



Utah Supreme Court Rules of Criminal Procedure Committee

Meeting Agenda

Will Carlson, Chair

Location: Webex

Date: March 17, 2026 **Time:** 12:00 p.m. – 2:00 p.m. MST

Approve January 30, 2026, meeting minutes	Tab 1	Will Carlson
H.J.R. 28 Joint Resolution Amending Court Rules Related to Capital Felony Cases	Tab 2	Will Carlson
Action: Rule 17 subcommittee update		Lindsey Wheeler Lori Seppi Shawn Robinson Lisa Crawford Karin Fojtik
Rules 27A, 27B, & 38	Tab 3	Kent Burggraaf
Rules 7, 7.5, 7A, 9, 9A, 15.5	Tab 4	David Ferguson
Rule 14	Tab 5	Will Carlson

Meeting Schedule for 2026:

May 19th

July 21st

September 15th

November 17th

TAB 1

Utah Supreme Court Rules of Criminal Procedure Committee

Meeting Minutes
January 30, 2026

Committee members	Present	Excused	Guests/Staff Present
William Carlson, Chair	X		Keisa Williams, Staff
Kent A. Burggraaf	X		Amber Stargell, Rec. Secretary
Lisa Crawford	X		Alex Jacobson, Staff
Adam Crayk		X	
David Ferguson	X		
Karin Fojtik		X	
Judge Kristine Johnson	X		
Judge Denise Porter		X	
Janet Reese		X	
Shawn Robinson		X	
Lori Seppi	X		
Michael Samantha Starks	X		
Lindsey Wheeler		X	
Keri Sargent	X		

Agenda Item 1: Welcome, Introduction of New Staff Attorney, and Approval of Minutes

Will Carlson welcomed the Committee to the meeting. Keisa Williams introduced Alex Jacobson as the new staff attorney assigned to the Committee.

Mr. Carlson then turned to the November 18, 2025, meeting minutes for approval. David Ferguson moved to approve the minutes. Lori Seppi seconded the motion. Without opposition, the motion carried and the minutes were approved.

Agenda Item 2: S.J.R. 10 (Rules 17.5 & 18) and Rapid Response Legislative Subcommittee

Mr. Carlson explained that Senate Joint Resolution 10 (“S.J.R. 10”) proposes amendments to Rules 17.5 and 18 governing jury selection in felony cases. The resolution would require jury selection in felony cases to be conducted in-person at the place of trial unless both parties agree on the record to conduct jury selection virtually. Mr. Carlson noted that the resolution highlights

the importance of having a rapid response legislative subcommittee, particularly during the legislative session when the Committee may not otherwise meet before adjournment.

Keisa Williams explained that the Utah Supreme Court has directed each advisory committee to designate a rapid response team capable of responding quickly to requests from the Court or its legislative liaison when proposed legislation implicates procedural rules. The Committee discussed the importance of ensuring balanced representation on such a team, including members of the defense bar, prosecution, and judiciary, to preserve neutrality and the integrity of the rulemaking process.

The Committee then engaged in extensive discussion regarding the practical and administrative impacts of S.J.R. 10. Topics discussed included juror accessibility and convenience associated with virtual jury selection; the effect of virtual selection on juror participation rates; the ability of counsel to evaluate juror demeanor in virtual versus in-person settings; administrative capacity, particularly in the Third District; and issues related to staffing, parking, and the ability to support multiple jury selections simultaneously. The Committee also discussed fiscal considerations, including the absence of a fiscal note accompanying the resolution.

Members noted that Third District jury staff are currently able to support up to seven simultaneous virtual jury selections, but only three to four in-person jury selections at the same time. Concerns were raised about the logistical challenges of conducting mixed virtual and in-person jury selections concurrently.

Mr. Carlson conducted a roll-call discussion to gauge the Committee's general position on S.J.R. 10. Several members expressed support for the proposed rule change in concept, citing party autonomy and fairness considerations. Other members raised concerns regarding administrative and fiscal impacts, particularly as they relate to Third District operations.

Committee generally agreed that further fiscal and administrative analysis is necessary and that engagement through the rapid response mechanism would be appropriate.

David Ferguson, Kent Burggraaf, Michael Samantha Starks, and Lisa Crawford were designated to serve on the rapid response team.

Agenda Item 3: Rule 17.5 – Participating Victims / Verification Issues

Keri Sargent presented the issue identified by the Clerk of Court Group regarding Rule 17.5's "participating victim" provisions and the practical difficulty of verifying victim identity when victims are not added as parties in the case management system. The Committee discussed current workarounds (including courts contacting prosecutors for confirmation), variability across districts, and the possibility that the issue may be better addressed through administrative practice or technology changes rather than a rule amendment.

Mr. Carlson asked whether any members favored pursuing an amendment to Rule 17.5 on this topic at this time. No members indicated support for a rule amendment. The Committee agreed to continue monitoring the issue and to revisit it as appropriate.

Agenda Item 4: Rule 18 (*State v. Aziakanou*)

Mr. Carlson raised Rule 18 and noted the Committee should explore the issue referenced in *State v. Aziakanou* (footnote 12), including juror rights concepts discussed in Batson line of cases and broader concerns about public confidence and participation.

Lori Seppi agreed to spearhead a subcommittee/working group to further examine jury-selection issues and related rule considerations. Will Carlson also volunteered to participate, and David Ferguson indicated interest in participating in a limited/supporting capacity. The working group will report back at a future meeting.

Agenda Item 5: Rule 14 – Service of Subpoenas

Mr. Carlson introduced proposed approaches for amending Rule 14 subpoena service requirements (including expanding methods of service, waiver/acceptance models, and substituted service concepts). Members compared current criminal subpoena practice to Utah Rule of Civil Procedure 4 and discussed fiscal and practical inefficiencies created by strict personal service requirements, especially for government witnesses and repeated settings.

The Committee expressed interest in an approach emphasizing affirmative acceptance or waiver of service (rather than default email service without confirmation). Mr. Carlson stated he will prepare draft language for consideration at the March meeting, including attention to the out-of-state/domestication issue raised by members.

Agenda Item 6: Rule 22 – Allocution (*State v. James*)

Lori Seppi introduced the topic of allocution at sentencing, particularly in light of *State v. James*, noting the dissent's invitation for the Committee to consider whether Rule 22 should be revisited. The Committee discussed several considerations, including whether the rule should expressly require judges to personally invite allocution, the difficulty of establishing prejudice on appeal when allocution is denied, and whether an immediate remedy, such as resentencing, should be available. Members also discussed distinctions between sentences involving incarceration and probation, the application of harmless versus harmful error analysis, and the interests of both the judiciary and victims.

Members generally agreed that allocution is a fundamental right and expressed support for clarifying the rule, although there were differing views regarding the appropriate remedy when a violation occurs. Ms. Seppi agreed to draft proposed amendments to Rule 22 for the Committee's future consideration, incorporating the feedback discussed.

Adjournment

Mr. Carlson asked whether there was any additional business. Hearing none, the meeting adjourned without objection. Meeting Schedule next meeting is scheduled for March 17, 2026 at noon.

TAB 2

Candice B. Pierucci proposes the following substitute bill:

Joint Resolution Amending Court Rules Related to Capital Felony Cases

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Candice B. Pierucci

Senate Sponsor: Daniel McCay

LONG TITLE

General Description:

This resolution amends court rules related to capital felony cases.

Highlighted Provisions:

This resolution:

▸ amends Utah Rules of Appellate Procedure, Rule 23B, to address remand of a capital felony case for findings on ineffective assistance of counsel;

▸ amends Utah Rules of Criminal Procedure, Rule 27, to address a stay of the execution of a sentence; and

▸ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This resolution provides a special effective date.

Utah Rules of Appellate Procedure Affected:

AMENDS:

Rule 23B, Utah Rules of Appellate Procedure

Utah Rules of Criminal Procedure Affected:

AMENDS:

Rule 27, Utah Rules of Criminal Procedure

Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:

As provided in Utah Constitution Article VIII, Section 4, the Legislature may amend rules of procedure and evidence adopted by the Utah Supreme Court upon a two-thirds vote of all members of both houses of the Legislature:

Section 1. **Rule 23B**, Utah Rules of Appellate Procedure is amended to read:

30 **Rule 23B . Motion to remand for findings necessary to determination of**
31 **ineffective assistance of counsel claim.**

32 ~~[(a) Grounds for motion; time.]~~ **(a) Grounds for motion; time.** A party to an appeal in a
33 criminal case that is not a capital case with a sentence of death may move the court to remand
34 the case to the trial court for entry of findings of fact, necessary for the appellate court's
35 determination of a claim of ineffective assistance of counsel. The motion will be available only
36 upon a nonspeculative allegation of facts, not fully appearing in the record on appeal, which, if
37 true, could support a determination that counsel was ineffective.

38 The motion must be filed before or at the time of the filing of the appellant's brief. Upon a
39 showing of good cause, the court may permit a motion to be filed after the filing of the
40 appellant's brief. After the appeal is taken under advisement, a remand pursuant to this rule is
41 available only on the court's own motion and only if the claim has been raised and the motion
42 would have been available to a party.

43 ~~[(b) Content of motion.]~~ **(b) Content of motion.** The content of the motion must conform to
44 the requirements of Rule 23. The motion must include or be accompanied by affidavits or
45 declarations alleging facts not fully appearing in the record on appeal that show the claimed
46 deficient performance of the attorney. The affidavits or declarations must also allege facts that
47 show the claimed prejudice suffered by the appellant as a result of the claimed deficient
48 performance. The motion must also be accompanied by a proposed order of remand that
49 identifies the ineffectiveness claims and specifies the factual issues relevant to each such claim
50 to be addressed on remand.

51 ~~[(c) Orders of the court; response; reply.]~~ **(c) Orders of the court; response; reply.** If a
52 motion under this rule is filed at the same time as appellant's principal brief, any response and
53 reply must be filed within the time for the filing of the parties' respective briefs on the merits,
54 unless otherwise specified by the court. If a motion is filed before appellant's brief, the court
55 may elect to defer ruling on the motion or decide the motion prior to briefing.

56 (1) If the court defers the motion, the time for filing any response or reply will be the
57 same as for a motion filed at the same time as appellant's brief, unless otherwise specified by
58 the court.

59 (2) If the court elects to decide the motion prior to briefing, it will issue a notice that any
60 response must be filed within 30 days of the notice or within such other time as the court may
61 specify. Any reply in support of the motion must be filed within 20 days after the response is
62 served or within such other time as the court may specify.

63 (3) If the requirements of ~~[parts]~~ paragraphs (a) and (b) of this rule have been met, the

64 court may order that the case be temporarily remanded to the trial court to enter findings of
65 fact relevant to a claim of ineffective assistance of counsel. The order of remand will identify
66 the ineffectiveness claims and specify the factual issues relevant to each such claim to be
67 addressed by the trial court. The order will also direct the trial court to complete the
68 proceedings on remand within 90 days of issuance of the order of remand, absent a finding by
69 the trial court of good cause for a delay of reasonable length.

70 (4) If it appears to the appellate court that the appellant's attorney of record on the
71 appeal faces a conflict of interest upon remand, the court will direct that counsel withdraw and
72 that new counsel for the appellant be appointed or retained.

73 ~~[(d) Effect on appeal.]~~ **(d) Effect on appeal.** If a motion is filed at the same ~~[time as]~~ time as
74 appellant's brief, the briefing schedule will not be stayed unless ordered by the court. If a
75 motion is filed before appellant's brief, the briefing schedule will be automatically stayed until
76 the court issues notice of whether it will defer the motion or decide the motion before briefing.

77 ~~[(e) Proceedings before the trial court.]~~ **(e) Proceedings before the trial court.** Upon remand
78 the trial court will promptly conduct hearings and take evidence as necessary to enter the
79 findings of fact necessary to determine the claim of ineffective assistance of counsel. Any
80 claim of ineffectiveness not identified in the order of remand will not be considered by the trial
81 court on remand, unless the trial court determines that the interests of justice or judicial
82 efficiency require consideration of issues not specifically identified in the order of remand.
83 Evidentiary hearings will be conducted without a jury and as soon as practicable after remand.
84 The burden of proving a fact will be upon the proponent of the fact. The standard of proof will
85 be a preponderance of the evidence. The trial court will enter written findings of fact
86 concerning the claimed deficient performance by counsel and the claimed prejudice suffered
87 by appellant as a result, in accordance with the order of remand. Proceedings on remand must
88 be completed within 90 days of entry of the order of remand, unless the trial court finds good
89 cause for a delay of reasonable length.

90 ~~[(f) Preparation and transmittal of the record.]~~ **(f) Preparation and transmittal of the record.**
91 At the conclusion of all proceedings before the trial court, the clerk of the trial court will
92 immediately prepare the record of the supplemental proceedings as required by these rules. If
93 the record of the original proceedings before the trial court has been transmitted to the
94 appellate court, the clerk of the trial court will immediately transmit the record of the
95 supplemental proceedings upon preparation of the supplemental record. If the record of the
96 original proceedings before the trial court has not been transmitted to the appellate court, the
97 clerk of the court will transmit the record of the supplemental proceedings upon the

98 preparation of the entire record.

99 [~~(g) Appellate court determination.~~] **(g) Appellate court determination.** Errors claimed to
100 have been made during the trial court proceedings conducted pursuant to this rule are
101 reviewable under the same standards as the review of errors in other appeals. The findings of
102 fact entered pursuant to this rule are reviewable under the same standards as the review of
103 findings of fact in other appeals.

104 **(h) Capital case with death sentence.** If a criminal case is a capital case with a sentence of
105 death, the court may not remand the criminal case under this rule to the trial court for entry of
106 findings of fact on a claim of ineffective assistance of counsel.

107 Section 2. **Rule 27**, Utah Rules of Criminal Procedure is amended to read:

108 **Rule 27 . Stays of sentence pending motions for new trial or appeal from courts**
109 **of record.**

110 **(a) Staying sentence terms other than incarceration.**

111 [~~(a)(1) A sentence of death is stayed if a motion for a new trial, an appeal or a petition~~
112 ~~for other relief is pending.]~~

113 **(1) Stay of a sentence of death.**

114 (A) Except as provided in this paragraph (a)(1), a court may not stay or suspend the
115 execution of a sentence of death.

116 (B) A court must issue a temporary stay of a sentence of death when:

117 (i) a timely motion for a new trial is filed;

118 (ii) the judgment is appealed;

119 (iii) the judgment is automatically reviewed as described in Utah Code section
120 76-3-207;

121 (iv) the individual sentenced to death files a first petition for postconviction relief
122 after a direct appeal;

123 (v) the individual sentenced to death files a timely notice of appeal from a final
124 order of a first petition for postconviction relief;

125 (vi) the individual sentenced to death is appointed counsel to represent the
126 individual in an action on a first petition for postconviction relief;

127 (vii) counsel enters an appearance to represent the individual sentenced to death in
128 an action for a first petition for postconviction relief; or

129 (viii) the court finds that an individual sentenced to death is pregnant.

130 (C) (i) A court may only grant a temporary stay upon a petition to determine whether
131 an individual sentenced to death is incompetent to be executed if there are circumstances

132 beyond the court's control that prevent the court from ruling on the petition before the
133 scheduled execution date.

134 _____ (ii) If a court finds an individual sentenced to death is incompetent to be executed
135 and the court has not issued a temporary stay under this rule, the court must issue a temporary
136 stay of the execution of the sentence of death.

137 _____ (iii) If a court finds an individual sentenced to death is competent to be executed,
138 the Utah Supreme Court may not issue a temporary stay of an execution unless a stay is
139 necessary to rule on an appeal or a petition for extraordinary relief before the scheduled
140 execution date.

141 _____ (iv) If the court issues a stay under this paragraph (a)(1)(C), the stay is
142 automatically lifted upon a finding that the individual is competent to be executed.

143 _____ (D) A court may not issue a temporary stay of a sentence of death when the
144 individual sentenced to death files a petition for postconviction relief, or a timely notice of
145 appeal from a final order on the petition, after a first petition of postconviction relief has been
146 denied or dismissed, unless the court finds all of the following:

147 _____ (i) the claims would not be barred under Utah Code section 78B-9-106;

148 _____ (ii) the claims are potentially meritorious; and

149 _____ (iii) the petition or appeal may not be reasonably disposed of before the execution
150 date.

151 _____ (E) If a court issued a temporary stay under paragraph (a)(1)(B)(iii), the court must
152 vacate the stay when the automatic review of the defendant's sentence is concluded.

153 _____ (F) If a court issued a temporary stay under paragraph (a)(1)(B)(vi) or (vii), the court
154 must vacate the stay if a petition for postconviction relief is not filed before the statute of
155 limitations passes under Utah Code section 78B-9-107.

156 _____ (G) If a court issued a temporary stay under paragraph (a)(1)(B)(viii), the court must
157 vacate the stay when the court finds that the individual is no longer pregnant.

158 _____ (H) Except as provided in paragraph (a)(1)(G) or (H), a stay issued by a court under
159 this paragraph (a)(1) automatically expires upon the entry of a final order disposing of the
160 action that triggered the stay.

161 _____ (I) [The] Upon any stay issued under this paragraph (a)(1), the defendant shall remain
162 in the custody of the warden of the Utah State Prison until the appeal or petition for other relief
163 is resolved.

164 _____ **[(a)](2) Stay upon an appeal by the prosecution.** When an appeal is taken by the
165 prosecution, a stay of any order of judgment in favor of the defendant may be granted by the

166 court upon good cause pending disposition of the appeal.

167 [(a)](3) **Stay for a new trial or appeal.** Upon the filing of a motion for a new trial or a
168 notice of appeal, and upon motion of the defendant, the court may stay any sentenced amount
169 of fines, conditions of probation (other than incarceration) pending disposition of the motion
170 for a new trial or appeal, upon notice to the prosecution and a hearing if requested by the
171 prosecution.

172 [(a)](4) **Appeal.** A party dissatisfied with the trial court's ruling on such a motion may
173 petition for relief in the court with appellate jurisdiction.

174 (b) **Staying sentence terms of incarceration.** A defendant sentenced, or required as a term of
175 probation, to serve a period of incarceration in jail or in prison, shall be detained, unless
176 released by the court in conformity with this rule.

177 [(b)](1) **In general.** Before a court may release a defendant after the filing of a motion for
178 a new trial or notice of appeal, the court must:

179 [(b)(1)](A) issue a certificate of probable cause; and

180 [(b)(1)](B) determine by clear and convincing evidence that the defendant:

181 [(b)(1)(B)](i) is not likely to flee; and

182 [(b)(1)(B)](ii) does not pose a danger to the physical, psychological, or financial
183 and economic safety or well-being of any other individual or the community if released under
184 any conditions as set forth in [subsection] paragraph (c).

185 [(b)](2) A defendant shall file a written motion in the trial court requesting a stay of the
186 sentence term of incarceration.

187 [(b)(2)](A) That motion shall be accompanied by a copy of the filed motion for a new
188 trial or notice of appeal; a written application for a certificate of probable cause; and a
189 memorandum of law. The memorandum shall identify the issues to be presented in the motion
190 for a new trial proceedings or on appeal and support the defendant's position that those issues
191 raise a substantial question of law or fact reasonably likely to result in reversal, an order for a
192 new trial or a sentence that does not include a term of incarceration in jail or prison. The
193 memorandum shall also address why clear and convincing evidence exists that the defendant is
194 not a flight risk and that the defendant does not pose a danger as outlined in paragraph
195 (b)(1)(B)(ii).

196 [(b)(2)](B) A copy of the motion, the application for a certificate of probable cause
197 and supporting memorandum shall be served on the prosecuting attorney. An opposing
198 memorandum may be filed within 14 days after receipt of the application, or within a shorter
199 time as the court deems necessary. A hearing on the application shall be held within 14 days

200 after the court receives the opposing memorandum, or if no opposing memorandum is filed,
201 within 14 days after the application is filed with the court.

202 [(b)](3) The court shall issue a certificate of probable cause if it finds that the motion for
203 a new trial or appeal:

204 [(b)](3)(A) is not being taken for the purpose of delay; and

205 [(b)](3)(B) raises substantial issues of law or fact reasonably likely to result in
206 reversal, an order for a new trial or a sentence that does not include a term of incarceration in
207 jail or prison.

208 [(b)](4) If the court issues a certificate of probable cause it shall order the defendant
209 released if it finds that clear and convincing evidence exists to demonstrate that the defendant
210 is not a flight risk and does not pose a danger as outlined in paragraph (b)(1)(B)(ii) if released
211 under any of the conditions set forth in [subsection] paragraph (c).

212 [(b)](5) The court ordering release pending determination of a motion for a new trial or
213 appeal under [subsection] paragraph (b)(4) shall order release on the least restrictive reasonably
214 available condition or combination of conditions set forth in [subsection] paragraph (c) that the
215 court determines will reasonably ensure the appearance of the defendant as required and the
216 safety of any other individual, property, and the community.

217 [(b)](6) **Review of trial court's order.** A party dissatisfied with the relief granted or
218 denied under this [subsection] paragraph (b) may petition the court with appellate jurisdiction
219 in which the appeal is pending.

220 [(b)](6)(A) If the petition is filed by the defendant, a copy of the petition, the affidavit
221 and papers filed in support of the original motion shall be served on the Utah Attorney General
222 if the case involves any felony charge, and on the prosecuting attorney if the case involves
223 only misdemeanor charges.

224 [(b)](6)(B) If the petition is filed by the prosecution, a copy of the petition and
225 supporting papers shall be served on defense counsel, or the defendant if the defendant is not
226 represented by counsel.

227 (c) **Conditions of release.** If the court determines that the defendant may be released
228 pending motion for a new trial proceedings or an appeal, [it] the court may release the
229 defendant on the least restrictive reasonably available condition or combination of conditions
230 that the court determines will reasonably ensure the appearance of the defendant as required
231 and the safety of any other individual, property, and the community. The conditions may
232 include, without limitation, that the defendant:

233 [(e)](1) is admitted to appropriate bail;

- 234 [(e)](2) not commit a federal, state or local crime during the period of release;
- 235 [(e)](3) remain in the custody of a designated person who agrees to assume supervision
236 of the defendant and who agrees to report any violation of a release condition to the court, if
237 the designated person is reasonably able to assure the court that the defendant will appear as
238 required and will not pose a danger to the safety of any other person, property, or the
239 community;
- 240 [(e)](4) maintain employment, or if unemployed, actively seek employment;
- 241 [(e)](5) maintain or commence an educational program;
- 242 [(e)](6) abide by specified restrictions on personal associations, place of abode or travel;
- 243 [(e)](7) avoid all contact with the victim or victims of the crime(s), any witness or
244 witnesses who testified against the defendant and any potential witnesses who might testify
245 concerning the offenses if the appeal results in a reversal or an order for a new trial;
- 246 [(e)](8) report on a regular basis to a designated law enforcement agency, pretrial
247 services agency or other agency;
- 248 [(e)](9) comply with a specified curfew;
- 249 [(e)](10) refrain from possessing a firearm, destructive device or other dangerous
250 weapon;
- 251 [(e)](11) refrain from possessing or using alcohol, or any narcotic drug or other
252 controlled substance except as prescribed by a licensed medical practitioner;
- 253 [(e)](12) undergo available medical, psychological or psychiatric treatment, including
254 treatment for drug or alcohol abuse or dependency;
- 255 [(e)](13) execute an agreement to forfeit, upon failing to appear as required, such
256 designated property, including money, as is reasonably necessary to assure the appearance of
257 the defendant as required, and post with the court such indicia of ownership of the property or
258 such percentage of the money as the court may specify;
- 259 [(e)](14) return to custody for specified hours following release for employment,
260 schooling or other limited purposes; and
- 261 [(e)](15) satisfy any other condition that is reasonably necessary to ensure the
262 appearance of the defendant as required and the safety of any other individual, property, and
263 the community.

264 (d) **Amended conditions of release.** The court may at any time for good cause shown amend
265 the order granting release to impose additional or different conditions of release.

266 Section 3. **Effective Date.**

267 As provided in Utah Constitution, Article VIII, Section 4, this resolution takes effect

_ 268 upon a two-thirds vote of all members elected to each house.

TAB 3

Rules 27A, 27B, and 38

Doug Thompson and Bryson King presented proposed amendments to Rules 7, 7A, 27A, 27B, and 38 to the Supreme Court on August 20th. Rules 7 and 7A were approved as final with a November 1st effective date. Rules 27A, 27B, and 38 were sent back to the committee for further revisions.

Minutes: Douglas Thompson and Bryson King communicated that the amendments to rules 27A, 27B, and 38 update the statutory references. Justice Pohlman and Maryt Fredrickson made additional edits for clarity and consistency, in addition to stylistic revisions. Mr. Thompson reviewed each edit with the Court. Justice Pohlman expressed concern that self-represented individuals may not understand the phrase “trial de novo” and recommended the committee explain it using basic plain language. Mr. Thompson will take these rules back to the committee. Mr. Thompson also sought final approval of rules 7 and 7A. There was one comment received from Judge McCullagh indicating a potential system programming limitation related to the required information. The committee believes the changes are not problematic and does not recommend revisions. Justice Pohlman notes that the rule directs the agency that initiated the case to provide specify information but does not indicate how it must be provided. Mr. King confirmed he has been working with the domestic violence coordinator to implement the changes and the information contained in the amendments is necessary for the courts to stay in compliance. Mr. King will submit a programming change request to the CORIS committee. Justice Pohlman offered a motion to approve rules 7 and 7A as final, effective November 1, 2025. Justice Hagen seconded the motion. The motion passed unanimously.

The Committee has been tasked with amending rules 27A, 27B, and 38 to define or explain the terms “trial de novo” and “hearing de novo” using plain language.

Utah R. Cr. Pro. 27A

Rule 27A. Stays pending appeal from a court not of record - Appeals for a trial de novo.

1 (a) Except as outlined in ~~subsection~~ paragraph (d) below, the procedures in this rule
2 ~~shall~~ govern stays of terms of sentences when a defendant files an appeal in a court not
3 of record for a trial de novo ~~pursuant to Utah Code § 78A-7-118(1)~~. As used herein, "trial de
novo" means a new trial conducted as if the original trial had not occurred.

4 (b) Upon the timely filing of a notice of appeal for a trial de novo, the justice court ~~shall~~
5 will:

6 ~~(b)~~(1) order stayed any fine or fee payments until the appeal is resolved; and

7 ~~(b)~~(2) order stayed any period of incarceration, unless:

8 ~~(b)~~(2)(A) at the time of sentencing, the judge court found by a
9 preponderance of the evidence that the defendant posed a danger to
10 another person or the community; or

11 ~~(b)~~(2)(B) the appeal does not appear to have a legal basis.

12 (c) If a stay is ordered, the ~~judge~~ justice court may leave in effect any other terms of
13 probation the ~~judge court~~ justice court deems necessary including:

14 ~~(e)~~(1) continuation of any pre-trial restrictions or orders;

15 ~~(e)~~(2) sentencing protective orders under Utah Code § 77-36-5.1;

16 ~~(e)~~(3) orders that limit or monitor a defendant's drug and alcohol use, including
17 use of an ignition interlock device; and

18 ~~(e)~~(4) requiring defendant's monetary bail to continue until defendant's
19 appearance in the district court. The ~~judge court shall will~~ only order monetary
20 bail to continue if the court finds by clear and convincing evidence that, without
21 such security, the defendant will likely fail to appear at district court.

22 (d) The provisions of this rule do not apply to appeals for trials de novo from
23 convictions for violations of Title 41, Chapter 6a, Part 5, DUI and Reckless Driving, or
24 violations of any local ordinance as described in Utah Code ~~§ section~~ 41-6a-501 ~~(2)(a)(iii)~~.
25 The procedures outlined in Rule 27B shall be used in govern those cases.

26 (e) A party dissatisfied with the findings made by the justice court ~~judge~~ in staying a
27 sentence under this rule ~~shall must~~ utilize the procedure outlined in rule 27B(g) to
28 obtain relief in the district court.

Utah R. Cr. Pro. 27A

Rule 27A. Stays pending appeal from a court not of record - Appeals for a trial de novo.

29 (f) A [justice](#) court may ~~at any time~~ for good cause shown amend its order granting
30 release to impose additional or different conditions of release. However, the justice
31 court may only act under this ~~subsection~~ [paragraph](#) (f) if the district court has not
32 docketed or held any hearings pursuant to this rule.

33 (g) For purposes of this rule, “term of sentence” or “sentence” ~~shall~~ [includes](#) findings of
34 contempt pursuant to Utah Code [§ section](#) 78B-6-301 et seq.

Rule 27B. Stays pending appeal from a court not of record - Hearings de novo, DUI, and reckless driving cases.

1 (a) The procedures in this rule ~~shall be used in determining whether to~~ govern stays of
2 the payment of any fines or periods of incarceration pending the resolution of an appeal
3 for a hearing de novo, ~~pursuant to Utah Code § 78A-7-118(3)~~. This rule ~~shall~~ also
4 governs stays in all appeals involving violations of Title 41, Chapter 6a, Part 5, DUI and
5 Reckless Driving, or violations of any local ordinance as described in Utah Code §
6 41-6a-501 ~~(2)(a)(iii)~~. As used herein, "hearing de novo" means a hearing in which the court
reviews anew an issue previously decided upon by the justice court, as if the original
decision had not been made.

7 **(b) Periods of incarceration of 28 days or less.**

8 ~~(b)~~(1) Unless exempted under ~~subsection~~ paragraph (b)(2), the justice court ~~judge~~
9 ~~shall will~~, upon the filing of a notice of appeal, stay the term of incarceration. The
10 ~~C~~court shall will then order the defendant released on the least restrictive
11 reasonably available condition or combination of conditions in Rule 27(c) that the
12 court determines will reasonably ensure the appearance of the defendant as
13 required and the safety of any other individual, property, and the community.

14 ~~(b)~~(2) However, the justice court ~~shall will~~ not order a defendant released if:

15 ~~(b)~~(2)(A) at the time of sentencing, the court makes a finding that the
16 defendant poses an identifiable risk to the safety of another individual,
17 property, or the community and that the period of incarceration, and no
18 less restrictive reasonably available alternative, is necessary to reduce or
19 eliminate that risk; or

20 ~~(b)~~(2)(B) it enters a written finding that the appeal does not appear to have
21 a legal basis.

22 **(c) Periods of incarceration of longer than 28 days.**

23 ~~(e)~~(1) After, or at the time of, the filing of a notice of appeal, if a stay is desired,
24 the defendant ~~shall must~~ file a written motion with the justice court requesting a
25 stay of a sentence term of incarceration of more than 28 days. That motion ~~shall~~
26 must be accompanied by a memorandum indicating the legal basis for the appeal
27 and that the appeal is not being taken for purposes of delay. The memorandum
28 ~~shall must~~ also address why the defendant is not a flight risk; and why the
29 defendant does not pose a danger to any other person, property, or the
30 community.

31 ~~(e)~~(2) A copy of the motion, and supporting memorandum, ~~shall must~~ be served
32 on the prosecuting attorney. An opposing memorandum may be filed within 7

Rule 27B. Stays pending appeal from a court not of record - Hearings de novo, DUI, and reckless driving cases.

33 seven days after receipt of the application, or shorter time as the court deems
34 necessary. A hearing on the application ~~shall~~ will be held within ~~7~~ seven days of
35 the court receiving either the opposing memorandum or an indication that no
36 opposing memorandum will be filed. If no opposing memorandum is filed, the
37 hearing will be held within 14 days after the application is filed with the court.

38 ~~(e)~~(3) The justice court ~~shall~~ will order the defendant released unless it finds by a
39 preponderance of the evidence that:

40 ~~(e)~~(3)(A) the defendant is a flight risk;

41 ~~(e)~~(3)(B) the defendant would pose a danger to any other person,
42 property, or the community if released under any of the conditions set
43 forth in Rule 27(c); or

44 ~~(e)~~(3)(C) the appeal does not appear to have a legal basis.

45 ~~(e)~~(4) The court ordering release pending appeal under ~~subsection~~ paragraph
46 (c)(3) ~~shall~~ will order that release on the least restrictive reasonably available
47 condition or combination of conditions set forth in Rule 27(c) that the court
48 determines will reasonably ensure the appearance of the defendant as required
49 and the safety of any other individual, property, and the community.

50 **(d) Fine and Fee payments.** Fine and fee payments shall be stayed pending resolution
51 of the appeal.

52 **(e) Other terms of sentence or probation.** Upon motion of the defendant, the justice
53 court may stay any other term of sentence related to conditions of probation (other than
54 incarceration) pending disposition of the appeal, upon notice to the prosecution and a
55 hearing if requested by the prosecution.

56 (f) A justice court may ~~at any time~~ for good cause shown amend its order granting
57 release to impose additional or different conditions of release. However, the justice
58 court may only act under this ~~subsection~~ paragraph (f) if the district court has not
59 docketed or held any hearings pursuant to this rule.

60 (g) A party dissatisfied with the relief granted, denied or modified under this rule may
61 petition the district court judge assigned to the appeal for relief.

62 ~~(g)~~(1) Such petition ~~shall~~ must be in writing and accompanied by the notice of
63 appeal filed in the justice court, the original motion for a stay and accompanying

Rule 27B. Stays pending appeal from a court not of record - Hearings de novo, DUI, and reckless driving cases.

64 papers filed in the justice court, if any, and any orders or findings of the justice
65 court on the issue. The petition ~~shall~~ must be served on the opposing party.

66 ~~(g)~~(2) The district court ~~shall~~ will schedule a hearing within ~~7~~ seven days of its
67 receipt of the petition, or a shorter time if the court determines justice requires.
68 The court ~~shall~~ will allow the opposing party an opportunity to file a
69 memorandum in opposition to the petition, and to be present and heard at the
70 hearing.

71 ~~(g)~~(3) The district court ~~shall~~ will use the same presumptions, evidentiary
72 burdens and procedures outlined in ~~subsections~~ paragraphs (b), (c) and (d) of
73 this rule in determining whether it should stay any terms of the justice court's
74 sentence during the pendency of the appeal.

75 (h) For purposes of this rule, "term of sentence" or "sentence" ~~shall~~ includes:

76 ~~(h)~~(1) any terms or orders of the justice court emanating from a plea held in
77 abeyance pursuant to Utah Code § 77-2(a)-1 et seq.; and

78 ~~(h)~~(2) findings of contempt pursuant to Utah Code § 78B-6-301 et seq.

Rule 38 Appeals from justice court to district court.

1 (a) Appeal of a judgment or order of the justice court is as provided in Utah Code §
2 78A-7-118. A case appealed from a justice court must be heard ~~in~~ by a district
3 court~~house~~ judge sitting ~~located~~ in the same county as the justice court from which the
4 case is appealed. In counties with multiple district courthouse locations, the presiding
5 judge of the district court will determine the appropriate location for the ~~hearing of~~
6 appeals.

7 (b) The notice of appeal.

8 ~~(b)~~(1) A notice of appeal from an order or judgment must be filed within 28 days
9 of the entry of that order or judgment.

10 ~~(b)~~(2) Contents of the notice. The notice required by this rule must be in the form
11 of, or substantially similar to, that provided in the appendix of this rule. At a
12 minimum the notice must contain:

13 ~~(b)~~(2)(A) a statement of the order or judgment being appealed and the
14 date of entry of that order or judgment;

15 ~~(b)~~(2)(B) the current address at which the appealing party may receive
16 notices concerning the appeal;

17 ~~(b)~~(2)(C) a statement as to whether the defendant is in custody because of
18 the order or judgment appealed; and

19 ~~(b)~~(2)(D) a statement that the notice has been served on the opposing
20 party and the method of that service.

21 ~~(b)~~(3) Deficiencies in the form of the filing will not cause the court to reject the
22 filing. They may, however, impact the efficient processing of the appeal.

23 (c) Motion to reinstate period for filing appeal.

24 ~~(c)~~(1) Upon a showing that a defendant was deprived of the right to appeal, the
25 justice court ~~must~~ will reinstate the 28-day period for filing an appeal. A
26 defendant seeking such reinstatement must file a written motion in the justice
27 court and serve the prosecuting entity. The court ~~must~~ will appoint counsel if the
28 defendant qualifies for court-appointed counsel. The prosecutor must have 21
29 days after service of the motion to file a written response. If the prosecutor
30 opposes the motion, the justice court ~~must~~ will set a hearing at which the parties
31 may present evidence. If the justice court finds by a preponderance of the

Rule 38 Appeals from justice court to district court.

32 evidence that the defendant has demonstrated that the defendant was deprived
33 of the right to appeal, ~~it must~~ the court will enter an order reinstating the time for
34 appeal. The defendant's notice of appeal must be filed with the justice court clerk
35 ~~of the justice court~~ within 28 days after the date of entry of the order.

36 ~~(e)~~(2) Absent a showing of excusable neglect, a motion to reinstate may be filed
37 no later than six months after the original time for appeal has expired.

38 **(d) Duties of the justice court.**

39 (1) ~~Duties of the justice court.~~ Within ~~7~~ seven days of receiving the notice of
40 appeal, the justice court ~~must~~ will transmit to the appropriate district court an
41 appeal packet containing:

42 ~~(d)(1)~~(A) the notice of appeal;

43 ~~(d)(1)~~(B) the docket;

44 ~~(d)(1)~~(C) the information or citation; and

45 ~~(d)(1)~~(D) the judgment and sentence, if any.

46 ~~(d)~~(2) Upon request from the district court the justice court ~~must~~ will transmit to
47 the district court any other orders and papers filed in the case.

48 **(e) Duties of the district court.**

49 ~~(e)~~(1) Upon receipt of the appeal packet from the justice court, the district court
50 ~~must~~ will hold a scheduling conference to determine ~~what the~~ issues ~~must be~~
51 ~~resolved by the~~ on appeal. The district court ~~must~~ will send notices to the
52 appellant at the address provided on the notice of appeal. Notices to the other
53 party must be served to the address provided in the justice court docket for that
54 party.

55 ~~(e)~~(2) If the defendant is in custody because of the matter appealed, the district
56 court ~~must~~ will hold the conference within ~~7~~ seven days of the receipt of the
57 appeals packet. If the defendant is not in custody because of the matter appealed,
58 the court ~~must~~ will hold the conference within 28 days of receipt of the appeals
59 packet.

Rule 38 Appeals from justice court to district court.

60 **(f) District court procedures for trials de novo.** ~~An~~ The following procedures apply to
61 an appeal by a defendant for a trial de novo, as that term is defined in Rule 27A(a) ~~pursuant~~
62 ~~to Utah Code § 78A-7-118(1) must~~
~~be accomplished by the following procedures:~~

63 ~~(f)(1)~~ If the defendant elects to go to trial, the district court will determine what
64 number and level of offenses the defendant is facing.

65 ~~(f)(2)~~ Discovery, the trial, and any pre-trial evidentiary matters the court deems
66 necessary, will be held in accordance with these rules.

67 ~~(f)(3)~~ After the trial, the district court ~~must~~ will, if appropriate, sentence the
68 defendant and enter judgment in the case as provided in these rules and
69 otherwise by law.

70 ~~(f)(4)~~ When entered, the judgment of conviction or order of dismissal serves to
71 vacate the judgment or orders of the justice court and becomes the judgment of
72 the case.

73 ~~(f)(5)~~ A defendant may resolve an appeal by waiving trial and compromising the
74 case by any process authorized by law to resolve a criminal case.

75 ~~(f)(5)(A)~~ Any plea must be taken in accordance with these rules.

76 ~~(f)(5)(B)~~ The court ~~must~~ will proceed to sentence the defendant or enter
77 such other orders required by the particular plea or disposition.

78 ~~(f)(5)(C)~~ When entered, the district court's judgment or other orders
79 vacate the orders or judgment of the justice court and become the order or
80 judgment of the case.

81 ~~(f)(5)(D)~~ A defendant who moves to withdraw a plea entered pursuant to
82 this section paragraph (f) may only seek to withdraw it pursuant to the
83 provisions of Utah Code § 77-13-6.

84 ~~(f)(6)~~ **Other dispositions.** A defendant, at a point prior to entering a plea
85 admitting guilt or a no contest plea, or prior to commencement of trial, may
86 choose to withdraw the appeal and have the case remanded to the justice court.
87 Within 14 days of the defendant notifying the court of such an election, the
88 district court ~~shall~~ will remand the case to the justice court.

89 **(g) District court procedures for hearings de novo.** If ~~the appeal~~ a party seeks a de
90 novo hearing, as that term is defined in Rule 27B(a) ~~pursuant to Utah Code § 78A-7-118(3)~~
~~or (4);~~

Rule 38 Appeals from justice court to district court.

91 ~~(g)~~(1) the district court ~~must~~ will conduct such hearing and make the appropriate
92 findings or orders, and

93 ~~(g)~~(2) within 14 days of entering its findings or orders, the district court ~~must~~ will
94 remand the case to the justice court, unless the case is disposed of by the findings
95 or orders, or the district court retains jurisdiction ~~pursuant to § 78A-7-118(6)~~.

96 **(h) Retained jurisdiction.** In cases where the district court retains jurisdiction after
97 disposing of the matters on appeal, the district court ~~must~~ will order the justice court to
98 forward all monetary bail, other security, or revenues received by the justice court to
99 the district court for disposition. The justice court ~~must~~ will transmit such monies or
100 securities within 21 days of receiving the order.

101 **(i) Other bases for remand.** The district court may also dismiss the appeal and remand
102 the case to the justice court if it finds that the defendant has abandoned the appeal.

103 **(j) Justice court procedures on remand.** Upon receiving a remanded case, the justice
104 court ~~must~~ will set a review conference to determine what, if any, proceedings ~~need be~~
105 ~~taken~~ are needed. If the defendant is in custody because of the case being considered,
106 such hearing must be had within five days of receipt of the order of remand. Otherwise,
107 the review conference should be had within 28 days. The court ~~must~~ will send notice of
108 the review conference to the parties at the addresses contained in the notice of appeal,
109 unless those have been updated by the district court.

110 **(k)** During the pendency of the appeal, and until a judgment, order of dismissal, or
111 other final order is entered in the district court, the justice court will retain jurisdiction
112 to monitor terms of probation or other consequences of the plea or judgment, unless
113 those orders or terms are stayed pursuant to Rule 27A.

114 **(l) Reinstatement of dismissed appeal.**

115 ~~(l)~~(1) An appeal dismissed pursuant to ~~subsection~~ paragraph (i) may be
116 reinstated by the district court ~~upon~~ motion of the defendant for:

117 ~~(l)~~(1)(A) mistake, inadvertence, surprise, excusable neglect; or

118 ~~(l)~~(1)(B) fraud, misrepresentation, or misconduct of an adverse party.

119 ~~(l)~~(2) The motion must be made within a reasonable time after entry of the order
120 of dismissal or remand.

TAB 4

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

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

- 4 (1) of the charge in the information or indictment and furnish a copy;
- 5 (2) of any affidavit or recorded testimony given in support of the information and
6 how to obtain them;
- 7 (3) of the right to retain counsel or have counsel appointed by the court without
8 expense if unable to obtain counsel;
- 9 (4) of rights concerning pretrial release;
- 10 (5) that the defendant is not required to make any statement, and that any statement
11 the defendant makes may be used against the defendant in a court of law; and
- 12 (6) that a defendant who is not a United States citizen may request that an attorney
13 for the government or law enforcement official notify a consulate officer from the
14 defendant's country of nationality that the defendant has been arrested, and that
15 even without the defendant's request, the consular may be notified.

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

23 (c) **Pretrial status order.** Except as provided in paragraph (c)(1), the court must issue a
24 pretrial status order at an initial appearance. Parties should be prepared to address this
25 issue, including complying with statutory victim notice requirements.

26 (1) At an initial appearance, the court must extend the temporary pretrial status
27 order issued under Rule 6 and delay issuing a pretrial status order if:

- 28 (A) a pretrial detention hearing is scheduled in accordance with Rule 7.5;
- 29 (B) either party requests a delay; or
- 30 (C) the court finds good cause to delay issuing a pretrial status order.

31 (2) The pretrial status order must:

32 (A) release the defendant on the defendant's own recognizance until the
33 case is adjudicated;

34 (B) designate one or more terms and conditions of the defendant's release
35 until the case is adjudicated; or

36 (C) order the defendant be detained until the case is adjudicated.

37 (3) The court issuing a pretrial status order may not give any deference to the
38 findings, conclusions, and order of a temporary pretrial status order.

39 (4) If the court issues an order detaining the individual, the court will make
40 sufficiently detailed finding of fact on the risk of substantial danger or flight from
41 the court's jurisdiction to enable a reviewing court to ensure that its determination
42 reasonably considered all of the evidence presented to it.

Commented [DF1]: 77-20-205(10)

43 (4~~5~~) A motion to modify the pretrial status order may be made by either party at
44 any time upon notice to the opposing party sufficient to permit the opposing party
45 to prepare for a hearing on the motion to modify and to permit each ~~alleged~~ victim
46 to be notified and be present.

Commented [DF2]: The statutory definition of victim includes alleged victim.

47 (A) Motions to modify a pretrial status order may be made only upon a
48 showing that there has been a material change in circumstances.

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49 [note: we could include a reference to 77-20-201(10), we could also
50 include the list here, but it's sort of unwieldy to add more indented
51 paragraphs]

52
53 (B) If the court fixes a financial condition as a condition of release and the
54 defendant has not secured release within seven days of the issuance of the
55 order, the defendant may move to modify the order. The court will apply a
56 rebuttable presumption that the defendant does not have the ability to pay
57 the financial condition.

Commented [DF3]: 77-20-207(2), reworded for clarity

58 (~~B~~C) A hearing on a motion to modify a pretrial status order may be held in
59 conjunction with a preliminary hearing or any other pretrial hearing.

60 (6) A request for pretrial release at an initial appearance does not constitute a
61 pretrial detention hearing unless the request has been fully presented to and ruled
62 upon by the court.

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Commented [DF4]: 77-20-205(2)(d)

63 (d) Release conditions.

64 (1) When imposing the terms and conditions of a defendant's release, a court must
65 impose only those terms and conditions that are reasonably available and necessary

66 to reasonably ensure the defendant’s appearance, the safety of any witnesses or
67 victims, the safety and welfare of the public, and the non-obstruction of the
68 criminal justice process. The court may not base a determination about pretrial
69 release solely on the seriousness or type of offense that the individual is arrested for
70 or charged with, unless the individual is arrested for or charged with a capital
71 felony.

Commented [DF5]: From 2024 session, 77-20-205(9)

72 (2) A court determining what terms and conditions of release to impose must
73 consider any identified services offered by a local government’s pretrial services
74 program and may not require the local government to provide services that are not
75 currently available. Many conditions of release will not require resources from
76 local governments and a court may impose any such condition subject to the
77 limitations of (d)(1).

78 (3) If the court determines that a financial condition, other than an unsecured bond,
79 is necessary to impose as a condition of release, the court ~~shall~~ will set a single
80 amount for each case and ~~shall~~ will consider both the financial condition schedule
81 in statute and the defendant’s ability to pay when determining the amount of the
82 financial condition. If a bail commissioner or temporary pretrial status order
83 previously fixed a financial condition for the defendant, the court may not give any
84 deference to that action or the amount of the financial condition.

85 (A) ~~Notwithstanding this subsection, w~~When a court imposes a financial
86 condition for a case in which a bail commissioner or temporary pretrial
87 status order previously fixed a financial condition and the defendant has not
88 secured release by the time the court issues a pretrial status order, the court
89 must consider whether the amount exceeded the defendant’s ability to pay.

90 (e) **Continuances.** Upon application of either party and a showing of good cause, the court
91 may allow up to a seven-day continuance of the hearing-initial appearance to allow for
92 preparation, including notification to any victims. The court may allow more than seven
93 days with the defendant’s consent.

94 (f) **Right to preliminary examination.**

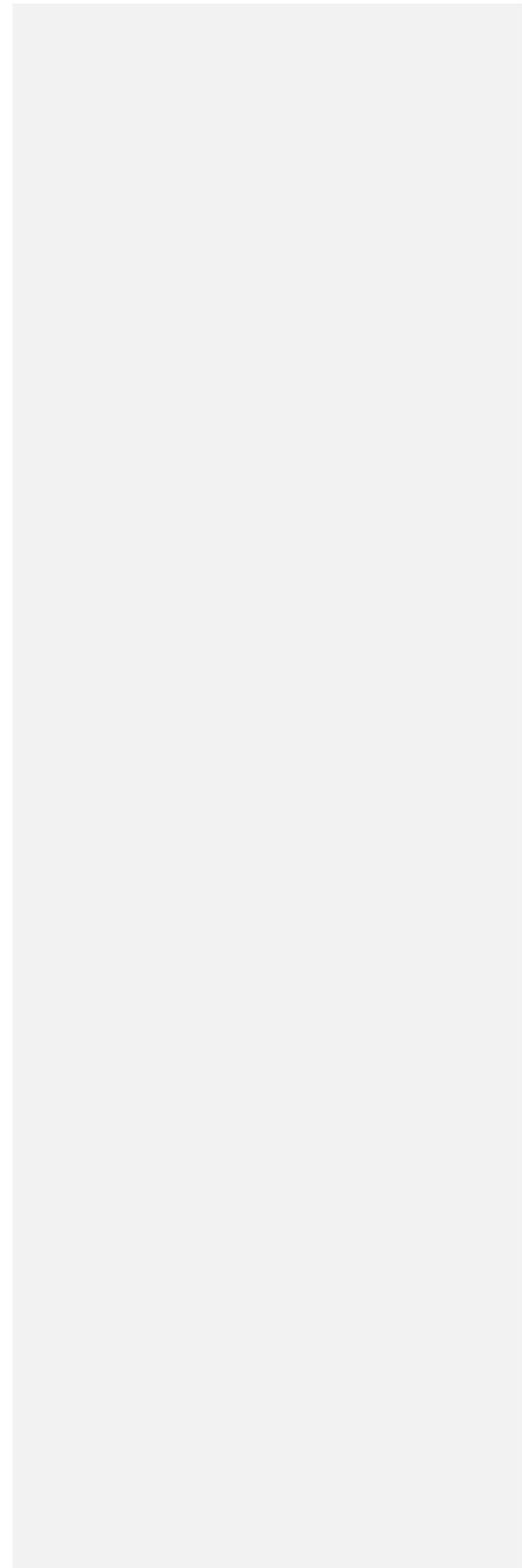
95 (1) The court must inform the defendant of the right to a preliminary examination
96 and the times for holding the hearing. If the defendant waives the right to a
97 preliminary examination, and the prosecuting attorney consents, the court must
98 order the defendant bound over for trial.

99 (2) If the defendant does not waive a preliminary examination, the court must
100 schedule the preliminary examination upon request. The examination must be held
101 within a reasonable time, but not later than 14 days if the defendant is in custody
102 for the offense charged and not later than 28 days if the defendant is not in custody.
103 These time periods may be extended by the magistrate for good cause shown. Upon

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104 consent of the parties, the court may schedule the case for other proceedings before
105 scheduling a preliminary hearing.

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



1 **Rule 7.5. Pretrial detention hearings.**

2 (a) **Applicability.** A prosecutor may file a motion for pretrial detention if the defendant has
3 been charged with one or more offenses eligible for detention under Utah Constitution,
4 Article I, Section 8.

5 (b) **Contents of the motion.** The motion must place the defendant on notice of the basis
6 for the prosecutor’s request. The motion may not omit any material information that is
7 known to the prosecuting attorney to be favorable to the defendant. The motion may
8 include proposed factual findings for the court to adopt.

Commented [DF1]: Threw this in here. I don’t care much one way or the other about the language. It just makes more sense to having something here than starting the paragraph with the next sentence.

9 (b) **Timing.** Upon receipt of a motion for pretrial detention, the court ~~shall~~ will set a
10 pretrial detention hearing to be held at either the initial appearance or between seven and
11 14 days after the defendant’s arrest. A defendant has the right to be represented by counsel
12 at the pretrial detention hearing and, if indigent, has the right to court-appointed counsel.

Commented [DF2]: Section 77-20-206(1)(b), (c).

13 (1) If the court is unable to hold a detention hearing within 14 days of the
14 defendant’s initial appearance, the court must make a good faith effort to identify
15 another court who has the ability to conduct the detention hearing within 15 days of
16 the initial appearance.

Commented [DF3]: Not sure if this is better here or in Rule 7. This is based on section 77-20-206(2)

17 (c) **Burdens of Proof.** At the detention hearing, the prosecutor has the burden of proof and
18 proceeds first. The prosecutor must show that there is substantial evidence to support the
19 offense eligible for detention, and for a non-capital offense one or more of the following:

Commented [DF4]: 77-20-206(2)(b).

20 (1) for a motion to detain based on a felony committed while on parole, probation,
21 or free while awaiting trial on a previous felony charge the status of that previous
22 felony;

23 (2) for a motion to detain based on a felony, clear and convincing evidence that:

24 (A) the defendant constitutes a substantial danger to any other individual or
25 the community; or

26 (B) the defendant is likely to flee if released; or

27 (3) for a motion to detain based on a domestic violence offense, clear and
28 convincing evidence that the defendant would constitute a substantial danger to the
29 victim;

30 (4) for a motion to detain based on driving under the influence or driving with a
31 measurable controlled substance in the body:

32 (A) substantial evidence the offense resulted in death or serious bodily
33 injury to an individual; and

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34 (B) clear and convincing evidence that the person would constitute a
35 substantial danger to the community if released;

36 (5) for a motion to detain based on violation of a pretrial status order, clear and
37 convincing evidence that the defendant violated the terms and conditions of release
38 and that no other terms or conditions can reasonably ensure the defendant's
39 appearance, the safety of any witnesses or victims, the safety and welfare of the
40 public, and the non-obstruction of the criminal justice process.

41 (e) A defendant's failure to appear. The court may not hold a defendant without bail
42 solely on the basis of a defendant's failure to appear at a scheduled proceeding.

43 (d) Procedure. Both parties have the opportunity to make arguments and present relevant
44 evidence or information. The court may rely on any reliable record or source, including
45 proffered evidence. The court will allow a victim to be heard at the hearing if the victim
46 wishes to address pretrial detention.

47 (e) Subpoenas. Either party may subpoena witnesses to testify. At the end of a detention
48 hearing, a defendant may ask the court for leave to issue a subpoena compelling the victim
49 to testify, continuing the evidentiary hearing until the conclusion of that testimony. The
50 court may only grant the defendant's request to compel victim testimony if the court finds
51 that the testimony sought:

52 (1) is material to whether the burdens of proof described in paragraph (c) have been
53 met in light of all information which has been presented to the court; and

54 (2) would not unnecessarily intrude on the victim's rights or place an undue burden
55 on the victim.

56 (f) Written Findings. If the court grants the motion for pretrial detention, the court will
57 execute a pretrial status order denying pretrial release and ordering that the defendant be
58 detained while the defendant awaits trial or other resolution of criminal charges. The court
59 will include any written findings in the record. The court may not base its determination
60 solely on the seriousness or type of offense that the individual is charged with, unless the
61 individual is charged with a capital felony.

62 (g) Appeal De Novo from the Justice Court. If a defendant is denied bail or release in
63 justice court after a pretrial detention hearing, the defendant may appeal the denial as a
64 hearing de novo to the district court by filing in the justice court a notice of appeal. The
65 district court must schedule the detention hearing promptly, and no later than 14 days after
66 receipt of the notice of appeal. The justice court's order will remain in effect until the
67 hearing de novo. At the conclusion of the hearing, the district court will remand the case to
68 the justice court for further proceedings unless the parties and the district court agree to
69 have the district court retain jurisdiction.

Commented [DF5]: 77-20-201 lists two other crimes: felony riot, which I didn't include because it is already covered under the general felony catchall. The other is DUI/DMCS if the person was on probation/parole, or currently charged with another DUI/DMCS.

I didn't include the DUI/DMCS provision because it is partly unconstitutional. This provision copies the "felony on felony" provision, extending it to "misdemeanor DUI on misdemeanor DUI." That's pretty squarely not allowed by art I sec 8. Of course, some DUIs are felony DUIs, but if the defendant is charged with a felony DUI then the general felony catchall applies.

Commented [DF6]: 77-20-207(6). Not sure if this goes here or in Rule 7 somewhere.

Commented [DF7]: 77-20-205(9). The statute says "arrested for or charged with" and I took out "arrested for" since we're past that point once we're at a detention hearing. This seems to appropriately go in the written findings part since this part of the statute is related to the judge's findings.

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

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

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

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

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

9 (4) of rights concerning pretrial release;

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

12 (6) that a defendant and not a United States citizen may request that an attorney for
13 the government or law enforcement official notify a consulate officer from the
14 defendant's country of nationality that the defendant has been arrested, and that
15 even without the defendant's request, the consular may be notified.

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

23 (c) **Pretrial status order.** Except as provided in paragraph (c)(1), the court must issue a
24 pretrial status order at an initial appearance. Parties should be prepared to address this
25 issue, including complying with [statutory](#) victim notice requirements.

26 (1) At an initial appearance, the court must extend the temporary pretrial status
27 order issued under Rule 6 and delay issuing a pretrial status order if:

28 (A) a pretrial detention hearing is scheduled in accordance with Rule 7.5;

29 (B) either party requests a delay; or

30 (C) the court finds good cause to delay issuing a pretrial status order.

31 (2) The pretrial status order must:

32 (A) release the defendant on the defendant’s own recognizance until the
33 case is adjudicated;

34 (B) designate one or more terms and conditions of the defendant’s release
35 until the case is adjudicated; or

36 (C) order the defendant be detained until the case is adjudicated.

37 (3) The court issuing a pretrial status order may not give any deference to the
38 findings, conclusions, and order of a temporary pretrial status order.

39 ~~(4) If the court issues an order detaining the individual, the court will make~~
40 ~~sufficiently detailed finding of fact on the risk of substantial danger or flight from~~
41 ~~the court’s jurisdiction to enable a reviewing court to ensure that its determination~~
42 ~~reasonably considered all of the evidence presented to it.~~

Commented [DF1]: 77-20-205(10)

43 ~~(4.5) A motion to modify the pretrial status order may be made by either party at~~
44 ~~any time upon notice to the opposing party sufficient to permit the opposing party~~
45 ~~to prepare for a hearing on the motion to modify, and to permit each alleged victim~~
46 ~~to be notified and be present.~~

Commented [DF2]: This rule is for justice courts. Victim notice requirements are not required in justice court proceedings (notice attaches to “important criminal hearings” which are felonies). See 77-38-2.

47 (A) Motions to modify a pretrial status order may be made only upon a
48 showing that there has been a material change in circumstances.

49 [note: we could include a reference to 77-20-201(10), we could also
50 include the list here, but it’s sort of unwieldy to add more indented
51 paragraphs]

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53 ~~(B) If the court fixes a financial condition as a condition of release and the~~
54 ~~defendant has not secured release within seven days of the issuance of the~~
55 ~~order, the defendant may move to modify the order. The court will apply a~~
56 ~~rebuttable presumption that the defendant does not have the ability to pay~~
57 ~~the financial condition.~~

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Commented [DF3]: 77-20-207(2), reworded for clarity

58 ~~(BC) A hearing on a motion to modify a pretrial status order may be held in~~
59 ~~conjunction with a preliminary hearing or any other pretrial hearing.~~

60 ~~(56) A request for pretrial release at an initial appearance does not constitute a~~
61 ~~pretrial detention hearing unless the request has been fully presented to and ruled~~
62 ~~upon by the court.~~

Commented [DF4]: 77-20-205(2)(d)

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64 (d) Release conditions.

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65 (1) When imposing terms and conditions of a defendant's release, a court must
66 impose only those terms and conditions that are reasonably available and necessary
67 to reasonably ensure the defendant's appearance, the safety of any witnesses or
68 victims, the safety and welfare of the public, and the non-obstruction of the
69 criminal justice process. The court may not base a determination about pretrial
70 release solely on the seriousness or type of offense that the individual is arrested for
71 or charged with.

72 (2) A court determining what conditions of release to impose must consider any
73 identified services offered by a local government's pretrial services program and
74 may not require the local government to provide services that are not currently
75 available. Many conditions of release will not require resources from local
76 governments and a court may impose any such condition subject to the limitations
77 of (d)(1).

78 (3) If the court determines that a financial condition, other than an unsecured bond,
79 is necessary to impose as a condition of release, the court shall set a single amount
80 for each case and ~~shall~~ will consider both the financial condition schedule in statute
81 and the defendant's ability to pay when determining the amount of the financial
82 condition. If a bail commissioner or temporary pretrial status order previously fixed
83 a financial condition for the defendant, the court may not give any deference to that
84 action or the amount of the financial condition.

85 (A) ~~Notwithstanding this subsection, w~~When a court imposes a financial
86 condition for a case in which a bail commissioner or temporary pretrial
87 status order previously fixed a financial condition and the defendant has not
88 secured release by the time the court issues a pretrial status order, the court
89 must consider whether the amount exceeded the defendant's ability to pay.

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

94 (f) **Entering a plea.**

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

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

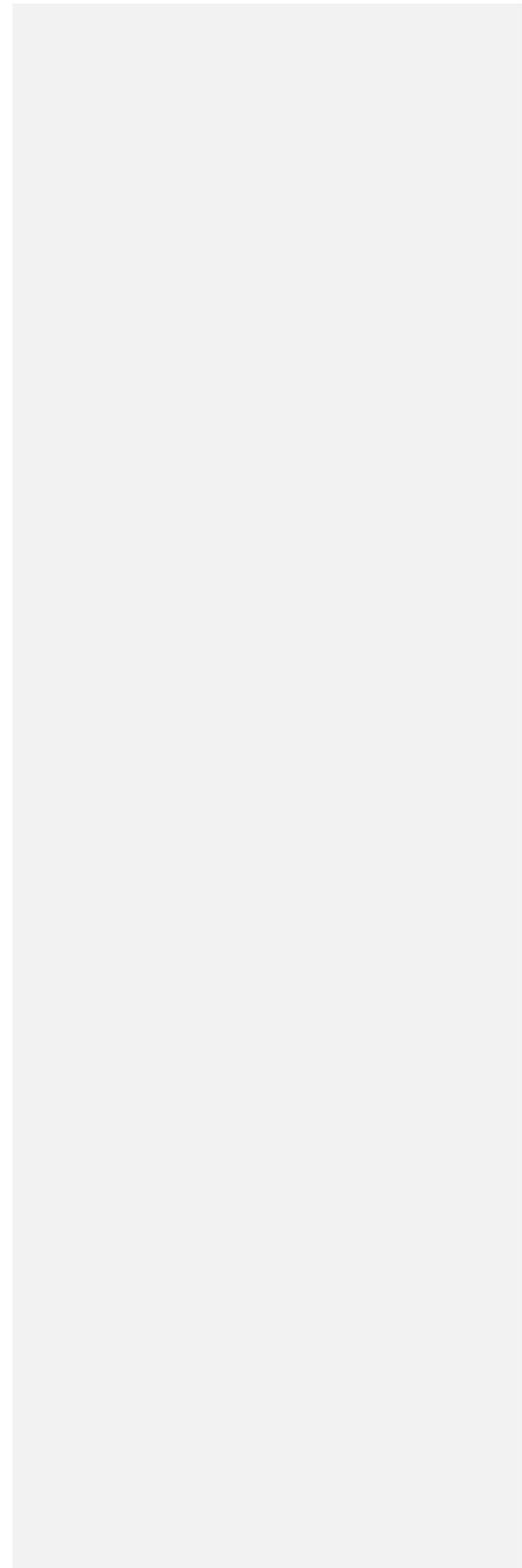
98 (3) If the plea is not guilty, the court must set the matter for trial or a pretrial
99 conference within a reasonable time. Such time should be no longer than 30 days if
100 defendant is in custody.

Commented [DF5]: From this last session, 77-20-205(9)

Commented [DF5R2]: For obvious reasons I omitted the phrase "unless the individual is arrested for or charged with a capital felony"

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101 (4) The court may administratively enter a not guilty plea for the defendant. If the
102 court has appointed counsel, the defendant does not desire to enter a plea, or for
103 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.

(a) Probable cause determination.

(1) A ~~person-defendant~~ arrested without a warrant for an offense must be presented without unnecessary delay before a magistrate for the determination of probable cause and eligibility for a temporary pretrial status order.

(2) The arresting officer, custodial authority, or prosecutor with authority over the most serious offense for which the 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 reasonably available facts known to the affiant that are relevant to a temporary pretrial status order including information identified in Utah Code section 77-20-~~202, including:~~

~~(A) identification information for the defendant;~~

~~(B) the defendant's residential address;~~

~~(C) any pending charges or warrants for the defendant;~~

~~(D) the defendant's probation or parole supervision status;~~

~~(E) whether the defendant was on pretrial release for another offense prior to the arrest for the current offense;~~

~~(F) the defendant's financial circumstances; and~~

~~(G) any ties the defendant has to the community.~~

(3) If available, the magistrate should also be presented the results of a validated pretrial risk assessment tool and any other reliable information that may aid in the magistrate's determination under (a)(4).

(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 issue a temporary pretrial status order that releases the defendant on the defendant's own recognizance, designates one or more terms or conditions to be imposed upon the defendant's release, or orders the defendant to be detained. In making a determination about pretrial release, a magistrate shall impose only those terms and conditions of release that are reasonably available and necessary to reasonably ensure:

Commented [DF1]: The current list in that code section is now twice as long as this list here. I'm not sure that any of it needs to go here anyway.

- 34 (A) the defendant's appearance in court when required;
- 35 (B) that the ~~individual~~ defendant will not obstruct or attempt to obstruct the
- 36 criminal justice process;
- 37 (C) the safety of any witnesses or victims of the offense allegedly
- 38 committed by the ~~individual~~ defendant; and
- 39 (D) the safety and welfare of the public.

41 (5) The magistrate may not base a pretrial status order solely on the seriousness or
42 type of offense that the individual is arrested for unless the individual is arrested for
43 or charged with a capital felony. If the magistrate issues an order detaining the
44 individual, the magistrate will make sufficiently detailed finding of fact on the risk
45 of substantial danger or flight from the court's jurisdiction to enable a reviewing
46 court to ensure that the magistrate's determination reasonably considered all of the
47 evidence presented to it.

Commented [DF2]: 77-20-205(9) - added to the statute in the 2024 session and (10) added in 2025

48 ~~(5)~~ If the magistrate finds the statement does not support probable cause to detain
49 the defendant on all of the submitted charges, the magistrate may determine what,
50 if any, of the charges are supported, and proceed under paragraph (a)(4).

51 ~~(7)~~ If probable cause is not articulated for any charge, the magistrate must return
52 the statement to the submitting authority indicating such.

53 (8) The magistrate must issue a temporary pretrial status order of detention if the
54 defendant is arrested for a felony offense and the magistrate finds:

Commented [DF3]: 77-20-205(1)(c)

55 (A) there is substantial evidence to support the defendant's arrest for the
56 felony offense;

57 (B) the defendant committed the felony offense while on parole or
58 probation for a conviction of a felony offense, or free on bail awaiting trial on a
59 felony offense; and

60 (C) based on information reasonably available to the magistrate, the
61 defendant:

62 (i) is a habitual offender as defined in statute; or

63 (ii) will be a habitual offender as defined in statute if the individual
64 is convicted of the felony offense

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

70 (1098) The ~~arrestee-defendant~~ need not be present at the probable cause
71 determination.

72 (b) **Monetary bail.** If the magistrate determines that a financial condition, other than an
73 unsecured bond, is necessary to impose as a condition of release, the magistrate shall set a
74 single amount for each case and shall consider the defendant's ability to pay when
75 determining the amount of the financial condition if that information is provided to the
76 magistrate at the time of the bail determination. If a bail commissioner previously fixed a
77 financial condition for the defendant, the magistrate may not give any deference to the bail
78 commissioner's action or the amount of the financial condition.

79 (1) Notwithstanding this subsection, when imposing a financial condition in a case
80 that a bail commissioner previously fixed a financial condition and the defendant
81 has not secured release by the time the magistrate issues a temporary pretrial status
82 order, the magistrate must consider whether the amount exceeded the defendant's
83 ability to pay.

84 (c) **Magistrate availability.**

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

89 (2) If a ~~person-defendant~~ is arrested in a county other than where the offense was
90 alleged to have been committed, the arresting authority may present the ~~person~~
91 ~~defendant~~ to a magistrate in the location arrested, or in the county where the crime
92 was committed.

93 (d) **Time for review.**

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

98 (2) During the 24 hours after arrest, for good cause shown an arresting officer,
99 custodial authority, or prosecutor with authority over the most serious offense for
100 which defendant was arrested may request an additional 24 hours to hold a

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101 defendant and prepare the probable cause statement or request for release
102 conditions.

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

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

109 (B) The four-day period in this subsection may be extended upon
110 application of the prosecutor for a period of three more days, for good cause
111 shown. Any prosecutor request beyond an initial three-day extension must
112 identify the number of previous extensions received.

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

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

Utah R. Cr. P. 9A Procedures for persons
arrested pursuant to an arrest warrant

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

4
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 paragraph (a)(1).

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

14
15 (b)(2) When a peace officer or other person arrests a defendant pursuant to a warrant
16 issued for failing to appear for a subsequent court proceeding or for reasons other than
17 those described in paragraph (a)(1), the person must be presented to a magistrate by 3:00
18 pm on the fourth calendar day after the defendant was booked.

19
20 (b)(~~2~~3) If the time periods in ~~this subsection~~ paragraph (b) expire on a weekend or legal
21 holiday, the period expires at 5:00pm on the next business day.

22
23 (c) With the results of a pretrial risk assessment, and having considered the factors that
24 caused the court to issue an arrest warrant in the first place, the magistrate may modify
25 the release conditions.

26
27 (d) Any defendant who remains in custody after the review process must be seen by the
28 court issuing the arrest warrant no later than the third day after the arrest.

29

30 (e) If the arrested person meets the release conditions required by the arrest warrant, the
31 person must be released and instructed to appear as required in the issuing court.

32

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

Proposed changes to Rule 15.5

These changes are meant to reflect a recent decision by the United States Supreme Court reaffirming the constitutional requirements that the State must overcome to allow remote testimony of a child in a child sexual abuse case. *Pitts v. Mississippi*, 607 U.S. ____ (2025). A Mississippi statute required courts to let children testify remotely in child abuse cases. The Court determined that the statute violated its precedent in *Maryland v. Craig*, 497 U. S. 836 (1990). Quoting *Craig* in part, the Court explained: “the Sixth Amendment tolerates screening [for remote testimony] in child-abuse cases only if a court hears evidence and issues a case-specific finding of the requisite necessity.” (cleaned up) (quoting *Craig* at 855).

While Rule 15.5 doesn’t require a court to let a child witness testify remotely, it sets the standard at “good cause.” That is a potentially misleading standard if the parties fail to raise *Maryland v. Craig* in their briefing. Harmonizing Rule 15.5 with *Craig* reduces the risk of both plain error and ineffective assistance reversals.

See proposed changes below:

(b) **Remote transmission of testimony.** In a criminal case concerning a charge of child abuse or of a sexual offense against a child, the court, upon motion of a party and ~~for good cause shown,~~ making findings that the circumstances of the case make it necessary to do so, may order that the testimony of any victim or other witness younger than 14 years of age be taken in a room other than the court room, and be televised by closed circuit equipment to be viewed by the jury in the court room. All of the following conditions shall be observed:

(c) **Remote recording of testimony.** In any criminal case concerning a charge of child abuse or of a sexual offense against a child, the court may order, upon motion of a party and making findings that the circumstances of the case make it necessary to do so~~for good cause shown,~~ that the testimony of any victim or other witness younger than 14 years of age be taken outside the courtroom and be recorded. That testimony is admissible as evidence, for viewing in any court proceeding regarding the charges if the provisions of Subsection (b) are observed, in addition to the following provisions:

TAB 5

1 **Rule 14. Subpoenas**

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

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

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

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

21 **(a)(4) Notwithstanding (a)(3), service of a subpoena to require the attendance of**
22 **a witness or interpreter before a court, magistrate, or grand jury is deemed complete**
23 **upon the filing of an acceptance or waiver of service including an affidavit or**
24 **declaration form completed by the witness or interpreter. A discovery subpoena**
25 **served in a foreign jurisdiction must be served in compliance with Rule 4 and Rule 5 of**
26 **the Utah Rules of Civil Procedure.**¹

¹ Subpoenas may be to appear in court or for discovery purposes (to see documents, for example). Subpoenas for discovery purposes are controlled by the Interstate Depositions and Discovery Act (IDDA), codified in Utah through Utah Code Title 78B Chapter 17. §78B-17-202 requires discovery subpoenas served in other states to comply with rules 4 and 5 of the Rules of Civil Procedure.

27 (a)(4) Written return of service of a subpoena, **an acceptance of service, or a**
28 **waiver of service** must be made promptly to the court and to the person requesting that
29 the subpoena be served, stating the time and place of service, **acceptance, or waiver** and
30 by whom service was made, **accepted, or waived**.

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

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

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

37 (a)(8) If a party has reason to believe a material witness is about to leave the state,
38 will be too ill or infirm to attend a trial or hearing, or will not appear and testify pursuant to a
39 subpoena, the party may, upon notice to the other, apply to the court for an order that the
40 witness be examined conditionally by deposition. The party must file an affidavit providing
41 facts to support the party's request. Attendance of the witness at the deposition may be
42 compelled by subpoena. The defendant shall be present at the deposition and the court
43 will make whatever order is necessary to effect such attendance. A deposition may be used
44 as substantive evidence at the trial or hearing to the extent it would otherwise be
45 admissible under the Rules of Evidence if the witness is too ill or infirm to attend, the party
46 offering the deposition has been unable to obtain the attendance of the witness by
47 subpoena, or the witness refuses to testify despite a court order to do so.

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

49 (b)(1) No subpoena or court order compelling the production of medical, mental
50 health, school, or other privileged records pertaining to a victim shall be issued by or at the
51 request of any party unless the court finds after a hearing, upon notice as provided below,
52 that the records are material and the party is entitled to production of the records sought
53 under applicable rules of privilege, and state and federal law.

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

56 (b)(3) The request for the subpoena or court order shall be filed with the court as
57 soon as practicable, but no later than 28 days before trial, or by such other time as
58 permitted by the court. The request and notice of any hearing shall be served on counsel
59 for the victim or victim's representative and on the opposing party. Service on an
60 unrepresented victim must be facilitated through the prosecutor. The prosecutor must
61 make reasonable efforts to provide a copy of the request for the subpoena to the victim or
62 victim's representative within 14 days of receiving it.

63 (b)(4) If the court makes the required findings under subsection (b)(1), it must issue
64 a subpoena or order requiring the production of the records to the court. The court will then
65 conduct an in camera review of the records and disclose to the defense and prosecution
66 only those portions that the requesting party has demonstrated a right to inspect.

67 (b)(5) Any party issuing a subpoena for non-privileged records, papers or other
68 objects pertaining to a victim must serve a copy of the subpoena upon the victim or victim's
69 representative. Service on an unrepresented victim must be facilitated through the
70 prosecutor. The prosecutor must make reasonable efforts to provide a copy of the
71 subpoena to the victim within 14 days of receiving it. The subpoena may not require
72 compliance in less than 14 days after service on the prosecutor or victim's representative.

73 (b)(6) The court may, in its discretion or upon motion of either party or the victim or
74 the victim's representative, issue any reasonable order to protect the privacy of the victim
75 or to limit dissemination of disclosed records.

76 (b)(7) For purposes of this rule, "victim" and "victim's representative" are used as
77 defined in Utah Code § 77-38-2.

78 (b)(8) Nothing in this rule alters or supersedes other rules, privileges, statutes or
79 caselaw pertaining to the release or admissibility of an individual's medical, psychological,
80 school or other records.

81 (c) **Applicability of Rule 45, Utah Rules of Civil Procedure.** The provisions of Rule
82 45, Utah Rules of Civil Procedure, will govern the content, issuance, objections to, and
83 service of subpoenas to the extent those provisions are consistent with the Utah Rules of
84 Criminal Procedure.