Utah Supreme Court
Rules of Criminal Procedure Committee

Meeting Agenda

Will Carlson, Chair

Location: Webex
Date: May 19, 2026 **Time:** 12:00 p.m. – 2:00 p.m. MST

Approve March 17, 2026, meeting minutes	Tab 1	Will Carlson
State v. Mitton – Requested Procedural Changes to Rule 29(b)	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:
July 21st
September 15th
November 17th

TAB 1

Utah Supreme Court Rules of Criminal Procedure Committee

Meeting Minutes
March 17, 2026

Committee members	Present	Excused	Guests/Staff Present
William Carlson, Chair	**X**		Keisa Williams, Staff
Kent A. Burggraaf	**X**		
Lisa Crawford	**X**		
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: Approval of Minutes and Legislative Update

Mr. Carlson called the meeting to order and turned to approval of the prior meeting minutes. Judge Denise Porter moved to approve the minutes as drafted. Lisa Crawford seconded the motion. Without opposition, the motion carried and the minutes were approved.

Mr. Carlson then provided a brief update regarding legislative developments during the recent session, including Joint Resolution 28 and amendments affecting Rules 27, 203B, and related provisions. No action was taken.

Agenda Item 2: Rule 17 Subcommittee Update

Lori Seppi provided an update regarding Rule 17(K), which addresses materials permitted to accompany the jury during deliberations. Ms. Seppi discussed the impact of *Wyatt v. State*, which

interpreted Rule 17(K) as not expressly prohibiting testimonial exhibits from being sent to the jury room during deliberations. Prior case law generally assumed testimonial exhibits would not accompany the jury, but *Wyatt* indicated that such exclusion was not reflected in the text of the rule.

Discussion followed regarding prior Rule 17 subcommittee assignments and the possibility of consolidating related Rule 17 efforts into a single working group.

Committee members agreed that combining Rule 17(B) and Rule 17(K) efforts could improve consistency and streamline review of the broader rule structure.

Lori Seppi and Lindsey Wheeler were designated as co-chairs of the Rule 17 working group. Ms. Seppi agreed to circulate the memorandum and working materials to the subcommittee.

Agenda Item 3: Rules 207A, 207B, and Rule 38 – Definitions of Trial and Hearing De Novo

Kent Burggraaf presented proposed revisions intended to define "trial de novo" and "hearing de novo" and create consistency among related rules. Mr. Burggraaf explained that the proposal arose following comments from the Utah Supreme Court requesting additional clarification regarding the meaning of de novo proceedings.

Committee members generally agreed that the proposed definitions appeared reasonable but requested additional review through stakeholder groups and justice court attorneys.

The Committee agreed to revisit the proposal at the May meeting and anticipated a possible vote after additional review and discussion.

Agenda Item 4: Rules 7, 7.5, 8, 9, and 15.5 – Bail and Detention Procedures

David Ferguson presented proposed amendments intended to bring various rules governing bail and detention procedures into alignment with statutory changes and prior Supreme Court comments. Mr. Ferguson explained that the current structure creates difficulties because bail proceedings involve multiple procedural stages that are not clearly separated within the rules.

The Committee engaged in extensive discussion regarding whether procedural rules should continue attempting to track statutory amendments as those provisions change over time. Members also discussed separation of powers concerns and whether certain statutory provisions may involve procedural matters traditionally governed by the judiciary.

Members generally agreed that broader conceptual questions should be addressed before finalizing specific language changes. The Committee agreed additional review was necessary and determined not to schedule a final vote for the May meeting.

Members were asked to provide written comments to David Ferguson and copy Alex Jacobson.

Agenda Item 5: Rule 14 – Service of Subpoenas

Mr. Carlson presented draft amendments relating to subpoena service requirements and summarized prior Committee direction regarding service issues.

Discussion focused on proposed language clarifying who may serve subpoenas and creating a process for acceptance or waiver of service. Members discussed practical concerns regarding personal service requirements, especially in criminal cases involving repeated government witnesses.

Mr. Carlson agreed to revise the proposed language based on Committee feedback and place the matter on a future agenda for continued discussion.

Agenda Item 6: Rules 9, 9A, and 15.5 – Remote Testimony

David Ferguson briefly discussed proposed language revisions addressing remote testimony standards following recent case law developments.

Discussion focused on concerns that practitioners may rely solely on rule language without consulting controlling case law. Mr. Ferguson explained that the revisions were intended to clarify applicable standards and reduce the likelihood of unintended stipulations inconsistent with governing authority.

No action was taken.

Agenda Item 7: Batson Subcommittee Update

Lori Seppi advised the Committee that she had been assigned responsibility for the Batson subcommittee and indicated that she would begin circulating materials and initiating research efforts.

No further action was taken at this time.

Adjournment

The meeting adjourned without objection. The next meeting is scheduled for **May 19, 2026**.

TAB 2

Rule 29. Disability and disqualification of a judge or change of venue.

Effective: 4/1/2018

(a) **Disability.**

(a)(1) Substitute judge during trial. If, by reason of death, sickness, or other disability, the judge before whom a trial has begun is unable to continue with the trial, any other judge of that court or any judge assigned by the presiding officer of the Judicial Council, upon certifying that the judge is familiar with the record of the trial, may, unless otherwise disqualified, proceed with and finish the trial, but if the assigned judge is satisfied that neither the judge nor a substitute judge can proceed with the trial, the judge may grant a new trial.

(a)(2) Substitute judge after guilty verdict.If, by reason of death, sickness, or other disability, the judge before whom a defendant has been tried is unable to perform the duties required of the court after a verdict of guilty, any other judge of that court or any judge assigned by the presiding officer of the Judicial Council may perform those duties.

(b) **Disqualification.**

(b)(1) Motion to disqualify.

(b)(1)(A) A party to any action or the party's attorney may file a motion to disqualify a judge. The motion shall be accompanied by a certificate that the motion is filed in good faith and shall be supported by an affidavit stating facts sufficient to show bias or prejudice, or conflict of interest.

(b)(1)(B) The motion shall be filed after commencement of the action, but not later than 21 days after the last of the following:

(b)(1)(B)(i) assignment of the action or hearing to the judge;

(b)(1)(B)(ii) appearance of the party or the party's attorney; or

(b)(1)(B)(iii) the date on which the moving party learns or with the exercise of reasonable diligence should have learned of the grounds upon which the motion is based.

If the last event occurs fewer than 21 days prior to a hearing, the motion shall be filed as soon as practicable.

(b)(1)(C) Signing the motion or affidavit constitutes a certificate under Rule 11 of the Utah Rules of Civil Procedure and subjects the party or attorney to the procedures and sanctions of Rule 11. No party may file more than one motion to disqualify in an action.

(b)(1)(D) The other parties to the action may not file an opposition to the motion and if any response is filed it will not be considered. The moving party need not file a Request to Submit for Decision under Rule 12. The motion will be submitted for decision upon filing.

(b)(2) Reviewing judge; reassignment.

(b)(2)(A) The judge against whom the motion and affidavit are directed shall, without further hearing, enter an order granting the motion or certifying the motion and affidavit to a reviewing judge. The judge shall take no further action in the case until the motion is decided. If the judge grants the motion, the order shall direct the presiding judge of the court to assign another judge to the action or hearing. Assignment in justice court cases will be in accordance with Utah Code of Judicial Administration Rule 9-109. The presiding judge of the court, any judge of the district, or any judge of a court of like jurisdiction, may serve as the reviewing judge.

(b)(2)(B) If the reviewing judge finds that the motion and affidavit are timely filed, filed in good faith and legally sufficient, the reviewing judge shall assign another judge to the action or hearing or request the presiding judge to do so. Assignment in justice court cases will be in accordance with Utah Code of Judicial Administration Rule 9-109.

(b)(2)(C) In determining issues of fact or of law, the reviewing judge may consider any part of the record of the action and may request of the judge who is the subject of the motion and affidavit an affidavit responsive to questions posed by the reviewing judge.

(b)(2)(D) The reviewing judge may deny a motion not filed in a timely manner.

(c) **Change of venue.**

(c)(1) Courts of record.

(c)(1)(A) In the courts of record, if a party believes that a fair and impartial trial cannot be had in the court location or in the county where the action is pending, that party may move to have the trial of the case take place with a jury from another county or the case transferred to a court location in a county where a fair trial may be held. Such motion shall be supported by an affidavit setting forth facts.

(c)(1)(B) If the court is satisfied that the representations made in the affidavit required by subsection (c)(1)(A) are true and justify a change of jury pool or location, the court shall enter an order transferring the case, or selecting a jury from a county free from the objection. If the court is not satisfied that the representations justify an alternate jury pool or transfer of the case, the court shall either enter an order denying the motion or order a hearing to receive further evidence with respect to the alleged prejudice and resolve the matter.

(c)(2) Justice courts.

(c)(2)(A) In the justice courts, if a party believes that a fair and impartial trial cannot be had in the court location or in the county where the action is pending, that party may move to have the trial of the case take place with a jury from another county or in a court location where a fair trial may be held. Such motion shall be supported by an affidavit setting forth facts.

(c)(2)(B) If the court is satisfied that the representations made in the affidavit required by subsection (c)(2)(A) are true and justify a change of jury pool or location, the court shall enter an order selecting a jury from a county free from the objection; or directing that trial proceedings be held in a court location free from the objection. If the court is not satisfied that the representations justify an alternate jury pool or relocation of the trial, the court shall either enter an order denying the motion or order a hearing to receive further evidence with respect to the alleged prejudice and resolve the matter.

(c)(3) Timing. A motion filed pursuant to this subsection (c) shall be filed not later than 14 days after the party learns or with the exercise of reasonable diligence should have learned of the grounds upon which the motion is based.

(d) **Documents of record.**When a change of judge or place of trial is ordered all documents of record concerning the case shall, without delay, be transferred or made available in the new location.

2026 WL 1251866

Supreme Court of Utah.

STATE of Utah, Petitioner,

v.

Richard Scott MITTON, Respondent.

No. 20240586

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Heard September 8, 2025

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Filed May 7, 2026 *

First District Court, Box Elder County, The Honorable Spencer D. Walsh, The Honorable Brandon J. Maynard, No. 211100057

Attorneys and Law Firms

Derek E. Brown, Att'y Gen., Connor Nelson, Asst. Solic. Gen., Salt Lake City, for petitioner

Wayne K. Caldwell, Wayman M. Stodart, Logan, for respondent

Associate Chief Justice Pohlman authored the opinion of the Court, in which Chief Justice Durrant, Justice Petersen, Justice Hagen, and Judge Mabey joined.

On Certiorari to the Utah Court of Appeals

Associate Chief Justice Pohlman, opinion of the Court:

INTRODUCTION

***1** ¶1 At the close of the first day of Richard Mitton's trial, the judge overseeing his case discovered and disclosed to the parties that the judge's wife was related to one of the State's witnesses. In the ensuing hours, Mitton moved to disqualify the judge, arguing that the relationship could undermine the public's perception of the court's impartiality.

¶2 As required by rule, the disqualification motion was referred to another judge—in this case, the district's presiding judge—for review. The next morning, and before trial resumed, the presiding judge granted the motion, "vacated the trial," and transferred the case to another judge in the district without affording the parties an opportunity to object. The trial judge then excused the jury and advised counsel and Mitton of the developments. The State later filed an amended information with an enhanced charge and moved for an expedited trial setting with the newly assigned judge.

¶3 Before a subsequent trial could occur, Mitton moved to dismiss the charges against him on the basis that, among other things, Utah's double jeopardy protection barred his retrial. The new judge disagreed. He rejected the motion to dismiss because he concluded that an exception to double jeopardy applied to Mitton's case—that is, there were no reasonable alternatives, so the mistrial and discharge of the jury had been legally necessary. Mitton appealed.

¶4 The court of appeals reversed and decided that the legal necessity exception to double jeopardy did not apply. Relying on our precedent, the court of appeals concluded that the trial court's failure to afford the parties an opportunity to object before declaring a mistrial precluded a finding of legal necessity, regardless of what the circumstances were. And as a result, the court concluded that double jeopardy barred the State from retrying Mitton.

¶5 We granted certiorari to decide whether a failure to afford parties an opportunity to object before declaring a mistrial is dispositive in the legal necessity analysis. We conclude that it is not. Even where parties are not afforded an opportunity to object, if the record reveals that there were no reasonable alternatives to mistrial under the circumstances, the legal necessity exception to double jeopardy applies.

¶6 Accordingly, we reverse the court of appeals' decision ordering dismissal of the charges against Mitton. Because the court of appeals did not address whether there were reasonable alternatives to declaring a mistrial, and because the issue is not before us on certiorari review, we remand to the court of appeals to address that question and to consider, if necessary, any remaining arguments.

BACKGROUND [1]

The Criminal Charges

***2** ¶7 The State charged Mitton with two counts of aggravated assault (domestic violence), which were both classified as third-degree felonies. The charges arose out of an altercation between Mitton and his brother-in-law, Brad,[2] in which Brad allegedly sustained numerous injuries requiring medical attention. Brad's wife (Wife) was present during the incident, and the State identified her as a potential trial witness.

The Trial Court Proceedings

¶8 The Honorable Brandon J. Maynard, who is assigned to the Brigham City courthouse, presided over the first day of Mitton's jury trial. Judge Maynard impaneled and swore in the jury, and the jury heard opening statements and direct testimony from Brad, who began to describe the circumstances leading to his altercation with Mitton.

¶9 After dismissing the jury for the day, Judge Maynard disclosed to the parties that he recognized and was related by marriage to one of the witnesses in the courtroom. Specifically, he recognized Wife who had been sitting in the courtroom gallery. He explained that he believed Wife's mother and his own wife's grandmother are sisters. Judge Maynard stated that he had recognized Wife's face, but that he did not know her last name or that she was a witness in the case until she was excused from the courtroom after opening statements. Judge Maynard also expressed that he didn't view the relation as a "conflict that creates any concerns for [him]" but that he disclosed it to give counsel "an opportunity to discuss that or think about that."

¶10 That night, Mitton filed a motion to disqualify Judge Maynard based on the judge's disclosure.[3] Although he recognized that disqualification was not required by statute, Mitton argued that the connection between Judge Maynard and Wife "clearly raises issues concerning the public perception of impartiality [and] independence."

¶11 The next morning, before trial resumed, Judge Maynard informed the parties that the Honorable Brian G. Cannell, the presiding judge of the First District Court, had granted Mitton's motion to disqualify and had "vacated the trial."[4] Judge Maynard further advised that he had just visited the jurors and "excused them, t[elling] them ... that they are no longer paneled in this case." Judge Maynard then explained that the case would be reassigned to the Honorable Spencer D. Walsh, and he worked with counsel to set a pretrial hearing before Judge Walsh on his next available hearing date in the Brigham City courthouse.

***3** ¶12 The following day, the State filed an amended information, enhancing one of the counts to a second-degree felony. It also moved for an expedited jury trial setting in front of Judge Walsh.

¶13 Several weeks later, Mitton moved to dismiss the charges against him, arguing, among other things, that the State's continued prosecution of him violates the federal and state constitutional protections against double jeopardy. Mitton argued that the discharge of the jury operates as an acquittal and that "the State is barred from retrying [him]" because he did not consent to the discharge and the discharge was not a "legal necessity."

¶14 At a hearing on his motion, Mitton posited what he characterized as alternatives to declaring a mistrial and discharging the jury. Specifically, he suggested that Judge Walsh, who "sits often in Brigham City[,] ... could have been brought in with the same jury impaneled and been brought up to speed on the first day." Or alternatively, the jurors could have been sent home "while keeping them impaneled" until a new judge could be assigned.

¶15 Judge Walsh denied Mitton's motion to dismiss. He concluded that, although Mitton did not consent to a mistrial following Judge Maynard's disqualification, the mistrial was legally necessary. Citing Judge Cannell's findings, Judge Walsh found that Judge Cannell considered alternatives to discharging the jury and determined that no reasonable alternative existed because not discharging the jury "would not have even been a possibility from a logistical standpoint," as "calendaring constraints" made it impractical for a judge to become immediately available. Indeed, Judge Cannell reported that he had "reviewed [Judge Walsh's] availability and determined it would be several days, if not several weeks or months, before the retrial could proceed."[5] Judge Walsh also concluded that Judge Cannell created an adequate record disclosing the factual basis for his legal necessity determination.

The Appeal

¶16 Mitton sought interlocutory review of the denial of his motion to dismiss, which the court of appeals granted. On appeal, Mitton argued that Judge Walsh erred by "denying his motion to dismiss on double jeopardy grounds" because "Judge Cannell declared a mistrial without properly establishing legal necessity to do so." *State v. Mitton*, 2024 UT App 44, ¶¶ 16–17, 548 P.3d 908.

¶17 The court of appeals agreed with Mitton. Relying on *State v. Manatau*, 2014 UT 7, 322 P.3d 739, it determined that the "legal necessity" exception to double jeopardy cannot apply unless the parties are afforded an "adequate opportunity to object" to the mistrial before the jury is discharged. *Mitton*, 2024 UT App 44, ¶ 20, 548 P.3d 908 (cleaned up). The court then concluded that, because neither Mitton nor the State were given such an opportunity, Mitton cannot be retried without violating Utah's constitutional prohibition against double jeopardy. [6] *Id.* ¶ 21.

***4** ¶18 As part of its decision, the court of appeals also offered procedural guidance to trial courts facing a conflict issue like the one that arose in Mitton's trial. *Id.* ¶ 22. It outlined the steps the initial judge, reviewing judge, and assigned judge should take when confronted with a motion to disqualify mid-trial. *See id.* ¶¶ 22 –29 & n.8.

¶19 We granted the State's petition for certiorari review.

ISSUE AND STANDARD OF REVIEW

¶20 We granted certiorari to address whether the legal necessity exception to Utah's constitutional prohibition against double jeopardy can apply even where the parties were not afforded an opportunity to object before a mistrial was declared and the jury discharged. The court of appeals resolved this issue based on its interpretation of our caselaw. That interpretation presents a question of law, which we review for correctness. *State v. Labrum*, 2025 UT 12, ¶ 17, 568 P.3d 1075.

ANALYSIS

I. THE LEGAL NECESSITY EXCEPTION TO DOUBLE JEOPARDY MAY STILL APPLY EVEN WHEN PARTIES AREN'T PROVIDED AN OPPORTUNITY TO OBJECT BEFORE A MISTRIAL IS DECLARED

¶21 Article I, section 12 of the Utah Constitution protects a criminal defendant from being "twice put in jeopardy for the same offense." This provision prohibits, among other things, the government "from making repeated attempts to convict an individual for the same offense after jeopardy has attached." *State v. Harris*, 2004 UT 103, ¶ 22, 104 P.3d 1250.

¶22 In a jury trial, jeopardy attaches when the jury is impaneled and sworn. *State v. Ambrose*, 598 P.2d 354, 358 (Utah 1979), *overruled on other grounds by* *Harris*, 2004 UT 103, ¶ 20, 104 P.3d 1250. Thus, if a mistrial is declared and a jury is discharged before a verdict has been rendered, the State—with two exceptions—is barred from trying the defendant again for the same offense. *Harris*, 2004 UT 103, ¶ 24, 104 P.3d 1250. Specifically, Utah's Double Jeopardy Clause bars the State from retrying a criminal defendant after jeopardy attaches unless: (1) the defendant consents to the jury's discharge, or (2) "legal necessity" requires the jury be discharged in the interest of justice. *Id.* (cleaned up). These exceptions allow courts to "balance the defendant's right to have his trial concluded by a particular tribunal with the public's interest in fair trials designed to end in just judgments." *State v. Cram*, 2002 UT 37, ¶ 8, 46 P.3d 230 (cleaned up).

¶23 The second of these two exceptions—the "legal necessity" exception—permits the retrial of a criminal defendant if declaring a mistrial and discharging the jury was the "only reasonable alternative to insure justice under the circumstances." *Ambrose*, 598 P.2d at 358; *see also* *Harris*, 2004 UT 103, ¶ 26, 104 P.3d 1250. Although we have consistently resisted setting "specific rules for what constitutes legal necessity, ... we have provided trial courts with an articulable guideline" to aid in their assessment of the issue. *Harris*, 2004 UT 103, ¶ 26, 104 P.3d 1250 (cleaned up); *see also* *Ambrose*, 598 P.2d at 359.

¶24 First, we have said that "a trial court must carefully evaluate all of the circumstances" that may necessitate a mistrial, which "requires the trial judge to afford the parties adequate opportunity to object" and "to consider possible

curative alternatives" to mistrial. *Harris*, 2004 UT 103, ¶ 27, 104 P.3d 1250. Second, we require a trial court to "create a record disclosing the factual basis for the court's determinations that a mistrial is legally necessary and that no reasonable alternative exists." *State v. Manatau*, 2014 UT 7, ¶ 16, 322 P.3d 739; *see also* *Harris*, 2004 UT 103, ¶ 28, 104 P.3d 1250.

***5** ¶25 The question presented in this appeal is what happens when the trial court fails "to afford the parties adequate opportunity to object." After observing that neither Mitton nor the State were afforded that opportunity, the court of appeals concluded that such a failure is dispositive of the legal necessity question, regardless of whether the record reveals that a mistrial was the only reasonable alternative to ensure justice under the circumstances. *See* *State v. Mitton*, 2024 UT App 44, ¶ 21, 548 P.3d 908. It stated that "for this reason alone, the State cannot retry Mitton without violating his constitutional protections against double jeopardy." *Id.*

¶26 The State contends that the court of appeals erred in interpreting our legal necessity jurisprudence. It describes that precedent as establishing "multi-component guidelines" that allow us to consider "the circumstances the trial court faced comprehensively, to ensure that the trial judge exercised sound discretion before deciding that a mistrial was the only reasonable choice." It argues that the court of appeals departed significantly from those guidelines, rendering "the opportunity to object a mandatory feature of legal necessity" and barring retrial even where a mistrial "would have been inevitable had an objection been raised."

¶27 We agree with the State that a trial court's failure to provide an opportunity to object before declaring a mistrial is not, standing alone, dispositive of the legal necessity question. Because we have often framed our procedural guidelines in mandatory terms, it is understandable that Mitton and the court of appeals read our legal necessity jurisprudence as supporting a different conclusion. But, as explained below, we have yet to articulate what consequences flow from a trial court's failure to afford the parties an opportunity to object before a mistrial is declared. And with the question now squarely before us, we conclude that even without an opportunity to object, if the record reveals that there were no reasonable alternatives to mistrial under the circumstances, the legal necessity exception to double jeopardy still applies.

A. The Legal Necessity Exception to Double Jeopardy Has Evolved to Include a Requirement that Parties Be Allowed to Object Before a Court Declares a Mistrial

¶28 We begin our analysis of the legal necessity exception by examining the four cases that largely form our jurisprudence on the subject.

¶29 First, *State v. Whitman*, 93 Utah 557, 74 P.2d 696 (1937). There, the trial court judge "became somewhat incensed" at defense counsel's in-trial remarks and, after labeling counsel's conduct as "reprehensible," declared a mistrial over the defendant's objection and discharged the jury. *Id.* at 697. In reversing the court's subsequent rejection of the defendant's double jeopardy claim, we stated that "before the court may discharge a jury," (1) "there should exist ... a legal necessity for such discharge," (2) "the court must make inquiry and find and determine that such necessity existed at the time of the discharge," and (3) "the essential facts as to such necessity, and the findings of the court thereon, must be made a matter of record." *Id.* at 698. We ultimately applied only the first step of the analysis, concluding that "there was no apparent reason for declaring a mistrial" and thus "the jury was unnecessarily discharged." *Id.* at 697–98. And based on that determination, we reversed the trial court's rejection of the defendant's double jeopardy claim. *Id.* at 698.

¶30 Second, *State v. Ambrose*, 598 P.2d 354 (Utah 1979), *overruled on other grounds by* *Harris*, 2004 UT 103, ¶ 20, 104 P.3d 1250. The prosecutor in *Ambrose* recommended —in the presence of the deadlocked jury—that the jury should be urged to continue deliberating given "the costs involved, the expense, [and the] inconvenience to everybody." *Id.* at 356. After soliciting defense counsel's view of whether it was problematic for the prosecutor to comment on the cost of retrial, the trial court immediately declared a mistrial and discharged the jury without fielding any comments or objections. *Id.* at 356–58.

***6** ¶31 On appeal from the subsequent denial of a motion to dismiss, we analyzed whether the defendant could be retried without running afoul of Utah's Double Jeopardy Clause. *Id.* at 358. In discussing the legal necessity exception, we reaffirmed our intent not to "lay down specific rules in

this area." *Id.* at 359. Still, we described legal necessity as requiring "a determination that discharging the jury was the only reasonable alternative to insure justice under the circumstances." *Id.* And we emphasized that a trial court must be "careful" in making its determination given "the important rights ... involved," and must exercise its discretion to declare a mistrial "scrupulous[ly]." *Id.* at 358, 360 (cleaned up).

¶32 In applying these "principles," we concluded that the record did not reveal that discharging the jury was the only reasonable alternative under the circumstances, and that, due to a lack of explanation from the trial court, we could not discern whether it "engaged in the scrupulous exercise of judicial discretion required." *Id.* at 359–60 (cleaned up). We then cautioned that a trial court "must ... not only determine that legal necessity exists, but it must make its findings to that effect a matter of record, or a defendant may successfully claim former jeopardy on appeal." *Id.* at 360.

¶33 Finally, we discussed the State's separate assertion that because the defendant did not object to the trial court's discharge of the jury, the defendant implicitly consented to the mistrial and waived protection under the Double Jeopardy Clause. *Id.* We rejected that assertion, observing that "the court acted so abruptly" that defense counsel "had no opportunity to object." *Id.* Notably, however, we did not state that an opportunity to object was a dispositive element of the legal necessity determination. *See id.* at 360–61.

¶34 Third, *State v. Harris*, 2004 UT 103, 104 P.3d 1250. After the trial court discovered that the courtroom's equipment failed to record the first morning session of trial, the court asked the parties how they wanted to proceed. *Id.* ¶¶ 5–6. Defense counsel proposed that they either reexamine the first witness or continue without reexamination, agreeing that the defendant would waive his right to appeal. *Id.* ¶ 6. The State objected and argued that the trial could not continue. *Id.* The court declared a mistrial and another judge subsequently declined to dismiss the case based on double jeopardy. *Id.* ¶¶ 7–9.

¶35 On appeal, we analyzed whether the discharge of the jury was legally necessary. [7] *Id.* ¶¶ 22–39. We began by restating the "articulable guideline" we had provided to trial courts "for determining whether a particular set of facts is such that 'legal necessity' requires the court to discharge the jury in the interest of justice." *Id.* ¶ 26. Specifically, we stated that a trial court may discharge a jury if, "after careful inquiry," it determines that "discharging the jury is *the only reasonable alternative to insure justice under the circumstances*." *Id.* (cleaned up).

¶36 We then described the " 'only reasonable alternative' standard" as having two elements that "must be satisfied." *Id.* ¶ 27. The first element requires a trial court to "carefully evaluate all of the circumstances and conclude that legal necessity mandates the discharge of the jury." *Id.* We explained that such an evaluation "requires" the court to consider possible alternatives to mistrial and to determine that none of the proposed alternatives are reasonable. *Id.* And although our discussion in *Ambrose* about objections was confined to the issue of waiver, *see* 598 P.2d at 360–61, in *Harris* we adopted another requirement: the opportunity to object, 2004 UT 103, ¶ 27, 104 P.3d 1250 (citing *Ambrose*, 598 P.2d at 360–61). But we had no occasion to opine on how the absence of that opportunity would affect the ultimate analysis. After all, in *Harris*, both parties had an opportunity to object to the mistrial before it was declared. [8] *See* 2004 UT 103, ¶¶ 5–6, 104 P.3d 1250.

***7** ¶37 We then moved to the second element of the "only reasonable alternative" standard, where we repeated the admonition from *Ambrose* that "the record must adequately disclose both the factual basis" for the mistrial and the reasons why the alternatives to mistrial were "unreasonable under the circumstances." *Id.* ¶¶ 27 – 28 (citing *Ambrose*, 598 P.2d at 360). We, at times, referred to this as a "requirement" on the trial court to "document its findings." *Id.* ¶ 29. At other times, we merely "encourage[d]" the court to "expressly articulat[e]" its thinking. *Id.* ¶ 28. But ultimately, we concluded that "a mistrial granted *without* express findings and determinations"

would "*not* necessarily foreclose the retrial of a defendant." *Id.* (emphases added).

¶38 We explained that rather than offending double jeopardy protections, a trial court's lack of findings would impact the nature of appellate review. *Id.* ¶¶ 28–30. Specifically, we said that when a court, on the record, articulates the factual basis for the mistrial and explains why the alternatives are unreasonable, "we will not disturb that decision unless it is plainly wrong or is beyond the limits of reasonability." *Id.* ¶ 29 (cleaned up). But if a court fails to make such a record, we said that "the mistrial will operate as an acquittal unless the factual basis for the mistrial is readily apparent from the record." *Id.* ¶ 30. We cautioned that without an explanation of the grounds for legal necessity, "the trial judge cedes to us the authority and responsibility to second-guess his judgment by conducting an independent assessment of the reasonableness of the proposed alternatives." *Id.* ¶ 33.

¶39 We then completed our review by independently assessing the options available to the *Harris* trial court because it had not explained why the proposed alternatives to mistrial were unreasonable. *Id.* ¶¶ 33 –38. We concluded that even if imperfect, the proposed alternatives were reasonable. *Id.* ¶¶ 34 –36, 38–39. Thus, we held that because the trial court exceeded its discretion in declaring a mistrial, the reviewing court erred in subsequently concluding that the defendant could be retried without violating Utah's constitutional prohibition against double jeopardy. *Id.* ¶ 39.

¶40 Fourth, *State v. Manatau*, 2014 UT 7, 322 P.3d 739. The most recent of our cases discussing the legal necessity exception arose where the trial judge recused herself and declared a mistrial after a pocketknife was found in the suit jacket the defendant's wife had brought to the defendant to wear in court. *Id.* ¶¶ 3–5. Before the jury was dismissed, both parties objected to the mistrial, but the judge declined to change her mind and expressed her belief that double jeopardy would not attach. *Id.* ¶ 6. When the defendant later moved to dismiss the case on double jeopardy grounds, the newly assigned judge denied the motion on the grounds that the mistrial was legally necessary. *Id.* ¶ 7.

¶41 On appeal, we reviewed the mistrial decision to determine whether it was legally necessary.[9] *Id.* ¶ 8. Citing *Harris*, we said we would review that determination for abuse of discretion, "afford[ing] substantial deference" to the trial court, if it articulated on the record the factual basis for its decision. *Id.* ¶¶ 8, 13. But in the absence of such findings, we said we would "independently assess whether the mistrial was legally necessary," *id.* ¶ 8, and that "the mistrial will operate as an acquittal if we are unable to find a readily apparent factual basis for the mistrial on the face of the record," *id.* ¶ 13. We added that a defendant "does not bear a burden to show a mistrial is legally necessary if the defendant objects to the mistrial." *Id.* ¶ 12. And we emphasized that "[a]bsent an adequate record, we resolve uncertainties as to the existence of legal necessity in favor of the defendant." *Id.* ¶ 13.

***8** ¶42 Applying these standards, we concluded that the trial court did not meet either of the two "only reasonable alternative" elements we had articulated in *Harris*. *Id.* ¶¶ 18–19; *see also supra* ¶¶ 36–37. We concluded that the trial court did not, in fact, consider alternatives to mistrial because the court was operating under the mistaken understanding that jeopardy had not yet attached when the mistrial was declared. *Manatau*, 2014 UT 7, ¶ 18, 322 P.3d 739. We then separately concluded that because the trial court did not consider alternatives to mistrial, it necessarily failed to make record findings about why alternatives were unreasonable. *Id.* ¶ 20.

¶43 Still, we recognized that we could independently assess "whether the trial court had any reasonable option to a mistrial." *Id.* ¶ 22. We took this opportunity, even though the trial court did not consider any alternatives on the record, and neither party offered any. *Id.* But we concluded that in making our independent assessment, we would "resolv[e] all uncertainties caused by gaps in the record in favor of the defendant." *Id.*

¶44 Finally, we conducted an independent assessment, reviewed the record, and concluded that "a reasonable alternative did exist"—or at least "it *may* have been reasonable for the case to have been reassigned to another judge." *Id.* ¶ 23 (emphasis added) (citing UTAH R. CRIM. P. 29(a) (describing the process for a judge reassignment mid-trial)). We acknowledged that "in some situations this alternative may be unreasonable—for example, where no other judge is available to continue the trial within a reasonable amount of time." *Id.* But, we stated that there

was "no evidence of any circumstances that would make reassignment of the case to another judge unreasonable here." *Id.* And "[a]bsent findings that reassignment was not feasible, we must resolve any uncertainty caused by this gap in the record in favor of the defendant." *Id.*

B. The Failure to Afford an Opportunity to Object Before Mistrial Does Not Foreclose the Legal Necessity Exception Under Utah's Double Jeopardy Clause

¶45 With our legal necessity precedent well in mind, we turn to the parties' arguments on appeal. The State contends that the court of appeals "disregarded this precedent and established a new test premised on rigid adherence to requirements." It argues that the factually varied circumstances that lead to mistrials demand "a holistic and discretionary analysis instead of a rigid, one-size-fits-all approach." It asserts that the court of appeals should have considered whether the trial court's decision to declare a mistrial "was ultimately an exercise of sound discretion" based on all the circumstances rather than concluding that the legal necessity exception did not apply solely because the parties were not given an opportunity to object. Mitton, on the other hand, argues that the court of appeals got it exactly right. He argues that Utah's legal necessity test "*requires* certain elements"—including the opportunity to object—"be[ ] satisfied." In other words, like the court of appeals, Mitton views the trial court's failure to afford that opportunity as "dispositive." [10]

¶46 To resolve this dispute, we return to the beginning. In *Whitman*, we simply said that a trial court may declare a mistrial and "discharge the jury under peculiar circumstances in cases of necessity." 74 P.2d at 698. Then, in *Ambrose*, we described the legal necessity exception as requiring "a determination that discharging the jury was the only reasonable alternative to insure justice under the circumstances." 598 P.2d at 359. And we reaffirmed that standard in *Harris* and *Manatau*. *See* *Harris*, 2004 UT 103, ¶ 26, 104 P.3d 1250; *Manatau*, 2014 UT 7, ¶ 10, 322 P.3d 739.

***9** ¶47 Thus, applying this precedent in situations where a criminal defendant has not consented to a mistrial, the fundamental question a trial court must ask itself is whether discharging the jury is the only reasonable alternative to ensure justice under the circumstances. If the answer is no, the court should remedy the circumstances that gave rise to the question by employing another alternative. But if the answer is yes, and a mistrial is declared without the defendant's consent, a reviewing court may need to resolve whether the trial court abused its discretion in concluding that declaring a mistrial was the only reasonable alternative available under the circumstances. *See infra* ¶ 52.

¶48 The other procedural steps we first articulated in *Whitman*, and repeated in *Ambrose*, remain. In considering whether to declare a mistrial, a trial court must (1) carefully evaluate all of the circumstances, (2) consider possible curative alternatives to a mistrial, and (3) if it decides to declare a mistrial, disclose on the record the factual basis for its determination that a mistrial is necessary and that no other reasonable alternative exists. *Whitman*, 74 P.2d at 698; *Ambrose*, 598 P.2d at 358–60. And, as part of step two—the requirement that a trial court consider other alternatives to a mistrial—a trial court must provide an opportunity for the parties to object and to propose alternatives. *Harris*, 2004 UT 103, ¶ 27, 104 P.3d 1250; *Manatau*, 2014 UT 7, ¶ 11, 322 P.3d 739.

¶49 We have articulated these requirements in mandatory terms because of their importance. To avoid unnecessarily declaring a mistrial and subjecting a criminal defendant to successive trials, we expect trial courts to comply with these procedural requirements. But we have never established these procedural requirements as a constitutional test that absolutely determines whether the trial court has exercised sound discretion in declaring a mistrial. Instead, we have explained that the nature of our review of the legal necessity determination will vary depending on whether the court has complied with these requirements.

¶50 For example, in *Manatau*, even though the parties had an opportunity to object to the mistrial, neither side proposed an alternative, the trial court did not consider any possible alternatives, and it did not create a record of a legal necessity determination. 2014 UT 7, ¶ 22, 322 P.3d 739. Still, we considered whether the mistrial was, in fact, legally necessary. *Id.* ¶¶ 22–24. We explained that *if* a trial court considers alternatives to mistrial and makes supporting findings on the record, "we afford substantial deference to its determination that legal necessity warrants a mistrial." *Id.* ¶ 13. But *if* a trial court fails to engage in the necessary analysis and articulate why no reasonable alternatives existed, we will independently assess whether there were reasonable

alternatives to a mistrial, "resolving all uncertainties caused by gaps in the record in favor of the defendant." *Id.* ¶ 22.

¶51 Although we didn't discuss in *Harris* or *Manatau* whether these same rules would apply if the trial court failed to afford the parties an opportunity to object, we don't read either case as requiring anything different. After all, the parties in both cases were given an opportunity to object before the jury was discharged. *See* *Harris*, 2004 UT 103, ¶ 6, 104 P.3d 1250; *Manatau*, 2014 UT 7, ¶ 6, 322 P.3d 739. Thus, we had no occasion to consider the consequence of a failure to afford such an opportunity. But we see no reason why we would treat this requirement any differently than the other procedural requirements guiding a legal necessity determination.

¶52 So, if a trial court affords the parties an opportunity to object and offer alternatives to mistrial, and the trial court explains why those alternatives were not reasonable under the circumstances, then a reviewing court will afford more deference to that "only reasonable alternative" determination. But if a trial court fails to afford an opportunity to object, then a reviewing court is tasked with independently determining whether the trial court had a reasonable alternative to a mistrial. And under those circumstances, the reviewing court will resolve any uncertainties caused by gaps in the record in favor of the defendant.

***10** ¶53 We endorse this approach as both consistent with our legal necessity jurisprudence and as striking the appropriate balance between the criminal defendant's right against double jeopardy with "the public's interest in fair trials designed to end in just judgments." *Cram*, 2002 UT 37, ¶ 8, 46 P.3d 230 (cleaned up). It incentivizes a trial court to follow these procedural requirements. But where infeasible, this procedural misstep does not become a windfall for the accused. [11]

¶54 Applying these rules here, we conclude that the court of appeals erred by forgoing an independent determination of reasonable alternatives and, instead, treating Judge Cannell's failure to afford an opportunity to object prior to mistrial as dispositive of the legal necessity question. The court must conduct an independent assessment of the record to determine whether Judge Cannell had any reasonable alternatives to declaring a mistrial under the circumstances as they existed when Judge Maynard was disqualified mid-trial. [12] Because Judge Cannell did not afford the parties an opportunity to object, the court of appeals must resolve any uncertainty caused by gaps in the record in Mitton's favor.

C. We Refer the Consideration for Additional Procedural Guidance to Our Judicial Council and Rules Committees

¶55 Finally, we pause to address the "clarification of the proper procedure" that the court of appeals offered in response to Judge Cannell's expressed uncertainty about what trial judges should do when faced with a motion to disqualify a judge during a criminal trial. *Mitton*, 2024 UT App 44, ¶ 22, 548 P.3d 908. We appreciate the court of appeals' responsiveness to Judge Cannell's request for additional "clarity." But rather than embed new rules within caselaw, we have recently emphasized our preference to create procedural rules through our comprehensive rulemaking process, which accounts for consideration of public comment and "perspectives beyond those of the parties to a case at bar." *See State v. Labrum*, 2025 UT 12, ¶ 39, 568 P.3d 1075. That process also ensures that the rule is appropriately adopted by the body with constitutional authority to create such a rule. *See, e.g.*, UTAH CONST. art. VIII, § 4 ("The Supreme Court shall adopt rules of procedure and evidence to be used in the courts of the state ...."); *id.* § 12(1) ("There is created a Judicial Council which shall adopt rules for the administration of the courts of the state.").

***11** ¶56 Thus, to the extent the court of appeals purported to adopt new procedure in its effort to guide the courts, that guidance is not binding. But we do note that much of what the court of appeals described is already found in rule. *See* *Mitton*, 2024 UT App 44, ¶¶ 24–26, 548 P.3d 908 (citing UTAH R. CRIM. P. 29(b)). To the extent it's not, we refer this matter to our criminal rules advisory committee and the Judicial Council to consider, as appropriate, whether it would be prudent to adopt additional procedural or administrative rules to guide trial courts in these difficult and often time-sensitive situations.

¶57 We also ask our advisory rules committee to consider whether the procedural steps outlined in our legal necessity jurisprudence should be codified in rule. *See supra* Section I.A. Although we have, in the past, adopted procedural steps in our caselaw, our procedural and administrative rules should be codified in our rule books where they are more readily accessible to parties, lawyers, and the bench.

CONCLUSION

¶58 The State contends that the court of appeals erred in treating the trial court's failure to provide an opportunity to object as dispositive of legal necessity, a decision that resulted in double jeopardy barring retrial of Mitton. We agree. Specifically, we hold that the court of appeals erred by foreclosing application of the legal necessity exception solely because the trial court did not afford the parties an opportunity to object to the mistrial. Accordingly, we reverse the court of appeals' decision ordering dismissal of the charges against Mitton, and we remand to the court of appeals for further proceedings consistent with this opinion.

Due to his retirement, Justice Pearce did not participate herein; District Court Judge Jennifer A. Mabey sat.

Justice Nielsen became a member of the Court after oral argument in this matter and accordingly did not participate.

All Citations

--- P.3d ----, 2026 WL 1251866, 2026 UT 11

Footnotes

* As of January 31, 2026, "The Supreme Court consists of seven justices." UTAH CODE § 78A-3-101(1). Pursuant to Utah Supreme Court Standing Order No. 18, this court sat and rendered judgment in this matter as a division of five justices.

1 In providing the relevant background, we emphasize that the allegations against Mitton are not proved and that he is presumed innocent. *See* UTAH CODE § 76-1-501(1) ("A defendant in a criminal proceeding is presumed to be innocent until each element of the offense charged against him is proved beyond a reasonable doubt.").

2 The court of appeals used this pseudonym and other conventions to protect the privacy of the witnesses and alleged victim. For consistency, we adopt the same conventions.

3 A party in a criminal case may move to disqualify a judge for bias, prejudice, or a conflict of interest. UTAH R. CRIM. P. 29(b)(1)(A). When such a motion is filed, "[t]he judge against whom the motion ... [is] directed shall, without further hearing, enter an order granting the motion or certifying the motion ... to a reviewing judge." *Id.* R. 29(b)(2)(A). If the sitting judge certifies the motion to a reviewing judge, the sitting judge may not take "further action in the case until the motion is decided." *Id.* The district's presiding judge may serve as the reviewing judge for such motions. *Id.*

4 Although he didn't use the exact terminology, by vacating the trial and excusing the jury, Judge Cannell effectively declared a mistrial. *State v. Mitton*, 2024 UT App 44, ¶ 8 n.4, 548 P.3d 908; *see also Mistrial*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("A trial that the judge brings to an end without a determination on the merits because of a procedural error or serious misconduct occurring during the proceedings.").

5 Judge Cannell twice supplemented his findings related to the necessity for discharging the jury and declaring a mistrial. Some of those findings were made months after the mistrial was declared and after Mitton's motion to dismiss was filed.

6 In reaching its conclusion, the court of appeals deemed it unnecessary to address two other issues Mitton raised: (1) a challenge based on Utah's statutory bar against multiple prosecutions, UTAH CODE § 76-1-403; and (2) a challenge to the propriety of Judge Walsh's reliance on Judge Cannell's amended findings, *supra* ¶ 15 n.5. *See* *Mitton*, 2024 UT App 44, ¶ 16 n.6, 548 P.3d 908. Neither issue is before us on certiorari review.

Further, because the court of appeals confined its analysis to the double jeopardy protections afforded by the Utah Constitution, we do not separately address any challenge Mitton raised under the Fifth Amendment.

7 Our review of the trial court's denial of defendant's motion to dismiss on double jeopardy grounds necessitated our review of the underlying declaration of the mistrial based on legal necessity. *State v. Harris*, 2004 UT 103, ¶¶ 1, 21–39, 104 P.3d 1250.

8 We adopted the obligation to afford the parties an opportunity to object to the declaration of a mistrial without any analysis or explanation. *See id.* ¶ 27.

9 As we did in *Harris*, in assessing whether the trial court erred in not dismissing a retrial on double jeopardy grounds, "we review[ed] the rulings of two separate trial [judges]." *State v. Manatau*, 2014 UT 7, ¶ 8, 322 P.3d 739. We reviewed the initial trial judge's order declaring a mistrial "to determine whether the mistrial was legally necessary." *Id.* And we reviewed the second trial judge's double jeopardy ruling denying the defendant's motion to dismiss. *Id.*

10 Mitton also argues that "the lack of an opportunity to object was the basis upon which the Court applied double jeopardy" in *Ambrose*. We disagree. Our reference to the lack of such an opportunity in *Ambrose* was made in the context of our discussion of a possible waiver of double jeopardy rights. It was not part of our legal necessity analysis. *See supra* ¶ 36.

11 The State's primary objection to the court of appeals' rigid application of the opportunity to object requirement was that there may be instances where a mistrial is required, and the court simply cannot afford the parties an opportunity to lodge an objection. For example, the State imagines catastrophic events like earthquakes or mass casualty events where trials are interrupted and there is no opportunity to invite counsel to offer objections before a jury is discharged from service. In such extreme circumstances, a trial court may fail to comply with the procedural requirements of our precedent. But even without an opportunity to object or an adequate record, a reviewing court will still retain the ability to examine those circumstances and conclude that retrial would not offend double jeopardy protections because no reasonable alternatives existed.

12 Because the question of whether reasonable alternatives existed and whether Judge Cannell abused his discretion in declaring a mistrial is not before us on certiorari review, we do not undertake this assessment ourselves and express no opinion on it.

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.

(a) Except as outlined in ~~subsection~~ paragraph (d) below, the procedures in this rule ~~shall~~ govern stays of terms of sentences when a defendant files an appeal in a court not 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) For purposes of this rule, "term of sentence" or "sentence" ~~shall~~ includes findings of 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.

(a) The procedures in this rule ~~shall be used in determining whether to~~ govern stays of the payment of any fines or periods of incarceration pending the resolution of an appeal for a hearing de novo~~, pursuant to Utah Code § 78A-7-118(3)~~. This rule ~~shall~~ also governs stays in all appeals involving violations of Title 41, Chapter 6a, Part 5, DUI and Reckless Driving, or violations of any local ordinance as described in Utah Code § 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rule 38 Appeals from justice court to district court.

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

(b) The notice of appeal.

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

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

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

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

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

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

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

(c) Motion to reinstate period for filing appeal.

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

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

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

(d) Duties of the justice court.

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

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

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

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

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

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

(e) Duties of the district court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) Reinstatement of dismissed appeal.

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

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

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

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

TAB 4

Utah R. Crim. P. 7
Redline proposed changes

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

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

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

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

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

(4) of rights concerning pretrial release;

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

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

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

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

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

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

(B) either party requests a delay; or

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

(2) The pretrial status order must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) **Release conditions.**

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

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

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

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

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

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

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

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

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

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

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

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

Utah R. Crim. P. 7.5
Redline New Rule

Rule 7.5. Pretrial detention hearings.

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

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

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

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

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

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

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

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

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

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

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

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

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.

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

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

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

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

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

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

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

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

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

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

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

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

Utah R. Crim. P. 7A
Redline proposed changes

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

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

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

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

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

(4) of rights concerning pretrial release;

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

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

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

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

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

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

(B) either party requests a delay; or

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

(2) The pretrial status order must:

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

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

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

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

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

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

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

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

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

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

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

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

(~~5~~6) A request for pretrial release at an initial appearance does not constitute a pretrial detention hearing unless the request has been fully presented to and ruled upon by the court.

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

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(d) **Release conditions.**

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

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

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

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

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

(f) **Entering a plea.**

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

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

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

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"

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

Utah R. Crim. P. 9
Redline proposed changes

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.~~

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.

(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:

(A) the defendant's appearance in court when required;

(B) that the ~~individual~~ defendant will not obstruct or attempt to obstruct the criminal justice process;

(C) the safety of any witnesses or victims of the offense allegedly committed by the ~~individual~~defendant; and

(D) the safety and welfare of the public.

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

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

(~~5~~6) If the magistrate finds the statement does not support probable cause to detain the defendant on all of the submitted charges, the magistrate may determine what, if any, of the charges are supported, and proceed under paragraph (a)(4).

(~~6~~7) If probable cause is not articulated for any charge, the magistrate must return the statement to the submitting authority indicating such.

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

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

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

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

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

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

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

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(9~~8~~7) A statement that is verbally communicated by telephone must be reduced to a sworn written statement prior to presentment to the magistrate. The statement must be retained by the submitting authority and as soon as practicable, a copy shall be delivered to the magistrate who made the determination.

(10~~9~~8) The ~~arrestee~~ defendant need not be present at the probable cause determination.

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

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

(c) **Magistrate availability.**

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

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

(d) **Time for review.**

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

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

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

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

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

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

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

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

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

(a)(2) An "arrest warrant" does not include a warrant issued for failing to appear for a subsequent court proceeding or for reasons other than those described in ~~subsection~~ paragraph (a)(1).

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

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

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

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

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

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

(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

Rule 14. Subpoenas

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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