

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

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

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

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

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