



# Utah Supreme Court's Advisory Committee on the Rules of Juvenile Procedure

## Meeting Agenda

*David W. Fureigh, Chair*

Location: Webex Meeting  
Date: February 3, 2023  
Time: 12:00 pm – 2:00 pm

<b>Action:</b> Welcome and approval of January 6, 2023, meeting minutes.	Tab 1	David Fureigh
<b>Discussion &amp; Action:</b> Rule 6. Admission to detention without court order. <ul style="list-style-type: none"><li><i>Amend Rule 6 as proposed by Judge Steven Beck and as further amended by the group. At the January 6, 2023, committee meeting, the group suggested the rule make mention of all statutorily required sections that make-up the JJYS referral for detention form.</i></li></ul>	Tab 2	Judge Steven Beck All
<b>Discussion &amp; Action:</b> Rule 22. Initial appearance and preliminary examination in cases under Utah Code section 80-6-503, and SB0087 and SJR006. <ul style="list-style-type: none"><li><i>The legislature is proposing to amend Rule 22 to address the use of reliable hearsay in preliminary hearings. If this proposal passes, the rule as amended by the legislature would be effective May 3, 2023. The Committee has made its own unrelated amendments to the rule, and the rule as amended by the committee is ready to present to the Supreme Court for final publication effective May 1, 2023.</i></li></ul>	Tab 3	All

<p><b>Discussion:</b> Rules of Evidence and Rules of Juvenile Procedure.</p> <ul style="list-style-type: none"> <li>• <i>Committee members will discuss the applicability of rules 404, 609, and 616 of the Rules of Evidence in juvenile court proceedings.</i></li> </ul>	Tab 4	All
<p><b>Discussion &amp; Action:</b> Rule 29C. Victim restitution orders.</p> <ul style="list-style-type: none"> <li>• <i>Rule 29C is a new rule proposed by committee member Bill Russell. After receiving feedback from the group, Mr. Russell indicated he would revise the rule and prepare a new proposal.</i></li> </ul>	Tab 5	All
<p><b>Discussion:</b> The Judicial Council’s Green Phase Working Group Report and Possible Rule Amendments.</p> <ul style="list-style-type: none"> <li>• Judge Dame – Rules 7 and 9</li> <li>• Janette White – Rules 13 and 18</li> <li>• Michelle Jeffs – Rules 22 and 23A</li> <li>• Arek Butler – Rules 26 and 29B</li> <li>• Jordan Putnam – Rules 34 and 37B</li> <li>• Matthew Johnson – Rule 50</li> </ul>	Tab 6	All
<p><b>Discussion:</b> Old business or new business</p>		All

<https://www.utcourts.gov/utc/juvenile-procedure/>

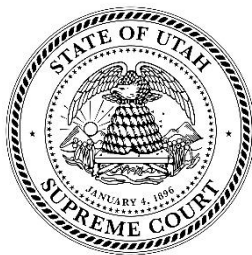
Meeting Schedule:

March 3, 2023  
June 2, 2023

April 7, 2023  
August 4, 2023

May 5, 2023 (In-person)  
September 1, 2023

# TAB 1



# Utah Supreme Court's Advisory Committee on the Rules of Juvenile Procedure

## Draft Meeting Minutes

*David W. Fureigh, Chair*

Location: Webex Meeting

Date: January 6, 2023

Time: 12:00 p.m. – 2:00 p.m.

<p><b><u>Attendees:</u></b> David Fureigh, Chair Judge Paul Dame William Russell Janette White Arek Butler Jordan Putnam Matthew Johnson Mikelle Ostler Chris Yannelli Michelle Jeffs Carol Verdoia, Emeritus Member</p>	<p><b><u>Excused Members:</u></b> Judge Debra Jensen Kristin Fadel Sophia Moore</p>
<p><b><u>Staff:</u></b> Raymundo Gallardo Kiley Tilby, Recording Secretary Carolyn Sharp, Juvenile Court Law Clerk</p>	

**1. Welcome and approval of the December 2, 2022 Meeting Minutes:** (David Fureigh)

David Fureigh welcomed everyone to the meeting and welcomed Judge Beck as a guest regarding the first agenda item. Mr. Fureigh then asked for approval of the December 2, 2022, meeting minutes. Chris Yannelli requested a small change as it related to item five, paragraph five regarding the sufficiency of the victim impact statement for restitution and requested the word “not” be stricken from the minutes. With that amendment, Judge Dame moved to approve the minutes. William Russell seconded the motion, and it passed unanimously.

**2. Discussion & Action - Rule 6. Admission to detention without court order:** (Judge Steven Beck; All)

Mr. Fureigh introduced the first agenda item and indicated Judge Beck filed an Updated Petition to Amend Rule 6 based on the feedback that had been received from law enforcement. Mr. Fureigh stated he looked at the new proposal and if the committee decides to move forward with amending the rule, he has some suggested changes to subparagraph (b) that has been proposed.

Judge Beck stated he reviewed the feedback received from law enforcement and there were a few things that stood out. A recurring theme from the feedback was that police officers are not in the best position to ascertain whether alternatives have been considered. Judge Beck agrees that decision is a judicial decision that needs to be made by a judge, not law enforcement. As a result of that feedback, Judge Beck indicates he reworked the language in paragraph (b) so law enforcement can provide the court with all of the information they need to make a decision in that regard, including the reason the officer did not release the minor. Judge Beck stated some officers reported that when they take a juvenile to detention, they call the detention center to see if the offense qualifies as a bookable offense. As a judge, Judge Beck indicated he wants to know whether the juvenile was booked because it was a bookable offense, or because it was a bookable offense plus the juvenile is a flight risk and the parents are actively making plans to get out of the country. Judge Beck stated those are very different situations, and the statute requires officers to list the reason the child was not released. Judge Beck stated paragraph (b) of his proposal is an attempt to explicitly define the requirements that are already required and outlined in Utah Code 80-6-203.

Judge Beck further stated another comment he saw that was somewhat repeating is that the proposal was insulting. Judge Beck stated he understands having integrity questioned and that it can feel insulting. However, Judge Beck points out that these are constitutional requirements – to affirm law enforcement is telling the truth when they are detaining someone – which is outlined in his memorandum that was originally submitted. Judge Beck indicated he is more concerned about the youth of color being detained disproportionately than he is about an adult law enforcement officer being asked to sign a declaration that the reason the child is not being released is free from bias.

Judge Dame expressed appreciation to Judge Beck for his continued work on this issue. Judge Dame reiterates the four requirements that the form must include, and asked Judge Beck if the reason the focus on the third requirement (the reason the minor was not released by the peace officer) was to attempt to eliminate the disparity, as opposed to having Rule 6 include all requirements on the form. Judge Beck agreed, and stated that ideally, the form would address all four requirements, but indicated he does not believe he is the individual to write the language. Judge Beck stated he has reviewed over 20 forms and the first and second requirement seem to outline the same thing (probable cause), and the fourth requirement is something the detention staff is likely more capable of understanding than law enforcement. However, the third requirement is not being asked in the form and is not being volunteered by a great majority.

Matthew Johnson asked Judge Beck if the current form outlines a separate section where law enforcement needs to put in language detailing the steps made to release the child. Judge Beck stated there is not one, and it is something he hopes this committee will be able to accomplish. Judge Beck clarified that his concern is not as much the attempts made to release the juvenile but that he would like an indication as to why they were not released. Judge Beck provided an example to the committee that in one of the forms he reviewed, the juvenile and his parents were attempting to flee the country. Although that had nothing to do with the offense itself, Judge Beck stated the juvenile was clearly a flight risk, and law enforcement volunteered that information.

Judge Dame stated if the committee is going to rewrite Rule 6 to include what Judge Beck is suggesting, and is required by statute, Judge Dame believes Rule 6 should include all four requirements for the sake of completeness so someone is not looking at the rule and wonder why it requires the third requirement, but not the first, second, or fourth. Judge Beck agreed that is best practice and stated there are other people who may be better suited to write that language than himself.

Judge Dame asked Judge Beck about the changes to the language that the committee had previously made to his proposal. Judge Beck stated he agrees with the changes that were previously made. Judge Dame stated he understands the reason for the proposal Judge Beck has made and understands why law enforcement might feel insulted. However, after discussions with Judge Beck, Judge Dame indicated that as professionals in the juvenile system, there is frustration in the disparate treatment of youth and the proposal is something the juvenile system can do to focus everyone on that and attempt to reduce the disparate treatment.

Mr. Yannelli asked Judge Beck about (b) and states the last line of (b) says, "...the detention facility shall not accept the minor for detention if this section of the form is not completed." Mr. Yannelli asked Judge Beck for clarity if that was the repercussion, if it was statutory, or if Judge Beck believed it would be a good remedy. Judge Beck responded that he believes it is statutorily mandated because it is a "shall." The statute outlines that when a child is taken to detention, a written

report “shall” be promptly filed. Judge Beck indicated the proposed language is to emphasize that it is not a voluntary part of the form. Judge Beck stated he is not asking the detention center to make a finding as to whether it is sufficient, but is only asking that they make sure that something is included in that part of the form. Judge Dame stated he would hope the detention center would allow law enforcement an opportunity to correct the form, rather than turn them away or release the minor. Judge Beck agreed.

William Russell stated he would make a proposal to JJYS to make a new form that had that separate section as the proposed rule provides to state the last and separate reason, that is separate from the probable cause section. Judge Dame indicated it is a procedural rule because it requires the form to include those separately and is an attempt to get compliance with the statute. Judge Dame stated the committee would need to work with JJYS to have the form available state-wide before the rule is passed. Mr. Fureigh asked if there is somewhere that directs JJYS to create a form. Judge Dame stated there is not, but JJYS will need to develop a form. Judge Beck stated in the forms he reviewed, there were different versions of the form. The committee then discussed working with JJYS to develop a form and brainstormed the contents of the form, how it would be formatted to include each section in the statute, etc. Blake Murdoch stated he could work with JJYS to create a form so there is consistency. Judge Dame requested the ability to review the draft form before it is published. The committee further discussed there will likely need to be training to law enforcement throughout the state if the amendment to Rule 6 is passed and a new form is created.

The committee then discussed bias. Mr. Yannelli indicated internal biases exist and law enforcement needs to be aware of that. Michelle Jeffs stated the majority of the consensus she heard was that it what is being asked is, “are we free from racial bias?” However, Ms. Jeffs indicated bias could be a lot broader than that and there was concern expressed about how law enforcement could certify that it was free from bias when unconscious bias may exist that they are not even aware of. Judge Beck stated the constitution requires this, and it is not meant to be offensive, but rather is an opportunity to allow law enforcement time to pause and reflect.

Judge Dame stated he is happy to work on drafting another option on subpart (b) before the next meeting. Judge Dame indicated he is thinking the rule will outline that the form must have separate sections, which address each of the requirements under the statute. Judge Dame further stated the committee could then work with JJYS on the form to work on the different sections. Mr. Russell asked Judge Dame for clarification on the proposed changes and indicated he believes Judge Dame and Judge Beck working together to come up with a redraft would be ideal. Mr. Gallardo will send the redline version to Judge Dame and Judge Beck with the changes the committee had previously made.

Mr. Yannelli has some concern about the proposed language that states, “The detention facility shall not accept a minor for detention if this section of the form is not completed.” Mr. Yannelli stated he agrees there is a reasonable presumption that could happen, but since that remedy is not spelled out statutorily, he would

not be in favor of that. Mr. Yannelli is concerned about the detention facility releasing the minor on a technicality. Judge Beck responded and proposed the following language, "The detention facility shall not accept a minor for detention until the form is fully completed." Mr. Yannelli indicated that will alleviate his concern. Judge Dame and Ms. Jeffs agreed that is a good suggestion.

Mr. Fureigh summarized the committee plan on how to move forward with Rule 6. Mr. Fureigh stated Judge Beck and Judge Dame will work on the proposed language and bring it to the next committee meeting for discussion. Mr. Fureigh further stated Ms. Jeffs had expressed the possibility of sending it back for law enforcement feedback, which can be addressed at the next committee meeting when the proposed changes have been made. Mr. Yannelli indicated he is still waiting on feedback from Salt Lake County and has not heard back.

**3. Discussion & Action - Rule 22. Initial appearance and preliminary examination in cases under Utah Code section 80-6-503: (All)**

Mr. Fureigh stated the committee had previously amended Rule 22 to clarify the time frames to conduct a preliminary hearing, as well as made some citation corrections and stylistic changes. Mr. Fureigh stated he took the proposal to the Supreme Court, and they adopted it. The proposed change went out for public comment and the comment period closed last month. No comments were received. Mr. Fureigh asked the committee for a motion to take it back to the Supreme Court and ask them to publish it. Judge Dame moved to send the amendment to the Supreme Court for publishing, and Janette White seconded the motion. The motion carried unanimously.

**4. Discussion - Rules of Evidence and Rules of Juvenile Procedure: (All)**

Mr. Fureigh reminded the committee about Judge Leavitt's appearance at a few committee meetings regarding some proposed changes in the Rules of Evidence that may have an affect the practice in juvenile court. Mr. Fureigh stated Mr. Russell created a document (Tab 4) regarding his views regarding the effect the change may have on the juvenile rules. Mr. Fureigh turned the time over to the committee for discussion.

Judge Dame stated he believes Judge Leavitt's intent is to remove the language in the Rules of Evidence that references the juvenile court so there is no confusion with the rest of the rules. Mr. Fureigh stated that was his understanding as well. Mr. Yannelli stated he thinks the issues arose because practitioners wanted Rule 412 of the Utah Rules of Evidence to apply in juvenile court and the Rules of Evidence committee had made a change to that rule. Judge Dame stated that by doing that, it implied that if it does not specifically state it applies in juvenile court, then it does not apply. Judge Dame further stated there are apparently different



views throughout the state about how the Rules of Evidence apply to juvenile proceedings.

Mr. Yannelli expressed that he believes Rule 412 of the Rules of Evidence should apply in juvenile court for delinquency. Judge Dame expressed that where this is likely heading is that the Rules of Evidence committee will delete the juvenile delinquency language in 412 and 615, will amend Rule 101 to clarify the definitions section that Utah Rules of Evidence apply in juvenile proceedings, and amend Utah Rule of Evidence 1101 to clarify that the rules of evidence apply in juvenile proceedings unless otherwise provided by Utah Rules of Juvenile Procedure. Judge Dame stated it then comes to this committee to determine whether this committee wants to make a rule that excludes any rules of evidence from juvenile proceedings. Mr. Yannelli and Mr. Fureigh agreed. Judge Dame proposed that any committee members who believe a rule of evidence should not apply in juvenile court come forward and make the argument for the committee's consideration.

Mr. Russell stated his largest concern is related to Rule 404(c) of the Rules of Evidence and expressed that he does not believe that should apply to juvenile court proceedings. Mr. Russell's proposal would be for this committee to make Rule 404(c) inapplicable to juvenile court proceedings. Judge Dame asked if that was the only one he was proposing. Mr. Russell stated that is the only one that is going to be subject to his motion. Mr. Russell then stated the other rules, including 609 (impeachment), does not make a lot of sense to him and believes it needs to be clarified. Judge Dame stated he is trying to narrow down the substantive issues that need to be addressed on this topic. Mr. Russell asked the committee if they believe Rule 609 makes sense in juvenile court as written, as he does not have an answer.

Mr. Yannelli indicated he does not believe Rule 616 of the Utah Rules of Evidence (Statements made during custodial interrogation) should apply to juvenile court. Mr. Yannelli believes Rule 27A of the Utah Rules of Juvenile Procedure already addresses that. Mr. Russell stated if Judge Leavitt's proposed amendments to the rules of evidence goes through, Rule 616 would apply to juvenile court. Mr. Russell indicated the question becomes if that rule should be broadened to include misdemeanor, as well as felony which is a big leap. Mr. Yannelli responded that is why he is suggesting Rule 616 should be dealt with because there is a specific juvenile rule that applies. If Rule 404 is not going to be something that people think should be included in juvenile court, then Rule 616 should not be included either. Mr. Fureigh asked if Rule 616 addresses the same thing as Rule 27A or if Rule 616 is in conflict with Rule 27A. Mr. Russell responded that Rule 27A was recently amended to build in the statute about parental consents as a prerequisite to admission of custodial interrogation statements by the accused child. He believes if Judge Leavitt's amendments go through, then Rule 616 will be implicated with that. Mr. Yannelli agrees that it could potentially be implicated with it. Judge Dame suggested the committee clarify the rules the committee needs to take a closer look at and get feedback. Judge Dame stated he has not made a conclusion on any of the rules and would like to hear a position from the committee members.

Judge Dame stated he would like to hear from Mr. Russell on his concerns as it relates to Rule 404(c). Judge Dame further stated he does not know of any Utah case law that might be helpful on that, but he did find case law out of another state that deals with applicability of Rule 404(c) in a juvenile proceeding. Judge Dame outlined it is an Arizona case, *State v. Rose* (441 P.3d 999), that outlines once the threshold requirements are met under 404(c) of the Rules of Evidence, the juvenile's delinquency adjudication for child molestation is admission in adult criminal proceedings. Judge Dame stated he is not sure what other conclusion states have come to and although it is not binding, Judge Dame believes it is interesting one way or the other.

Mr. Fureigh agreed that the committee should separate out the rules that are at issue as each of them are going to be different conversations and the committee is likely not able to tackle those rules in one agenda item. Now that the committee has identified the three rules, Mr. Fureigh asked the committee to bring any additional rules forward they feel might need to be looked at as a separate agenda item. Mr. Fureigh also asked that if a rule is brought forward, the committee member have some proposals for the committee's consideration. Mr. Fureigh then inquired about the hiring of a law clerk. Mr. Gallardo indicated Carolyn Sharp has been hired as a law clerk, who is present at the meeting. Mr. Fureigh then stated he is always interested in what other states are doing with regard to applying these rules of evidence in their juvenile courts. Mr. Fureigh stated any case law or statute research of other states with regard to the rules could be passed on to Mr. Gallardo and Ms. Sharp to assist with research.

Mr. Russell asked Judge Dame for the citation of *State v. Rose*, as mentioned earlier. Judge Dame provided Mr. Russell with the citation and indicated he has not done thorough research on the issue and has not read the case fully but wanted to throw it out there. Mr. Russell stated he has not been able to find anything on this issue, but he will have his clerk look at it closer and can be ready to present his position for the next meeting regarding Rule 404(c). Mr. Fureigh stated he will put it on the agenda for the next meeting, along with the other two rules outlined.

## **5. Discussion & Action - Rule 29C. Victim restitution orders: (All)**

Mr. Fureigh stated Mr. Russell proposed Rule 29C dealing with victim restitution orders. Mr. Fureigh indicated his recollection of the issue was to provide some more consistency and direction as to how they were done by the juvenile courts. Mr. Fureigh indicated that Mr. Russell proposed the language and the committee wanted to set it over for another meeting for consideration and feedback from other prosecutors.

Mr. Yannelli stated he sent the proposed rule to other prosecutors and has not heard back. Ms. Jeffs stated she also sent it out but has not heard back, likely due to the delay in her sending it out for feedback with the holidays. Mr. Fureigh asked if the committee wanted another month to wait for feedback.

Judge Dame indicated he had a few comments on the proposal, though he would like to hear more from Mr. Russell. Judge Dame expressed concern about the proposed language not referencing at least five other statutes that deal with restitution orders. Judge Dame further stated, as far as subpart (f), that an argument can be made that under Rule 1101, that restitution hearings are part of a sentencing hearing and there is Utah case law that clarifies that in light of that, the rules of evidence do not apply to restitution hearings. Judge Dame also discussed whether Rule 29C(g), which outlines the proximate causation requirement, is procedural or substantive. Judge Dame stated there is no appellate case that clearly states proximate cause is the standard for juvenile restitution determinations. Although Judge Dame does not disagree that is the standard, Judge Dame outlined that where it is not clearly set out in a case explicitly, whether if it is more of a substantive issue and whether it should be put in a procedural rule.

Mr. Yannelli asked Judge Dame to provide the statutory references. Judge Dame provided the statutes as follows: 78A-6-120, 80-6-710, 80-3-403, 80-6-102(12), 80-6-610, and 80-6-709. Mr. Russell stated it is a good thought to amend that language, and it could be a simple fix.

Mikelle Ostler stated she had a minor suggestion to the proposed language regarding the victim impact statement. Ms. Ostler stated the victim packet is a three-part packet, which includes the victim impact statement, victim restitution statement, and contact information that is safeguarded. Ms. Ostler suggests the language be changed to specifically reference the Victim Restitution Statement, as that is the document that lists their expenses. Mr. Russell thanked Ms. Ostler for bringing up that distinction.

Judge Dame stated another thing the committee may want to consider is distinguishing between "submitting" and "filing." The rule requires them to file, as opposed to submit, and the statute requires them to submit which have different definitions. Mr. Yannelli outlined he believes that is part of the frustration that led to the development of the proposed rule by Mr. Russell. Mr. Yannelli stated when there is not an agreement or stipulation as to restitution, it is those scenarios Mr. Russell is trying to tighten up with the rule. Mr. Yannelli thinks the rule changes some of what is in the statute. Mr. Yannelli outlined that he understands why Mr. Russell wants a rule developed but indicated there will be situations where defense or prosecution may be disappointed. Mr. Yannelli believes the statute already provides some timelines, and this might be one where we have to live with the statute. Mr. Yannelli further stated that the rule Mr. Russell is proposing adds additional requirements that could or should be statutory that are not there but are just things that must be negotiated in practice. Mr. Yannelli indicated he was looking at subpart (d) in the proposed rule regarding supporting documentation and is concerned that may preclude the prosecution from submitting a request if the victim believed they provided the documentation but did not.

Mr. Yannelli and Mr. Russell then discussed the definition of "submitted." Mr. Russell stated the term "submitted," as referenced in the statute, is not clear. Mr. Yannelli agreed that the statute could be clearer. Mr. Russell stated practitioners

and judges need to have guidance on what the practices and procedures in juvenile court are so they can govern themselves like professionals. Further, Mr. Russell would like to be able to go to his client and give them some semblance of predictability about what the rules are and what the judges are looking at in making the determinations because it is not clear right now. Mr. Russell would like some basic rules and clarity of what to expect, rather than each judge making different procedures.

Mr. Fureigh stated Mr. Russell will go back and look at things based on Judge Dame's feedback. Mr. Yannelli and Ms. Jeffs will also get some input from the prosecutors. This will be placed on the agenda for the next committee meeting.

## **6. Discussion – The Judicial Council's Green Phase Working Group Report: (All)**

Mr. Fureigh stated he glanced at the report and wanted to point out that back in 2016, this committee developed a couple of rules dealing with remote attendance at hearings. Mr. Fureigh outlined the committee developed Rule 29B for delinquency cases and Rule 37B for child welfare cases. Mr. Fureigh stated he recalls doing research surrounding that regarding the confrontation clause and how it applies in child welfare versus delinquency, which is why the committee ended up with two separate rules. Mr. Fureigh outlined that was pre-COVID, and suggested the committee look at those two rules and adjust the language as needed. Mr. Fureigh suggested the committee look at those rules. The report is asking the court to still consider doing at least some hearings virtually.

Mr. Gallardo stated he read the report and believes the bottom line is that the recommendation to the Judicial Council is that the determining person is the judicial officer whether to hold in-person, virtual or a hybrid hearing. If it is held in person, and a party requests a virtual appearance, that they show good cause. One of the recommendations to the Supreme Court is to define what "good cause" means to allow that party to appear virtually, or vice versa, if it is a virtual hearing, to have the hearing in person. Appendix C of the report gives several recommendations on the Rules of Juvenile Procedure that the committee should review again and consider amending again.

Mr. Fureigh stated he would have to look at the other rules to see if they require in-person attendance. Judge Dame stated the report references Rule 26 which requires a minor to appear in person, but if you look at the rule, it does not require they appear in person. It just outlines they have the right to appear in person. Judge Dame indicated the "good cause standard" is going to be quite a task in that context. Judge Dame believes what they are wanting is a definition of good cause and nothing comes to mind on how to specifically define that. Ms. White states each case is case-specific and there are certain situations that would apply in one hearing that would be apply in another. Ms. White believes they should leave it so each individual judge can determine what is appropriate for the specific situation. Judge Dame agreed and indicated it has not been an issue for him, and does not know how you define good cause for this purpose as there are lots of reasons why

one would object to an in-person versus remote. Mr. Russell also agreed this is a core judicial function.

Mr. Fureigh inquired if Mr. Gallardo knows what other committees are doing. Mr. Gallardo indicated he does not know and stated this committee may be one of the first that is reviewing this issue. Mr. Gallardo stated there is supposed to be a meeting with all other advisory committees and Mr. Gallardo believes one of the reasons for the meeting is to discuss this report and how they would like each committee to pursue this. Mr. Fureigh asked Mr. Gallardo to raise that issue. Mr. Gallardo stated he will raise the issue and represent that this committee does not see a need to define good cause.

The committee members agreed to take the rules outlined in the report and look at them. Judge Dame will look at Rule 7 and Rule 9. Ms. White will look at Rule 13 and Rule 18. Ms. Jeffs will look at Rule 22 and Rule 23A. Mr. Butler will look at Rule 26 and Rule 29B. Mr. Putnam will look at Rule 34 and Rule 37B. Mr. Johnson will look at Rule 50.

**7. Old business/new business: (All)**

No old or new business was discussed.

The meeting adjourned at 1:54 PM. The next meeting will be held on February 3, 2023 at 12:00 PM via Webex.

# **TAB 2**

Second Amended Petition to Amend Rule 6 of the Utah Rules of Juvenile Procedure

This petition is submitted pursuant to Rule 11-102(1) of the Utah Judicial Council Code of Judicial Administration

Proposed revisions:

Rule 6. Admission to detention without court order.

(a) Admission to detention without court order is governed by Utah Administrative Rules Title R547, Chapter 13, Guidelines for Admission to Secure Youth Detention Facilities.

(b) The form described in Utah Code section 80-6-203, to be completed by the peace officer or other person bringing the minor to a detention facility, must include:

(b)(1) a section for the details of the offense that the minor is alleged to have committed (i.e., a probable cause statement);

(b)(2) a section for the facts that bring the offense within the jurisdiction of the juvenile court (i.e., the name and date of birth of the minor, the parent(s) name(s) and address(es), the date of the offense, the location where the minor was taken into custody, etc.);

(b)(3) a section for the reason that the minor was not released by the peace officer or other person (i.e., an explanation of why it was not safe to release the minor to a parent, guardian, custodian, or juvenile receiving center);

(b)(4) a section for the eligibility of the minor for detention under the detention guidelines (i.e., the name and level of the offense the minor is alleged to have committed); and

*[an alternative for the "i.e." on (b)(4) would be (i.e., the basis for admission under Rule 547-13). While it would be best practice for law enforcement to be familiar with Rule 547-13, current practice is for them to rely on detention staff to inform them of whether an offense is eligible for detention. Furthermore, when judges do the 24-hour reviews of probable cause statements, eligibility for admission to detention is one of the considerations under review. As such, I would recommend against this alternative for the language of (b)(4)]*

(b)(5) the following language above the signature line: "Pursuant to Utah Code section 78B-18a-104, I declare under criminal penalty of the State of Utah that the foregoing is true and correct to the best of my belief and knowledge and that the reason the minor was taken to detention is free from bias."

(c) The detention facility shall not accept a minor for detention until each section of the form is fully completed and signed by the peace officer or other person presenting the minor for detention.

Rationale:

The language in this Second Amended Petition is in response to feedback from the Committee on the original Petition and the Updated (1-5-23) Petition. Please see each of those petitions and the minutes and record of the Committee's prior deliberations about this proposal for the rationale behind the proposed changes.

Thank you for your consideration,

Steven Beck (jbeck@utcourts.gov)



1 **Rule 6. Admission to detention without court order.**

2 (a) Admission to detention without court order is governed by Utah Administrative  
3 Rules Title R547, Chapter 13, Guidelines for Admission to Secure Youth Detention  
4 Facilities.

5 (b) The form described in Utah Code section 80-6-203, to be completed by the peace  
6 officer or other person bringing the minor to a detention facility, must include:

7 (1) a section for the details of the offense that the minor is alleged to have  
8 committed (i.e. a probable cause statement);

9 (2) a section for the facts that bring the offense within the jurisdiction of the  
10 juvenile court (i.e. the name and date of birth of the minor, the parent(s)  
11 name(s) and address(es), the date of the offense, the location where the minor  
12 was taken into custody, etc.);

13 (3) a section for the reason that the minor was not released by the peace officer  
14 or other person (i.e. an explanation of why it was not safe to release the minor  
15 to a parent, guardian, custodian, or juvenile receiving center);

16 (4) a section for the eligibility of the minor for detention under the detention  
17 guidelines (i.e. the name and level of the offense the minor is alleged to have  
18 committed); and

19 (5) the following language above the signature line: "Pursuant to Utah Code  
20 section 78B-18a-104, I declare under criminal penalty of the State of Utah that  
21 the foregoing is true and correct to the best of my belief and knowledge and  
22 that the reason the minor was taken to detention is free from bias."

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24 section of the form is fully completed and signed by the peace officer or other person  
25 presenting (bringing) the minor for detention.

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19 (5) the following language above the signature line: "Pursuant to Utah Code  
20 section 78B-18a-104, I declare under criminal penalty of the State of Utah that  
21 the foregoing is true and correct to the best of my belief and knowledge and  
22 that the reason the minor was taken to detention is free from bias."

23 (c) The detention facility shall (must) not accept a minor for detention until each  
24 section of the form is fully completed and signed by the peace officer or other person  
25 presenting (bringing) the minor for detention.

# TAB 3

**CRIMINAL PROSECUTION MODIFICATIONS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd D. Weiler**

House Sponsor: \_\_\_\_\_

**LONG TITLE**

**General Description:**

This bill addresses criminal prosecutions.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ clarifies the rights of a defendant in a criminal prosecution;
- ▶ provides a defendant with a right to depose a witness in a criminal prosecution if the defendant is charged by information with a class A misdemeanor or a felony;
- ▶ provides exceptions to a defendant's right to depose a witness in a criminal prosecution;
- ▶ addresses a deposition by a self-represented defendant in a criminal prosecution;
- ▶ grants a defendant with a right to subpoena a witness to testify at a hearing in certain circumstances;
- ▶ addresses the conduct for a criminal deposition and the examination of a witness at a hearing when a defendant has been unable to depose a witness or the witness terminates the deposition;
- ▶ addresses reliable hearsay in preliminary hearings;
- ▶ requires a prosecuting attorney to provide certain recordings to a defendant regarding witness statements in preliminary hearings;
- ▶ repeals a statute regarding the title of a chapter; and



28           ▶ makes technical and conforming changes.

29 **Money Appropriated in this Bill:**

30           None

31 **Other Special Clauses:**

32           None

33 **Utah Code Sections Affected:**

34 AMENDS:

35           77-1-6, as enacted by Laws of Utah 1980, Chapter 15

36           77-7a-103, as enacted by Laws of Utah 2016, Chapter 410

37 ENACTS:

38           77-7a-201, Utah Code Annotated 1953

39           77-7a-202, Utah Code Annotated 1953

40 REPEALS:

41           77-7a-101, as enacted by Laws of Utah 2016, Chapter 410



43 *Be it enacted by the Legislature of the state of Utah:*

44           Section 1. Section 77-1-6 is amended to read:

45           **77-1-6. Rights of defendant in criminal prosecution -- Depositions.**

46           ~~[(1) In criminal prosecutions the defendant is entitled]~~

47           (1) As used in this section:

48           (a) "Victim advocate" means the same as that term is defined in Section 77-38-403.

49           (b) (i) "Witness" means any individual who by reason of having relevant information is  
50 called or is likely to be called to testify at trial.

51           (ii) "Witness" includes any alleged victim of an offense for which the defendant is  
52 charged.

53           (2) In a criminal prosecution, a defendant has a right:

54           (a) ~~[To]~~ to appear in person and defend in person or by counsel;

55           (b) ~~[To]~~ to receive a copy of the accusation filed against ~~[him]~~ the defendant;

56           (c) ~~[To]~~ to testify in ~~[his]~~ the defendant's own behalf;

57           (d) ~~[To be confronted by the witnesses against him;]~~ to confront a witness testifying  
58 against the defendant;

59 (e) ~~[To]~~ to have compulsory process to [insure] ensure the attendance of [witnesses in  
 60 his] a witness on the defendant's behalf;

61 (f) if the defendant is charged by information with a class A misdemeanor or a felony,  
 62 to depose a witness by oral examination on any matter that is reasonably related to the offense  
 63 charged or will aid the defense of the defendant, including the credibility of the witness;

64 ~~[(f)]~~ (g) ~~[To]~~ to a speedy public trial by an impartial jury of the county or district where  
 65 the offense is alleged to have been committed;

66 ~~[(g)]~~ (h) ~~[To]~~ to the right of appeal in all cases; and

67 ~~[(h)]~~ (i) ~~[To]~~ to be admitted to bail in accordance with [provisions of law, or be entitled  
 68 to a trial within 30 days after arraignment if unable to post bail and if the business of the court  
 69 permits.] Chapter 20, Bail.

70 ~~[(2)]~~ (3) In addition to the rights described in Subsection (2):

71 (a) ~~[No person shall]~~ an individual may not be put twice in jeopardy for the same  
 72 offense;

73 (b) ~~[No accused person shall]~~ an accused individual may not, before final judgment, be  
 74 compelled to:

75 (i) advance money or fees to secure rights guaranteed by the [Constitution]  
 76 constitution or the laws of Utah[, or to]; or

77 (ii) pay the costs of those rights when received;

78 (c) ~~[No person shall]~~ an individual may not be compelled to give evidence against  
 79 [himself] oneself;

80 (d) ~~[A wife shall not be compelled to testify against her husband nor a husband against~~  
 81 his wife] a spouse may not be compelled to testify against the other spouse; and

82 (e) ~~[No person shall]~~ an individual may not be convicted unless:

83 (i) by verdict of a jury[, or];

84 (ii) upon a plea of guilty or no contest[, or];

85 (iii) upon a judgment of a court when trial by jury has been waived [or]; or

86 (iv) in case of an infraction, upon a judgment by a magistrate.

87 (4) (a) Notwithstanding Subsection (2)(f), a defendant does not have a right:

88 (i) to depose a witness that is younger than 14 years old at the time of the deposition;

89 (ii) to depose a witness more than once; or

90 (iii) to be physically present for the deposition of a witness who is an alleged victim of  
91 the offense for which the defendant is charged.

92 (b) A defendant may not depose a witness who is 14 years old or older but younger  
93 than 18 years old, unless the defendant demonstrates to the court that there are reasonable  
94 protections in place to protect the witness, including the presence of the witness's parent or  
95 guardian or a victim advocate at the deposition.

96 (c) If a defendant is representing oneself, the defendant may not directly depose a  
97 witness who is an alleged victim of the offense but the defendant may request that the court  
98 appoint counsel for the purpose of conducting a deposition of the witness on behalf of the  
99 defendant.

100 (d) A deposition of a witness must be conducted:

101 (i) in a manner in which the witness is treated with fairness, respect, and dignity, and is  
102 free from harassment and abuse; and

103 (ii) in accordance with Rule 16 of the Utah Rules of Criminal Procedure.

104 (e) A witness, who is an alleged victim of the offense for which the defendant is  
105 charged, may terminate a deposition only if a reasonable individual would conclude that the  
106 deposition is not being conducted in accordance with Subsection (4)(d)(i).

107 (5) (a) A defendant has a right to subpoena a witness to testify at an evidentiary hearing  
108 on any matter that is reasonably relevant to the offense charged or will aid the defense of the  
109 defendant, including the credibility of the witness, if:

110 (i) the witness refuses or declines to be deposed; or

111 (ii) the witness terminates a deposition before the defendant or the defendant's attorney  
112 is finished deposing the witness, unless the deposition is terminated in accordance with  
113 Subsection (4)(e).

114 (b) A defendant does not have a right:

115 (i) to subpoena a witness under Subsection (5)(a) if the witness is younger than 14  
116 years old at the time of the hearing;

117 (ii) to subpoena a witness under Subsection (5)(a) more than once; or

118 (iii) to be physically present for the testimony of a witness at an evidentiary hearing  
119 described in Subsection (5)(a) if the witness is an alleged victim of the offense for which the  
120 defendant is charged.

121 (c) A subpoena shall comply with the requirements of Rule 14 of the Utah Rules of  
122 Criminal Procedure.

123 (6) (a) If a defendant is representing oneself, the defendant may not directly examine a  
124 witness, who is an alleged victim of the offense, at an evidentiary hearing described in  
125 Subsection (5)(a) but the defendant may request that the court appoint counsel for the purpose  
126 of examining the witness on behalf of the defendant.

127 (b) An examination of a witness at an evidentiary hearing described Subsection (5)(a)  
128 must be conducted:

129 (i) in a manner in which the witness is treated with fairness, respect, and dignity, and is  
130 free from harassment and abuse; and

131 (ii) in accordance with the Utah Rules of Evidence.

132 Section 2. Section 77-7a-103 is amended to read:

133 **CHAPTER 7a. CRIMINAL INVESTIGATION RECORDINGS**

134 **Part 1. Law Enforcement Use of Body-worn Cameras**

135 **77-7a-103. Definitions.**

136 ~~[(+)]~~ As used in this part:

137 (1) (a) "Body-worn camera" means a video recording device that is carried by, or worn  
138 on the body of, a law enforcement officer and that is capable of recording the operations of the  
139 officer.

140 (b) "Body-worn camera" does not include a dashboard mounted camera or a camera  
141 intended to record clandestine investigation activities.

142 (2) "Law enforcement agency" means any public agency having general police power  
143 and charged with making arrests in connection with enforcement of the criminal statutes and  
144 ordinances of this state or any political subdivision.

145 (3) "Law enforcement encounter" means:

146 (a) an enforcement stop;

147 (b) a dispatched call;

148 (c) a field interrogation or interview;

149 (d) use of force;

150 (e) execution of a warrant;

151 (f) a traffic stop, including:



- 152 (i) a traffic violation;
- 153 (ii) stranded motorist assistance; and
- 154 (iii) any crime interdiction stop; or
- 155 (g) any other contact that becomes adversarial after the initial contact in a situation that
- 156 would not otherwise require recording.

157 Section 3. Section 77-7a-201 is enacted to read:

158 **Part 2. Recording Communications for Preliminary Hearings**

159 **77-7a-201. Definitions.**

160 As used in this part:

161 (1) "Communication" means any transmission of information between or among two or  
162 more persons by written, oral, electronic, or any other means.

163 (2) "Law enforcement agency" means the same as that term is defined in Section  
164 77-7a-103.

165 (3) "Prosecuting agency" means the office of the prosecuting attorney, including the  
166 prosecuting attorney and any staff for the office.

167 (4) "Witness" means the same as that term is defined in Section 77-1-6.

168 Section 4. Section 77-7a-202 is enacted to read:

169 **77-7a-202. Recording communications for preliminary hearing -- Reliable**  
170 **hearsay evidence.**

171 (1) If a prosecuting attorney seeks to admit a written statement of a witness as reliable  
172 hearsay in a preliminary hearing, the prosecuting attorney shall provide the defendant with all  
173 communications between the witness and the prosecuting agency or law enforcement agency  
174 regarding the drafting or completion of the written statement.

175 (2) The prosecuting agency shall provide the defendant with an audio or visual  
176 recording of any oral communication under Subsection (1).

177 (3) A written statement is not reliable hearsay if the prosecuting attorney does not  
178 provide the defendant with all communications described in Subsection (1) at least 48 hours  
179 before the day on which the preliminary hearing is held.

180 Section 5. **Repealer.**

181 This bill repeals:

182 Section **77-7a-101, Title.**

**JOINT RESOLUTION AMENDING RULES OF PROCEDURE  
AND EVIDENCE REGARDING CRIMINAL PROSECUTIONS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd D. Weiler**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This joint resolution amends court rules of procedure and evidence regarding criminal prosecutions.

**Highlighted Provisions:**

This joint resolution:

- ▶ amends Rule 7B of the Utah Rules of Criminal Procedure to address the use of reliable hearsay and the admission of evidence in preliminary hearings;
- ▶ amends Rule 14 of the Utah Rules of Criminal Procedure to address a defendant's right to a discovery deposition in a criminal prosecution;
- ▶ amends Rule 16 of the Utah Rules of Criminal Procedure to allow for depositions for the purpose of discovery in a criminal prosecution;
- ▶ amends Rule 22 of the Utah Rules of Juvenile Procedure to address the use of reliable hearsay in preliminary hearings;
- ▶ amends Rule 1102 of the Utah Rules of Evidence to address the admission of reliable hearsay statements in preliminary hearings; and
- ▶ makes technical and conforming changes.

**Special Clauses:**

This resolution provides a special effective date.

**Utah Rules of Criminal Procedure Affected:**



28 AMENDS:

29 **Rule 7B**, Utah Rules of Criminal Procedure

30 **Rule 14**, Utah Rules of Criminal Procedure

31 **Rule 16**, Utah Rules of Criminal Procedure

32 **Utah Rules of Juvenile Procedure Affected:**

33 AMENDS:

34 **Rule 22**, Utah Rules of Juvenile Procedure

35 **Utah Rules of Evidence Affected:**

36 AMENDS:

37 **Rule 1102**, Utah Rules of Evidence



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

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

44 Section 1. **Rule 7B**, Utah Rules of Criminal Procedure is amended to read:

45 **Rule 7B. Preliminary examinations.**

46 (a) **Burden of proof.** At the preliminary examination, the state has the burden of proof  
47 and proceeds first with its case. At the conclusion of the state's case, the defendant may testify  
48 under oath, call witnesses, and present evidence. The defendant may also cross-examine  
49 adverse witnesses.

50 (b) **Probable cause determination.** If from the evidence the magistrate finds probable  
51 cause to believe that the crime charged has been committed and that the defendant has  
52 committed it, the magistrate must order that the defendant be bound over for trial. The findings  
53 of probable cause may ~~[be based on hearsay, in whole or in part]~~ not be based solely on hearsay  
54 evidence. Objections to evidence on the ground that it was acquired by unlawful means are not  
55 properly raised at the preliminary examination.

56 (c) **If no probable cause.** If the magistrate does not find probable cause to believe the  
57 crime charged has been committed or the defendant committed it, the magistrate must dismiss  
58 the information and discharge the defendant. The magistrate may enter findings of fact,

59 conclusions of law, and an order of dismissal. The dismissal and discharge do not preclude the  
60 state from instituting a subsequent prosecution for the same offense.

61 (d) Probable cause evidence. A prosecutor must disclose any evidence that the  
62 prosecutor intends to use at the preliminary examination to establish probable cause, and all  
63 communications described in Utah Code section 77-7a-202, to the defendant at least 48 hours  
64 before the day on which the preliminary examination is held.

65 [~~(d)~~] (e) **Witnesses.** At a preliminary examination, the magistrate, upon request of  
66 either party, may exclude witnesses from the courtroom and may require witnesses not to  
67 converse with each other until the preliminary examination is concluded.

68 [~~(e)~~] (f) **Written findings.** If the magistrate orders the defendant bound over for trial,  
69 the magistrate must execute a bind-over order and include any written findings in the case  
70 record.

71 [~~(f)~~] (g) **Assignment on motion to quash.** If a defendant files a motion to quash a  
72 bind-over order, the motion shall be decided by the judge assigned to the case after bind-over,  
73 regardless of whether the judge conducted the preliminary examination in the judge's role as a  
74 magistrate.

75 Section 2. **Rule 14**, Utah Rules of Criminal Procedure is amended to read:

76 **Rule 14. Subpoenas.**

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

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

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

90 modify the subpoena if compliance would be unreasonable.

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

95 (a) (4) Written return of service of a subpoena must be made promptly to the court and  
96 to the person requesting that the subpoena be served, stating the time and place of service and  
97 by whom service was made.

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

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

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

103 (a) (8) If a party has reason to believe a material witness is about to leave the state, will  
104 be too ill or infirm to attend a trial or hearing, or will not appear and testify pursuant to a  
105 subpoena, the party may, upon notice to the other, apply to the court for an order that the  
106 witness be examined conditionally by deposition. The party must file an affidavit providing  
107 facts to support the party's request. Attendance of the witness at the deposition may be  
108 compelled by subpoena. The defendant shall be present at the deposition and the court will  
109 make whatever order is necessary to effect such attendance. A deposition may be used as  
110 substantive evidence at the trial or hearing to the extent it would otherwise be admissible under  
111 the Rules of Evidence if the witness is too ill or infirm to attend, the party offering the  
112 deposition has been unable to obtain the attendance of the witness by subpoena, or the witness  
113 refuses to testify despite a court order to do so. Nothing in this paragraph (a)(8) shall be  
114 construed to prevent a defendant from deposing a witness under Rule 16.

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

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

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

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

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

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

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

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

145 (b) (7) For purposes of this rule:

146 (b) (7) (A) "victim" means the same as the term "victim of a crime" is defined in Utah  
147 Code section 77-38-2.

148 (b) (7) (B) "victim's representative" means the same as the term "representative of a  
149 victim" is defined in Utah Code section 77-38-2.

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

152 school or other records.

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

157 Section 3. **Rule 16**, Utah Rules of Criminal Procedure is amended to read:

158 **Rule 16. Discovery.**

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

160 (1) Mandatory disclosures. The prosecutor must disclose to the defendant the following  
161 material or information directly related to the case of which the prosecution team has  
162 knowledge and control:

163 (A) written or recorded statements of the defendant and any codefendants, and the  
164 substance of any unrecorded oral statements made by the defendant and any codefendants to  
165 law enforcement officials;

166 (B) reports and results of any physical or mental examination, of any identification  
167 procedure, and of any scientific test or experiment;

168 (C) physical and electronic evidence, including any warrants, warrant affidavits, books,  
169 papers, documents, photographs, and digital media recordings;

170 (D) written or recorded statements of witnesses;

171 (E) reports prepared by law enforcement officials and any notes that are not  
172 incorporated into such a report; and

173 (F) evidence that must be disclosed under the United States and Utah constitutions,  
174 including all evidence favorable to the defendant that is material to guilt or punishment.

175 (2) Timing of mandatory disclosures. The prosecutor's duty to disclose under  
176 paragraph (a)(1) is a continuing duty as the material or information becomes known to the  
177 prosecutor. The prosecutor's disclosures must be made as soon as practicable following the  
178 filing of an Information. In every case, all material or information listed under paragraph (a)(1)  
179 that is presently and reasonably available to the prosecutor must be disclosed before the  
180 preliminary ~~hearing~~ examination, if applicable, or before the defendant enters a plea of guilty  
181 or no contest or goes to trial, unless otherwise waived by the defendant.

182 (3) Disclosures upon request.

183 (A) Upon request, the prosecutor must obtain and disclose to the defendant any of the  
184 material or information listed in paragraph (a)(1) which is in a record possessed by another  
185 governmental agency and may be shared with the prosecutor under Title 63G, Chapter 2,  
186 Government Records Access and Management Act. The request must identify with  
187 particularity the record sought and the agency that possesses it, and must demonstrate that the  
188 information in the record is directly related to the case.

189 (B) If the government agency refuses to share with the prosecutor the record containing  
190 the requested material or information under paragraph (a)(3)(A), or if the prosecution  
191 determines that it is prohibited by law from disclosing to the defense the record shared by the  
192 governmental agency, the prosecutor must promptly file notice stating the reasons for  
193 noncompliance. The defense may thereafter file an appropriate motion seeking a subpoena or  
194 other order requiring the disclosure of the requested record.

195 (4) Good cause disclosures. The prosecutor must disclose any other item of evidence  
196 which the court determines on good cause shown should be made available to the defendant in  
197 order for the defendant to adequately prepare a defense.

198 (5) Trial disclosures. The prosecutor must also disclose to the defendant the following  
199 information and material no later than 14 days, or as soon as practicable, before trial:

200 (A) Unless otherwise prohibited by law, a written list of the names and current contact  
201 information of all persons whom the prosecution intends to call as witnesses at trial; and

202 (B) Any exhibits that the prosecution intends to introduce at trial.

203 (C) Upon order of the court, the criminal records, if any, of all persons whom the  
204 prosecution intends to call as a witness at trial.

205 (6) Information not subject to disclosure. Unless otherwise required by law, the  
206 prosecution's disclosure obligations do not include information or material that is privileged or  
207 attorney work product. Attorney work product protection is not subject to the exception in Rule  
208 26(b)(5) of the Utah Rules of Civil Procedure.

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

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

213 (2) Other disclosures required by statute. The defense must disclose to the prosecutor



214 such information as required by statute relating to alibi or insanity.

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

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

219 (B) Any exhibits that the defense intends to introduce at trial.

220 (4) Information not subject to disclosure. The defendant’s disclosure obligations do not  
221 include information or material that is privileged or attorney work product. Attorney work  
222 product protection is not subject to the exception in Rule 26(b)(5) of the Utah Rules of Civil  
223 Procedure.

224 (c) **Methods of disclosure.**

225 (1) The prosecutor or defendant may make disclosure by notifying the opposing party  
226 that material and information may be inspected, tested, or copied at specified reasonable times  
227 and places.

228 (2) If the prosecutor concludes any disclosure required under this rule is prohibited by  
229 law, or believes disclosure would endanger any person or interfere with an ongoing  
230 investigation, the prosecutor must file notice identifying the nature of the material or  
231 information withheld and the basis for non-disclosure. If disclosure is then requested by the  
232 defendant, the court must hold an in camera review to decide whether disclosure is required  
233 and whether any limitations or restrictions will apply to disclosure as provided in paragraph

234 (d).

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

236 (1) The prosecutor or defendant may impose reasonable limitations on the further  
237 dissemination of sensitive information otherwise subject to discovery to prevent improper use  
238 of the information or to protect victims and witnesses from harassment, abuse, or undue  
239 invasion of privacy, including limitations on the further dissemination of recorded interviews,  
240 photographs, or psychological or medical reports.

241 (2) Upon a sufficient showing the court may at any time order that discovery or  
242 inspection be denied, restricted, or deferred, that limitations on the further dissemination of  
243 discovery be modified or make such other order as is appropriate. Upon motion by a party, the  
244 court may permit the party to make such showing, in whole or in part, in the form of a written

245 statement to be inspected by the judge alone. If the court enters an order granting relief  
246 following such an ex parte showing, the entire text of the party's statement shall be sealed and  
247 preserved in the records of the court to be made available to the appellate court in the event of  
248 an appeal.

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

250 (1) When a party fails to comply with the disclosure requirements of this rule, the court  
251 may, subject to constitutional limitations and the rules of evidence, take the measures or  
252 impose the sanctions provided in this paragraph that it deems appropriate under the  
253 circumstances. If a party has failed to comply with this rule, the court may take one or more of  
254 the following actions:

255 (A) order such party to permit the discovery or inspection, of the undisclosed material  
256 or information;

257 (B) grant a continuance of the proceedings;

258 (C) prohibit the party from introducing evidence not disclosed; or

259 (D) order such other relief as the court deems just under the circumstances.

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

263 (f) **Identification evidence.**

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

272 (2) Whenever the personal appearance of the accused is required for the foregoing  
273 purposes, reasonable notice of the time and place of such appearance shall be given to the  
274 accused and the accused's counsel.

275 (3) Unless relieved by court order, failure of the accused to appear or to comply with

276 the requirements of this paragraph without reasonable excuse shall be grounds for revocation of  
277 pre-trial release and will subject the defendant to such further consequences or sanctions as the  
278 court may deem appropriate, including allowing the prosecutor to offer as evidence at trial the  
279 defendant's failure to comply with this paragraph.

280 (g) Discovery depositions for class A misdemeanors and felonies.

281 (1) Generally.

282 (A) If a defendant is charged by information with a class A misdemeanor or a felony,  
283 the defendant may depose a witness by oral examination in accordance with Utah Code section  
284 77-1-6.

285 (B) A defendant may not depose a witness under this paragraph (g) more than once.

286 (C) A prosecutor, or a representative from the prosecuting agency, must be present at a  
287 deposition unless the witness requests that the prosecutor or a representative not be present.

288 (2) Notice of deposition.

289 (A) A defendant must provide the witness and the prosecutor with written notice of the  
290 defendant's intent to depose the witness.

291 (B) The written notice must:

292 (i) state the name of the witness;

293 (ii) if the name of the witness is not known, sufficiently describe the witness with  
294 enough information that the prosecutor can identify the individual that the defendant seeks to  
295 depose;

296 (iii) designate any documents and tangible things to be produced by the witness; and

297 (iv) state the method by which the deposition will be recorded.

298 (3) Time, place, and location of deposition.

299 (A) The defendant must make a good faith effort to coordinate the date, time, and  
300 location of a deposition and to accommodate the schedule and preferred location of the witness  
301 to be deposed.

302 (B) A deposition may be taken by videoconference or other remote electronic means.

303 (C) If the defendant and the witness are unable to agree upon the location of the  
304 deposition:

305 (i) for a witness that is an alleged victim of the offense for which the defendant is  
306 charged, the witness may select the location at which the deposition is held or to have the

307 deposition taken by video conference or other remote electronic means; and

308 (ii) for any other witness, the deposition must be held at the courthouse location where  
309 the defendant's initial appearance was held.

310 (4) Presence of defendant.

311 (A) The defendant may not be present in person at a deposition of a witness who is an  
312 alleged victim of the offense for which the defendant is charged unless the witness and the  
313 prosecutor consent to the in-person presence of the defendant.

314 (B) If the defendant is in custody and the witness and the prosecutor consent to the  
315 defendant's presence in person at the deposition, the defendant may only be present in person  
316 by leave of the court.

317 (C) If a deposition is conducted by video conference or other remote electronic means,  
318 a defendant may not be visible to a witness who is an alleged victim of the offense for which  
319 the defendant is charged, unless the witness and the prosecutor consent to the defendant being  
320 visible to the witness.

321 (5) Presence of other parties.

322 (A) A witness may have an attorney present for a deposition.

323 (B) If the defendant seeks to depose a witness who is an alleged victim of the offense  
324 for which the defendant is charged, the witness may have an advocate or another individual  
325 present for a deposition but the advocate or individual may not assist the witness in answering  
326 questions.

327 (6) Requirements for deposition.

328 (A) A deposition must be conducted under oath in accordance with Utah Code sections  
329 78B-1-142 through 78B-1-144.

330 (B) A prosecutor, a defendant's attorney, or a witness's attorney may administer an oath  
331 to a witness.

332 (C) A deposition must begin with a statement on the record that includes:

333 (i) the name of the individual who administers the oath to the witness;

334 (ii) the date, time, and place of the deposition;

335 (iii) the name of the witness;

336 (iv) the administration of the oath to the witness;

337 (v) an identification of all persons present at the deposition; and

338 (vi) if the prosecutor or a representative from the prosecuting agency is not present,  
339 whether the witness consents to the prosecutor or a representative not being present at the  
340 deposition.

341 (D) If the deposition is recorded other than stenographically, the individual who  
342 administers the oath to the witness shall repeat paragraphs (g)(6)(C)(i) through (iii) at the  
343 beginning of each unit of the recording.

344 (E) At the end of the deposition, the individual who administers the oath to the witness  
345 must state on the record that the deposition is complete and any stipulations regarding the  
346 deposition.

347 (F) Any questioning of a witness in a deposition may not exceed 90 minutes.

348 (G) A deposition must be recorded by sound, sound-and-visual, or stenographic means.

349 (H) The defendant must bear any cost of recording a deposition.

350 (I) The appearance, demeanor, or statements of the witness or attorneys at a deposition  
351 may not be distorted through recording techniques.

352 (7) Objections.

353 (A) A witness's attorney or a prosecutor may object to any question asked by the  
354 defendant's attorney.

355 (B) An objection must be recorded but the questioning must proceed and the testimony  
356 taken subject to the objection.

357 (C) Any objection must be stated concisely and in a non-argumentative and  
358 non-suggestive manner.

359 (D) A witness's attorney may instruct a witness to not answer a question to preserve a  
360 privilege or to enforce a limitation on evidence directed by the court.

361 (8) Continuance or termination of a deposition.

362 (A) The defendant or the defendant's attorney may not delay or continue the deposition  
363 of the victim after the date, time, and location of the deposition are established.

364 (B) A witness may only terminate a deposition in accordance with Utah Code section  
365 [77-6-1](#).

366 (9) Transcript or recording. A transcript or recording of a deposition taken under this  
367 paragraph (g) must be provided to all parties within 14 days, or as soon as practicable, before  
368 trial.

369           (10) Use of deposition at trial or other hearing. A deposition may be used at trial or a  
370 hearing by any party for the purpose of contradicting or impeaching the testimony of the  
371 deponent as a witness or as substantive evidence as permitted by the Utah Rules of Evidence.

372           Section 4. **Rule 22**, Utah Rules of Juvenile Procedure is amended to read:

373           **Rule 22. Initial appearance and preliminary examinations in cases under Utah**  
374 **Code section 80-6-503.**

375           (a) When a summons is issued in lieu of a warrant of arrest, the minor shall appear  
376 before the court as directed in the summons.

377           (b) When any peace officer or other person makes an arrest of a minor without a  
378 warrant, the minor shall be taken to a juvenile detention facility pending a detention hearing,  
379 which shall be held as provided by these rules. When any peace officer makes an arrest of a  
380 minor with a warrant, the minor shall be taken to the place designated on the warrant. If an  
381 information has not been filed, one shall be filed without delay in the court with jurisdiction  
382 over the offense.

383           (c) If a minor is arrested in a county other than where the offense was committed the  
384 minor shall without unnecessary delay be returned to the county where the crime was  
385 committed and shall be taken before a judge of the juvenile court.

386           (d) The court shall, upon the minor's first appearance, inform the minor:

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

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

390           (3) of the right to retain counsel or have counsel appointed by the court;

391           (4) of rights concerning detention, pretrial release, and bail in the event the minor is  
392 bound over to stand trial in district court; and

393           (5) that the minor is not required to make any statement, and that any statements made  
394 may be used against the minor in a court of law.

395           (e) The court shall, after providing the information under paragraph (d) and before  
396 proceeding further, allow the minor reasonable time and opportunity to consult counsel and  
397 shall allow the minor to contact any attorney by any reasonable means, without delay and  
398 without fee.

399           (f) The minor may not be called on to enter a plea. During the initial appearance, the

400 minor shall be advised of the right to a preliminary examination. If the minor waives the right  
401 to a preliminary examination the court shall proceed in accordance with Rule 23A to hear  
402 evidence regarding the factors contained in Utah Code section 80-6-504.

403 (g) If the minor does not waive a preliminary examination, the court shall schedule the  
404 preliminary examination. The time periods of this rule may be extended by the court for good  
405 cause shown. The preliminary examination shall be held within a reasonable time, but not later  
406 than ten days after the initial appearance if the minor is in custody for the offense charged and  
407 the information is filed under Utah Code section 80-6-503. The preliminary examination shall  
408 be held within a reasonable time, but not later than 30 days after the initial appearance if:

409 (1) the minor is in custody for the offense charged and the information is filed under  
410 Utah Code section 80-6-503; or

411 (2) the minor is not in custody.

412 (h) A preliminary examination may not be held if the minor is indicted. If the  
413 indictment is filed under Utah Code section 80-6-503, the court shall proceed in accordance  
414 with Rule 23A to hear evidence regarding the factors contained in Utah Code section 80-6-503.

415 (i) A preliminary examination shall be held under the rules and laws applicable to  
416 criminal cases tried before a court. The state has the burden of proof and shall proceed first  
417 with its case. At the conclusion of the state's case, the minor may testify under oath, call  
418 witnesses, and present evidence. The minor may cross-examine adverse witnesses.

419 (j) A prosecutor must disclose any evidence that the prosecutor intends to use at the  
420 preliminary examination to establish probable cause, and all communications described in Utah  
421 Code section 77-7a-202, to the minor at least 48 hours before the day on which the preliminary  
422 examination is held.

423 ~~[(j)]~~ (k) If from the evidence the court finds probable cause to believe that the crime  
424 charged has been committed, that the minor has committed it, and the information is filed  
425 under Utah Code section 80-6-503, the court shall proceed in accordance with Rule 23A to  
426 hear evidence regarding the factors contained in Utah Code section 80-6-504.

427 ~~[(k)]~~ (l) The finding of probable cause may ~~[be based on hearsay in whole or in part]~~  
428 not be based solely on hearsay evidence. Objections to evidence on the ground that it was  
429 acquired by unlawful means are not properly raised at the preliminary examination.

430 ~~[(l)]~~ (m) If the court does not find probable cause to believe that the crime charged has

431 been committed or that the minor committed it, the court shall dismiss the information and  
432 discharge the minor. The court may enter findings of fact, conclusions of law, and an order of  
433 dismissal. The dismissal and discharge do not preclude the state from instituting a subsequent  
434 prosecution for the same offense.

435 ~~[(m)]~~ (n) At a preliminary examination, upon request of either party, and subject to  
436 Title 77, Chapter 38, ~~[Victim Rights]~~ Rights of Crime Victims Act, the court may:

- 437 (1) exclude witnesses from the courtroom;  
438 (2) require witnesses not to converse with each other until the preliminary examination  
439 is concluded; and  
440 (3) exclude spectators from the courtroom.

441 Section 5. **Rule 1102**, Utah Rules of Evidence is amended to read:

442 **Rule 1102. Reliable Hearsay in Criminal Preliminary Examinations.**

443 (a) Statement of the Rule. Reliable hearsay is admissible at criminal preliminary  
444 examinations.

445 (b) Definition of Reliable Hearsay. For purposes of criminal preliminary examinations  
446 only and except as provided in Utah Code section [77-7a-202](#), reliable hearsay includes:

- 447 (b) (1) hearsay evidence admissible at trial under the Utah Rules of Evidence;  
448 (b) (2) hearsay evidence admissible at trial under Rule 804 of the Utah Rules of  
449 Evidence, regardless of the availability of the declarant at the preliminary examination;  
450 (b) (3) evidence establishing the foundation for or the authenticity of any exhibit;  
451 (b) (4) scientific, laboratory, or forensic reports and records;  
452 (b) (5) medical and autopsy reports and records;  
453 (b) (6) a statement of a non-testifying peace officer to a testifying peace officer;  
454 (b) (7) a statement made by a child victim of physical abuse or a sexual offense which  
455 is recorded in accordance with Rule 15.5 of the Utah Rules of Criminal Procedure;  
456 (b) (8) a statement of a declarant that is written, recorded, or transcribed verbatim  
457 which is:  
458 (b) (8) (A) under oath or affirmation; or  
459 (b) (8) (B) pursuant to a notification to the declarant that a false statement made therein  
460 is punishable; and  
461 (b) (9) other hearsay evidence with similar indicia of reliability, regardless of



462 admissibility at trial under Rules 803 and 804 of the Utah Rules of Evidence.

463 (c) Continuance for Production of Additional Evidence. If hearsay evidence is  
464 proffered or admitted in the preliminary examination, a continuance of the hearing may be  
465 granted for the purpose of furnishing additional evidence if:

466 (c) (1) The magistrate finds that the hearsay evidence proffered or admitted is not  
467 sufficient and additional evidence is necessary for a bindover; or

468 (c) (2) The defense establishes that it would be so substantially and unfairly  
469 disadvantaged by the use of the hearsay evidence as to outweigh the interests of the declarant  
470 and the efficient administration of justice.

471 Section 6. **Effective date.**

472 If this resolution is approved by two-thirds vote of all members elected to each house,  
473 this resolution takes effect on May 3, 2023.

1 **Rule 22. Initial appearance and preliminary ~~examination hearing~~ in cases under Utah**  
2 **Code sections 80-6-503 and 80-6-504.**

3 (a) When a summons is issued in lieu of a warrant of arrest, the minor shall appear before  
4 the court as directed in the summons.

5 (b) When any peace officer or other person makes an arrest of a minor without a warrant,  
6 the minor shall be taken to a juvenile detention facility pending a detention hearing,  
7 which shall be held as provided by these rules. When any peace officer makes an arrest  
8 of a minor with a warrant, the minor shall be taken to the place designated on the warrant.  
9 If an information has not been filed, one shall be filed without delay in the court with  
10 jurisdiction over the offense.

11 (c) If a minor is arrested in a county other than where the offense was committed the  
12 minor shall without unnecessary delay be returned to the county where the crime was  
13 committed and shall be taken before a judge of the juvenile court.

14 (d) The court shall, upon the minor's first appearance, inform the minor:

15 (1) of the charge in the information or indictment and furnish the minor with a  
16 copy;

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

19 (3) of the right to retain counsel or have counsel appointed by the court;

20 (4) of rights concerning detention, pretrial release, and bail in the event the minor  
21 is bound over to stand trial in district court; and

22 (5) that the minor is not required to make any statement, and that any statements  
23 made may be used against the minor in a court of law.

24 (e) The court shall, after providing the information under paragraph (d) and before  
25 proceeding further, allow the minor reasonable time and opportunity to consult counsel

26 and shall allow the minor to contact any attorney by any reasonable means, without delay  
27 and without fee.

28 (f) The minor may not be called on to enter a plea. During the initial appearance, the  
29 minor shall be advised of the right to a preliminary ~~examination~~hearing. If the minor  
30 waives the right to a preliminary ~~examination~~hearing the court shall proceed in  
31 accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code  
32 section 80-6-504.

33 (g) If the minor does not waive a preliminary ~~examination~~hearing, the court shall  
34 schedule the preliminary ~~examination~~hearing. ~~The time periods of this rule may be~~  
35 ~~extended by the court for good cause shown.~~ The preliminary ~~examination~~hearing shall  
36 be held within a reasonable time, but not later than ~~10 ten~~ days after the initial appearance  
37 if the minor is in custody for the offense charged. ~~and the information is filed under Utah~~  
38 ~~Code section 80-6-503.~~ The preliminary ~~examination~~hearing shall be held within a  
39 reasonable time, but not later than 30 days after the initial appearance if:

40 ~~(1) the minor is in custody for the offense charged and the information is filed~~  
41 ~~under Utah Code section 80-6-503; or~~

42 ~~(2)~~ the minor is not in custody. ~~The time periods of this rule may be extended by~~  
43 ~~the court for good cause shown.~~

44 (h) A preliminary ~~examination~~hearing may not be held if the minor is indicted. If the  
45 indictment is filed under Utah Code section 80-6-503, the court shall proceed in  
46 accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code  
47 section 80-6-503~~4~~.

48 (i) A preliminary ~~examination~~hearing shall be held under the rules and laws applicable  
49 to criminal cases tried before a court. The state has the burden of proof and shall proceed  
50 first with its case. At the conclusion of the state's case, the minor may testify under oath,  
51 call witnesses, and present evidence. The minor may cross-examine adverse witnesses.

52 (j) If from the evidence the court finds probable cause under Utah Code section 80-6-504  
53 ~~to believe that the crime charged has been committed, that the minor has committed it,~~  
54 ~~and the information is filed under Utah Code section 80-6-503,~~ the court shall proceed in  
55 accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code  
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57 (k) The finding of probable cause may be based on hearsay in whole or in part. Objections  
58 to evidence on the ground that it was acquired by unlawful means are not properly raised  
59 at the preliminary examination hearing.

60 (l) If the court does not find probable cause to believe that the crime charged has been  
61 committed or that the minor committed it, the court shall dismiss the information and  
62 discharge the minor. The court may enter findings of fact, conclusions of law, and an  
63 order of dismissal. The dismissal and discharge do not preclude the state from instituting  
64 a subsequent prosecution for the same offense.

65 (m) At a preliminary examination hearing, upon request of either party, and subject to  
66 Title 77, Chapter 38, Victim Rights, the court may:

67 (1) exclude witnesses from the courtroom;

68 (2) require witnesses not to converse with each other until the preliminary  
69 examination hearing is concluded; and

70 (3) exclude spectators from the courtroom.

71

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27 and without fee.

28 (f) The minor may not be called on to enter a plea. During the initial appearance, the  
29 minor shall be advised of the right to a preliminary hearing. If the minor waives the right  
30 to a preliminary hearing the court shall proceed in accordance with Rule 23A to hear  
31 evidence regarding the factors contained in Utah Code section 80-6-504.

32 (g) If the minor does not waive a preliminary hearing, the court shall schedule the  
33 preliminary hearing. The preliminary hearing shall be held within a reasonable time, but  
34 not later than 10 days after the initial appearance if the minor is in custody for the offense  
35 charged. The preliminary hearing shall be held within a reasonable time, but not later  
36 than 30 days after the initial appearance if the minor is not in custody. The time periods  
37 of this rule may be extended by the court for good cause shown.

38 (h) A preliminary hearing may not be held if the minor is indicted. If the indictment is  
39 filed under Utah Code section 80-6-503, the court shall proceed in accordance with Rule  
40 23A to hear evidence regarding the factors contained in Utah Code section 80-6-504.

41 (i) A preliminary hearing shall be held under the rules and laws applicable to criminal  
42 cases tried before a court. The state has the burden of proof and shall proceed first with  
43 its case. At the conclusion of the state's case, the minor may testify under oath, call  
44 witnesses, and present evidence. The minor may cross-examine adverse witnesses.

45 (j) A prosecutor must disclose any evidence that the prosecutor intends to use at the  
46 preliminary hearing to establish probable cause, and all communications described in  
47 Utah Code section 77-7a-202, to the minor at least 48 hours before the day on which the  
48 preliminary hearing is held.

49 (k) If from the evidence the court finds probable cause under Utah Code section 80-6-504,  
50 the court shall proceed in accordance with Rule 23A to hear evidence regarding the  
51 factors contained in Utah Code section 80-6-504.

52 (l) The finding of probable cause may not be based solely on hearsay evidence. Objections  
53 to evidence on the ground that it was acquired by unlawful means are not properly raised  
54 at the preliminary hearing.

55 (m) If the court does not find probable cause to believe that the crime charged has been  
56 committed or that the minor committed it, the court shall dismiss the information and  
57 discharge the minor. The court may enter findings of fact, conclusions of law, and an  
58 order of dismissal. The dismissal and discharge do not preclude the state from instituting  
59 a subsequent prosecution for the same offense.

60 (n) At a preliminary hearing, upon request of either party, and subject to Title 77, Chapter  
61 38, Rights of Crime Victims Act, the court may:

62 (1) exclude witnesses from the courtroom;

63 (2) require witnesses not to converse with each other until the preliminary hearing  
64 is concluded; and

65 (3) exclude spectators from the courtroom.

# TAB 4

## URE/URJP INTERPLAY—DECEMBER 2022

Both URE 101(a) and URE 1101(a) clearly state that the Utah Rules of Evidence apply in all courts and judicial proceedings in the state, which includes the juvenile court. U.R.Juv.P. 43(a) also specifically adopts them unless otherwise provided by rule or law. It appears beyond dispute that child welfare proceedings, which are civil in nature, are governed by the Rules of Evidence unless a specific juvenile rule or statute states otherwise. The question now arises as to how to clarify for delinquency cases which, if any, rules of evidence that use the terms “criminal case,” “criminal proceedings,” and “the defendant” should be adopted as juvenile rules using relevant terms such as “delinquency proceedings” and “the minor.”

Committee member William Russell submits the following to the chair, staff and other members of the committee for review and discussion. They are based on his observations in practice as a juvenile court practitioner as well as discussions with others who have analogous professional experience. What follows reflects some of his individual views and preliminary positions, but is intended to be neither exhaustive of discussion points nor definitive in nature.

### I. PRESENT URE WITH JUV TERMS

URE 412-AV’s Prior Sexual Behavior & URE 615-Witness Exclusion

These two rules of evidence presently use terminology making them clearly applicable to Juv proceedings. If substantially adopted as Juv rules, the Evidence rules could delete those references.

### II. PRESENT URE WITH CRIM/JUV IMPLICATIONS

URE 404-**Character evidence; Crimes or other acts.** Subsections (a) and (b) protect substantial due process and fairness rights of both the accused and the victim in criminal cases. Constitutional provisions may actually require them to be applied in delinquency cases, but no rule presently says this. Subsection (c) seems ill-suited to delinquency cases and some oppose its inclusion in the juvenile rules.

URE 410-**Pleas, plea discussions, and related statements.** Bars admission of withdrawn and “nolo contendere” pleas and colloquies with some exceptions. I have never seen nor heard of this rule being invoked in juvenile court, perhaps due to its fundamental nature. “No contest” is the analogous Juv plea.

URE 417-**Admissibility. . victim targeting. .** Allows limited admissibility of a defendant’s expression and association in a criminal case to prove victim targeting. Consistency and fairness may mitigate in favor of inclusion in a juvenile rule.

URE 609-**Impeachment by evidence of a criminal conviction.** Prior adult felony/dishonesty/false statement convictions are admissible in civil and criminal cases to impeach any witness, subject to limitations. Juvenile adjudications can be used only in criminal cases, but not against the defendant. Reliability, consistency, fairness and constitutional considerations seem to weigh in favor of inclusion in a juvenile rule in some form, but with substantial revision. This one really befuddled me.

URE 612-**Writing used to refresh a witness's memory.** Provides for sanctions in a criminal case for failure to provide writings used to refresh a witness recollection. Reliability, consistency, fairness and constitutional considerations seem to weigh in favor of inclusion in a juvenile rule.

URE 616-**Statements made during custodial interrogations.** Reliability, consistency, fairness and constitutional considerations seem to weigh in favor of inclusion in a juvenile rule. Existing (and recently amended) Juv rule 27A already governs admission of these statements given by minors and the provisions of this rule of evidence could be added to 27A. There would likely be discussion as to whether the scope of existing URE 616 should be broadened to include misdemeanor as well as felony prosecutions in juvenile court. Reliability, consistency, fairness and constitutional considerations seem to weigh heavily in favor of inclusion in a juvenile rule.

URE 617-**Eyewitness identification.** Provides a process to challenge and litigate eyewitness identification in a criminal trial. Reliability, consistency, fairness and constitutional considerations seem to weigh heavily in favor of inclusion in a juvenile rule.

### III. PRESENT JUVENILE RULES RELATED TO EVIDENCE

15(c)-minor's statements in preliminary inquiry meetings not admissible to prove guilt

29A-process to admit CJC recordings in delinq trials

37A- process to admit CJC recordings in CW trials

40-order of presentation at trials

43-rules of evidence apply unless otherwise provided

45-court not to review dispositional reports until after adjudication

46-rules of evidence do not apply to dispositional hearings

### IV. STRUCTURE AND REORGANIZATION OF THE JUVENILE RULES

Presently at least seven evidentiary rules are scattered about the Utah Rules of Juvenile Procedure. If multiple (as many as nine?) evidentiary rules are approved by the committee and submitted for consideration by the Supreme Court, it may be prudent to renumber, revise, and reorganize the current format. The committee may also want to consider the "large-cap add on" rules of 7 & 7A; 16 & 16A; 19, 19A, 19B & 19C; 25 & 25A; 27 & 27A; 29, 29A, & 29B; and 37, 37A & 37B.



1 Rule 404. Character Evidence; Crimes or Other Acts.

2 Effective: 4/1/2008

3 (a) Character Evidence.

4 (a)(1) Prohibited Uses. Evidence of a person's character or character trait is not  
5 admissible to prove that on a particular occasion the person acted in conformity with  
6 the character or trait.

7 (a)(2) Exceptions for a Defendant or Victim in a Criminal Case. The following  
8 exceptions apply in a criminal case:

9 (a)(2)(A) a defendant may offer evidence of the defendant's pertinent trait,  
10 and if the evidence is admitted, the prosecutor may offer evidence to rebut  
11 it;

12 (a)(2)(B) subject to the limitations in [Rule 412](#), a defendant may offer  
13 evidence of an alleged victim's pertinent trait, and if the evidence is  
14 admitted, the prosecutor may:

15 (a)(2)(B)(i) offer evidence to rebut it; and

16 (a)(2)(B)(ii) offer evidence of the defendant's same trait; and

17 (a)(2)(C) in a homicide case, the prosecutor may offer evidence of the alleged  
18 victim's trait of peacefulness to rebut evidence that the victim was the first  
19 aggressor.

20 (a)(3) Exceptions for a Witness. Evidence of a witness's character may be  
21 admitted under Rules [607](#), [608](#), and [609](#).

22 (b) Crimes, Wrongs, or Other Acts.

23 (b)(1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible  
24 to prove a person's character in order to show that on a particular occasion the  
25 person acted in conformity with the character.

26 (b)(2) Permitted Uses; Notice in a Criminal Case. This evidence may be  
27 admissible for another purpose, such as proving motive, opportunity, intent,  
28 preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

29 On request by a defendant in a criminal case, the prosecutor must:

30 (b)(2)(A) provide reasonable notice of the general nature of any such  
31 evidence that the prosecutor intends to offer at trial; and  
32 (b)(2)(B) do so before trial, or during trial if the court excuses lack of  
33 pretrial notice on good cause shown.

34 (c) Evidence of Similar Crimes in Child-Molestation Cases.

35 (c)(1) Permitted Uses. In a criminal case in which a defendant is accused of child  
36 molestation, the court may admit evidence that the defendant committed any  
37 other acts of child molestation to prove a propensity to commit the crime  
38 charged.

39 (c)(2) Disclosure. If the prosecution intends to offer this evidence it shall provide  
40 reasonable notice in advance of trial, or during trial if the court excuses pretrial  
41 notice on good cause shown.

42 (c)(3) For purposes of this rule “child molestation” means an act committed in  
43 relation to a child under the age of 14 which would, if committed in this state, be  
44 a sexual offense or an attempt to commit a sexual offense.

45 (c)(4) [Rule 404\(c\)](#) does not limit the admissibility of evidence otherwise  
46 admissible under Rule 404(a), 404(b), or any other rule of evidence.

47  
48 **2011 Advisory Committee Note.** The language of this rule has been amended as part of  
49 the restyling of the Evidence Rules to make them more easily understood and to make  
50 class and terminology consistent throughout the rules. These changes are intended to be  
51 stylistic only. There is no intent to change any result in any ruling on evidence  
52 admissibility.

53 **Original Advisory Committee Note.** Rule 404(a)-(b) is now Federal Rule of Evidence  
54 404 verbatim. The 2001 amendments add the notice provisions already in the federal  
55 rule, add the amendments made to the federal rule effective December 1, 2000, and  
56 delete language added to the Utah Rule 404(b) in 1998. However, the deletion of that  
57 language is not intended to reinstate the holding of *State v. Doporto*, 935 P.2d 484 (Utah

58 1997). Evidence sought to be admitted under Rule 404(b) must also conform with Rules  
59 402 and 403 to be admissible.

60 The 2008 amendment adds Rule 404(c). It applies in criminal cases where the accused is  
61 charged with a sexual offense against a child under the age of 14. Before evidence may  
62 be admitted under Rule 404(c), the trial court should conduct a hearing out of the  
63 presence of the jury to determine: (1) whether the accused committed other acts, which  
64 if committed in this State would constitute a sexual offense or an attempt to commit a  
65 sexual offense; (2) whether the evidence of other acts tends to prove the accused's  
66 propensity to commit the crime charged; and (3) whether under Rule 403 the danger of  
67 unfair prejudice substantially outweighs the probative value of the evidence, or  
68 whether for other reasons listed in Rule 403 the evidence should not be admitted. The  
69 court should consider the factors applicable as set forth in *State v. Shickles*, 760 P.2d  
70 291, 295-96 (Utah 1988), which also may be applicable in determinations under Rule  
71 404(b).

72 Upon the request of a party, the court may be required to provide a limiting instruction  
73 for evidence admitted under Rule 404(b) or (c).

1 Rule 609. Impeachment by Evidence of a Criminal Conviction.

2 (a) In General. The following rules apply to attacking a witness's character for  
3 truthfulness by evidence of a criminal conviction:

4 (a)(1) for a crime that, in the convicting jurisdiction, was punishable by death or  
5 by imprisonment for more than one year, the evidence:

6 (a)(1)(A) must be admitted, subject to [Rule 403](#), in a civil case or in a  
7 criminal case in which the witness is not a defendant; and

8 (a)(1)(B) must be admitted in a criminal case in which the witness is a  
9 defendant, if the probative value of the evidence outweighs its prejudicial  
10 effect to that defendant; and

11 (a)(2) for any crime regardless of the punishment, the evidence must be admitted  
12 if the court can readily determine that establishing the elements of the crime  
13 required proving — or the witness's admitting — a dishonest act or false  
14 statement.

15 (b) Limit on Using the Evidence After 10 Years. This subdivision (b) applies if more  
16 than 10 years have passed since the witness's conviction or release from confinement for  
17 it, whichever is later. Evidence of the conviction is admissible only if:

18 its probative value, supported by specific facts and circumstances, substantially  
19 outweighs its prejudicial effect; and

20 the proponent gives an adverse party reasonable written notice of the intent to use it so  
21 that the party has a fair opportunity to contest its use.

22 (c) Effect of a Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a  
23 conviction is not admissible if:

24 (c)(1) the conviction has been the subject of a pardon, annulment, certificate of  
25 rehabilitation, or other equivalent procedure based on a finding that the person  
26 has been rehabilitated, and the person has not been convicted of a later crime  
27 punishable by death or by imprisonment for more than one year; or

28 (c)(2) the conviction has been the subject of a pardon, annulment, or other  
29 equivalent procedure based on a finding of innocence.

30 (d) Juvenile Adjudications. Evidence of a juvenile adjudication is admissible under this  
31 rule only if:

32 (d)(1) it is offered in a criminal case;

33 (d)(2) the adjudication was of a witness other than the defendant;

34 (d)(3) an adult's conviction for that offense would be admissible to attack the  
35 adult's credibility; and

36 (d)(4) admitting the evidence is necessary to fairly determine guilt or innocence.

37 (e) Pendency of an Appeal. A conviction that satisfies this rule is admissible even if an  
38 appeal is pending. Evidence of the pendency is also admissible.

39

40 **2011 Advisory Committee Note.** The language of this rule has been amended as part of  
41 the restyling of the Evidence Rules to make them more easily understood and to make  
42 class and terminology consistent throughout the rules. These changes are intended to be  
43 stylistic only. There is no intent to change any result in any ruling on evidence  
44 admissibility. This rule is the federal rule, verbatim.

45 **Original Advisory Committee Note.** This rule is the federal rule, verbatim, and  
46 changes Utah law by granting the court discretion in convictions not involving  
47 dishonesty or false statement to refuse to admit the evidence if it would be prejudicial  
48 to the defendant. Current Utah law mandates the admission of such evidence. *State v.*  
49 *Bennett*, 30 Utah 2d 343, 517 P.2d 1029 (1973); *State v. Van Dam*, 554 P.2d 1324 (Utah  
50 1976); *State v. McCumber*, 622 P.2d 353 (Utah 1980).

51 There is presently no provision in Utah law similar to Subsection (d).

52 The pendency of an appeal does not render a conviction inadmissible. This is in accord  
53 with Utah case law. *State v. Crawford*, 60 Utah 6, 206 P. 717 (1922).

54 This rule is identical to Rule 609 of the Federal Rules of Evidence. The 1990  
55 amendments to the federal rule made two changes in the rule. The comment to the  
56 federal rule accurately reflects the Committee's view of the purpose of the amendments.

57

1 Rule 616. Statements Made During Custodial Interrogations.

2 Effective: 1/1/2016

3 (a) Definitions.

4 (a)(1) "Custodial interrogation" means questioning or other conduct by a law  
5 enforcement officer that is reasonably likely to elicit an incriminating response  
6 from a person and occurs when reasonable persons in the same circumstances  
7 would consider themselves in custody.

8 (a)(2) "Electronic recording" means an audio recording or an audio-video  
9 recording that accurately records a custodial interrogation.

10 (a)(3) "Law enforcement agency" means a governmental entity or person  
11 authorized by a governmental entity or by state law to enforce criminal laws or  
12 investigate suspected criminal activity. The term includes a nongovernmental  
13 entity that has been delegated the authority to enforce criminal laws or  
14 investigate suspected criminal activity.

15 (a)(4) "Law enforcement officer" means a person described in [Utah Code § 53-13-](#)  
16 [103\(1\)](#).

17 (a)(5) "Place of detention" means a facility or area owned or operated by a law  
18 enforcement agency where persons are detained in connection with criminal  
19 investigations or questioned about alleged criminal conduct. The term includes a  
20 law enforcement agency station, jail, holding cell, correctional or detention  
21 facility, police vehicle or any other stationary or mobile building owned or  
22 operated by a law enforcement agency.

23 (a)(6) "Statement" means the same as in [Rule 801\(a\)](#).

24 (b) Admissibility. Except as otherwise provided in Subsection (c) of this rule, evidence  
25 of a statement made by the defendant during a custodial interrogation in a place of  
26 detention shall not be admitted against the defendant in a felony criminal prosecution  
27 unless an electronic recording of the statement was made and is available at trial. This  
28 requirement is in addition to, and does not diminish, any other requirement regarding  
29 the admissibility of a person's statements.

30 (c) Exceptions. Notwithstanding subsection (b), the court may admit a statement made  
31 under any of the following circumstances if the statement is otherwise admissible under  
32 the law:

33 (c)(1) The statement was made prior to January 1, 2016;

34 (c)(2) The statement was made during a custodial interrogation that occurred  
35 outside Utah and was conducted by officers of a jurisdiction outside Utah;

36 (c)(3) The statement is offered for impeachment purposes only;

37 (c)(4) The statement was a spontaneous statement made outside the course of a  
38 custodial interrogation or made during routine processing or booking of the  
39 person;

40 (c)(5) Before or during a custodial interrogation, the person agreed to respond to  
41 questions only if his or her statements were not electronically recorded, provided  
42 that such agreement is electronically recorded or documented in writing;

43 (c)(6) The law enforcement officers conducting the custodial interrogation in  
44 good faith failed to make an electronic recording because the officers  
45 inadvertently failed to operate the recording equipment properly, or without the  
46 knowledge of any of the officers the recording equipment malfunctioned or  
47 stopped operating;

48 (c)(7) The law enforcement officers conducting or observing the custodial  
49 interrogation reasonably believed that the crime for which the person was being  
50 investigated was not a felony under Utah law;

51 (c)(8) Substantial exigent circumstances existed that prevented or rendered  
52 unfeasible the making of an electronic recording of the custodial interrogation, or  
53 prevented its preservation and availability at trial; or

54 (c)(9) The court finds:

55 (c)(9)(A) The statement has substantial guarantees of trustworthiness and  
56 reliability equivalent to those of an electronic recording; and

57 (c)(9)(B) Admitting the statement best serves the purposes of these rules  
58 and the interests of justice.

59 (d) Procedure to determine admissibility.

60 (d)(1) Notice. If the prosecution intends to offer an unrecorded statement under  
61 an exception described in Subsection (c)(4) through (9) of this Rule, the  
62 prosecution must serve the defendant with written notice of an intent to rely on  
63 such an exception not later than 30 days before trial.

64 (d)(2) Instruction. If the court admits into evidence a statement made during a  
65 custodial interrogation that was not electronically recorded under an exception  
66 described in Subsection (c)(4) through (9) of this Rule, the court, upon request of  
67 the defendant, may give cautionary instructions to the jury concerning the  
68 unrecorded statement.

69

70 **2015 Advisory Committee Note.** In 2008, the Utah Attorney General's Office, in  
71 cooperation with statewide law enforcement agencies, drafted a Best Practices  
72 Statement for Law Enforcement that recommended electronic recording of custodial  
73 interrogations. Since then, most agencies have adopted the Statement or their own  
74 policies to record custodial interviews. This rule is promulgated to bring statewide  
75 uniformity to the admissibility of statements made during custodial interrogations.  
76 See *State v. Perea*, 2013 UT 68, ¶ 130, 322 P.3d 624.

77 Several states have adopted requirements for recording custodial interviews, and the  
78 National Conference of Commissioners on Uniform State Law has approved and  
79 recommended for enactment a Uniform Electronic Recordation of Custodial  
80 Interrogations Act.

81 The benefits of recording custodial interrogations include “avoiding unwarranted  
82 claims of coercion”; preventing the use of “actual coercive tactics by police”; and  
83 demonstrating “the voluntariness of the confession, the context in which a particular  
84 statement was made, and . . . the actual content of the statement.” *State v. James*, 858  
85 P.2d 1012, 1018 (Utah Ct. App. 1993) (internal quotation marks omitted). Recordings  
86 assist the fact-finder and protect police officers and agencies from false claims of  
87 coercion and misconduct. *Perea*, 2013 UT 68, ¶ 130 n.23.



88 The rule addresses direct custodial questioning by law enforcement as well as other  
89 conduct during custodial questioning. It is intended to ensure that the custodial  
90 interrogation, including any part of the interrogation that is written or electronically  
91 transmitted, is fully and fairly recorded. Also, the admissibility of evidence under this  
92 rule is a preliminary question governed by Rule 104.

93

# TAB 5

1 Rule 29C. Victim restitution orders.

2 (a) Determinations of amounts ordered as victim restitution are governed by Utah  
3 Code section 80-6-710.

4 (b) To be considered by the court for a dispositional order, the submission of a request  
5 for victim restitution will be in writing and filed by the prosecuting attorney or the  
6 victim in the juvenile court's CARE system and served on all parties in the time and  
7 manner provided by law. Failure to timely file and serve this request constitutes a bar  
8 on the entry of an order of victim restitution as to the minor.

9 (c) If a request for restitution is filed, the documentation supporting the request  
10 described in Utah Code section 80-6-710(3)(a) and (b) will be attached to the written  
11 request.

12 (d) The court may enter an order of victim restitution as to the minor based upon a  
13 timely filed and supported request for restitution if the parties stipulate or the time to  
14 object under these rules has passed. If a timely objection to the request for victim  
15 restitution is filed by the minor, the court will hold a hearing to determine whether the  
16 adjudicated offenses proximately caused the victim's material loss, whether the  
17 supporting documents adequately prove such amounts, and the minor's ability to pay.

18 (e) At the hearing the prosecution bears the burden to prove by a preponderance of the  
19 evidence that the adjudicated offenses proximately caused the victim's material loss as  
20 stated in the written request. Any party may present evidence of the minor's ability to  
21 pay restitution.

22 (f) At the conclusion of the hearing, the court will enter findings as to whether the  
23 prosecution has met its burden to prove that the minor proximately caused material  
24 loss requested as victim restitution, whether the material loss arose from admitted  
25 conduct or by stipulation, and regarding the minor's ability to pay such amounts.

# TAB 6

# **GREEN PHASE WORKING GROUP**

## **REPORT AND RECOMMENDATIONS TO THE JUDICIAL COUNCIL AND SUPREME COURT REGARDING ONGOING USE OF VIRTUAL MEETING TECHNOLOGY TO CONDUCT COURT PROCEEDINGS**

October 14, 2022



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# **REPORT AND RECOMMENDATIONS TO THE JUDICIAL COUNCIL AND SUPREME COURT REGARDING ONGOING USE OF VIRTUAL MEETING TECHNOLOGY TO CONDUCT COURT PROCEEDINGS**

## **Executive Summary**

The Judicial Council directed the Green Phase Working Group ( GPWG) to study the ongoing use of virtual meeting technology to conduct court proceedings. The GPWG now submits the following report and recommendations for the Council's consideration.

- The use of virtual hearings to conduct court proceedings is accompanied by benefits and drawbacks, which must be identified, monitored, and balanced to best ensure that the courts continue striving to provide the public an open, fair, efficient, and independent system for the advancement of justice.
- A 2022 survey of Utah court users shows an overwhelming preference for the continued use of virtual hearings across court user types and age groups in district, juvenile, and justice courts.
- After careful study, the GPWG favors an approach that prioritizes judicial discretion in determining whether a hearing will be in person or virtual and allows court patrons to request to participate in a different manner.
- Recommended best practices for continued use of virtual hearings revolve around adequate notification of which hearings are intended to be conducted virtually, education and technical assistance to overcome technological and user-centric barriers, clear communication regarding decorum expectations, and continuing coordination with patrons, practitioners, the public, and other stakeholders.



## Introduction

During the COVID-19 pandemic, virtual meeting technology allowed the Utah judiciary to continue striving to provide the public an open, fair, efficient, and independent system for the advancement of justice, even while public health considerations significantly restricted in-person gatherings. Judicial officers and court staff have developed proficiency in the logistics of scheduling and conducting virtual hearings, which has revealed benefits and drawbacks related to using virtual meeting technology for court proceedings.

The Judicial Council directed the Green Phase Working Group (GPWG)<sup>1</sup> to study the matter and develop recommendations regarding the ongoing use of virtual meeting technology to conduct court proceedings. While virtual hearings will undoubtedly continue to be an important tool for the judiciary, the tool's effectiveness varies based on the situation and the parties involved. The goal has been to ascertain how virtual meeting technology can be employed into the future to advance the judiciary's mission without sacrificing the effectiveness inherent in in-person proceedings.

This report:

1. identifies prevalent benefits and drawbacks of virtual hearings;
2. explores the effect of virtual hearings on access to justice;
3. addresses technology considerations;
4. presents aggregate court user feedback on the use of this technology; and
5. recommends best practice considerations moving forward.

Recommendations from the GPWG are noted with a blue background throughout the report and are listed again at the end of the report.

## Definitions

"Virtual hearing" means a court proceeding where the judicial officer, court staff, parties, and attorneys simultaneously appear and participate through the use of virtual meeting technology from different physical locations.

"Hybrid hearing" means a court proceeding where some participants are present together in the physical courtroom while other participants simultaneously appear and participate in the proceedings through the use of virtual meeting technology from a different physical location.

"Virtual meeting technology" means a software platform that enables more than one individual to simultaneously participate in the same meeting from different physical locations.

---

<sup>1</sup> **Appendix A** contains a list of GPWG members and staff.

## Benefits and Drawbacks of Virtual Hearings

Virtual hearings have been critical to the operation of the judiciary during the pandemic. The use of technology allowed the courts to overcome the all-or-nothing choice between fully restricting access to the courts or exposing patrons, court staff, and judicial officers to a little-understood, highly contagious and deadly disease. Like any new technology, the benefits of virtual hearings came with drawbacks. The judiciary has learned a great deal about the utility and efficacy of virtual hearings since they became the default in 2020. Table 1 below outlines examples of the benefits and drawbacks of virtual hearings, as experienced by judicial officers, court employees, and court users throughout the state.

BENEFITS	
Access to Courts	<ul style="list-style-type: none"> <li>• Some people will be able to attend a hearing who otherwise would not be able to do so.</li> <li>• Virtual hearings accommodate people who do not have a driver license but have access to virtual meeting technology.</li> <li>• The judiciary can draw from a larger pool of interpreters if interpreters do not have to attend court in person.</li> <li>• Extended family members and friends are able to attend proceedings such as adoptions.</li> <li>• News media outlets are able to cover hearings more regularly and across greater geographic diversity.</li> </ul>
Convenience	<ul style="list-style-type: none"> <li>• Court patrons can appear in court without needing to take time from work or home responsibilities.</li> <li>• Virtual jury selection is less disruptive to potential jurors.</li> </ul>
Financial Savings	<ul style="list-style-type: none"> <li>• Court patrons are less likely to lose wages for missing work if they are able to appear remotely.</li> <li>• Court patrons may avoid the need to pay for childcare or travel expenses to and from the courthouse.</li> <li>• Litigants may avoid having to pay their attorneys to travel to court or wait at the courthouse for their case(s) to be called.</li> </ul>
Legal Representation	<ul style="list-style-type: none"> <li>• Practitioners may be able to represent more clients if they travel less for hearings.</li> <li>• Litigants can draw from a larger pool of attorneys if attorneys do not have to travel to different geographic regions of the state / county / city.</li> <li>• Underserved communities have greater access to pro bono representation.</li> <li>• Attorneys in some civil cases may be able to have better communication with their clients in a virtual setting where the client better understands that the communication will be focused and efficient.</li> </ul>
Efficiency	<ul style="list-style-type: none"> <li>• Court patrons may spend less time unable to fulfill other responsibilities while waiting for their hearing.</li> </ul>

	<ul style="list-style-type: none"> <li>• Practitioners are able to accomplish more work when spending less time traveling to hearings / sitting in a courtroom waiting for their case(s).</li> <li>• Virtual hearings may be a more efficient use of resources than transporting people from jails, prisons, or other secure facilities.</li> </ul>
Safety	<ul style="list-style-type: none"> <li>• Virtual hearings offer an increased feeling of safety for victims of crime, petitioners for protective orders and civil stalking injunctions, parties in high conflict domestic cases, volunteers and others.</li> <li>• There are fewer law enforcement and public safety concerns than are involved with physically transporting inmates to a courthouse.</li> </ul>
Comfort	<ul style="list-style-type: none"> <li>• Some court patrons find appearing remotely for proceedings more comfortable / less intimidating, allowing them to be more authentic</li> </ul>
Judicial Preference	<ul style="list-style-type: none"> <li>• Some judicial officers prefer virtual jury selection over in-person jury selection.</li> </ul>
Information	<ul style="list-style-type: none"> <li>• In some kinds of cases, courts receive additional information to use in decision-making when people who would not be able to participate in person are able to appear virtually.</li> </ul>
<b>DRAWBACKS</b>	
Loss of Court Efficiency	<ul style="list-style-type: none"> <li>• For certain hearings, conducting the hearing virtually may take longer than doing the same work in person.</li> <li>• Fewer opportunities for counsel to visit while in the courthouse may result in fewer cases being settled on terms acceptable to the parties.</li> <li>• It can be difficult to negotiate with another party through a virtual platform.</li> </ul>
Lack of Decorum	<ul style="list-style-type: none"> <li>• Because virtual hearings are often viewed as less formal, some participants show a lack of decorum reflected in their dress, location when appearing, other activities going on in the background, interruptions, and lack of civility.</li> </ul>
Lack of Focus	<ul style="list-style-type: none"> <li>• Court participants sometimes try to multitask during virtual hearings and do not give their full attention to the court proceeding.</li> </ul>
Constraints on Other Actions	<ul style="list-style-type: none"> <li>• It is difficult or impossible to enforce certain court orders virtually.</li> <li>• It is difficult to serve parties who would be served at the courthouse if the hearing were in person.</li> <li>• It may be difficult to get defendants to report to jail when custody is ordered through a virtual hearing.</li> </ul>
Resource Limitations	<ul style="list-style-type: none"> <li>• Some jails are unable to accommodate the volume or timing of virtual hearings.</li> <li>• Lack of necessary equipment or insufficient access to the internet may limit or prevent some people from appearing through Webex.</li> </ul>

<p>Communication Friction</p>	<ul style="list-style-type: none"> <li>• Communication between attorneys and clients may suffer during virtual hearings and requires more planning to accommodate.</li> <li>• There are challenges using the Language Line (interpretation resource) in virtual hearings.</li> <li>• Obtaining victim and restitution information from prosecutors is more challenging in a virtual setting.</li> <li>• News media outlets obtain the highest quality recordings (particularly of higher profile case hearings) when recorded in person.</li> <li>• Judicial officers, attorneys, and jurors may miss important non-verbal cues that could be seen in person.</li> </ul>
<p>Technical Issues</p>	<ul style="list-style-type: none"> <li>• Technical problems sometimes interfere with hearings and may hinder access to court.</li> <li>• Virtual hearings use large amounts of bandwidth.</li> <li>• Interpretation sometimes suffers during virtual hearings.</li> <li>• The quality of the record may be diminished.</li> <li>• There is a learning curve for new participants.</li> </ul>
<p>Demands on Staff</p>	<ul style="list-style-type: none"> <li>• Non-IT staff are often required to provide impromptu technical support.</li> <li>• With the current system, scheduling virtual hearings requires additional work for staff.</li> </ul>
<p>Legal Concerns</p>	<ul style="list-style-type: none"> <li>• Virtual hearings may present constitutional deficiencies for some criminal hearings.</li> <li>• It can be difficult to judge the credibility of witnesses or ensure that witnesses are not impermissibly relying on extrinsic sources or aided by other individuals when providing testimony (despite amending the rule to include additional language in the oath).</li> <li>• It can be difficult to know whether another person is in the room with a virtual participant, trying to influence that participant.</li> </ul>

Table 1 – Benefits and Drawbacks of Virtual Hearings

## Access to Justice

Access to justice has been, is, and will continue to be a primary consideration when assessing court operations, including the use of virtual meeting technology. One of the benefits of virtual hearings has been an increase in access to justice for many people.

- Some parties find that it is much easier to participate in court proceedings virtually than to appear in person. Through the use of virtual hearings, barriers such as arranging transportation, finding daycare, or taking time off from work or other life responsibilities are reduced or eliminated. For some people, these barriers are the difference between being able to access court services and having to delay, or even forgo, court involvement, some of which affects physical safety. For others, these barriers could be the difference between a default judgment and the ability to meaningfully participate in their case. In some instances, it will be the difference between participation in an occupancy hearing and becoming homeless.
- Virtual hearings can reduce barriers by allowing court patrons to feel safe by appearing in a comfortable place and in a different location than the person they fear. Though a court patron in this situation may be capable of attending an in-person hearing, such a patron may reasonably view virtual hearings as increasing their access to the courts.
- Virtual hearings provide greater access for some court patrons and practitioners with disabilities. At least one attorney explained that he is often not able to attend in-person hearings because of his disabilities. The use of virtual hearings has allowed him to significantly expand his law practice because he is able to attend many more proceedings. This provides greater access to the attorney and his clients.
- For many people, virtual hearings provide greater access to justice simply because they are more convenient. While mere convenience may not override other considerations, it is still an important factor.

There are also aspects of virtual hearings that can impede access to justice. These obstacles must be understood and considered to ensure that the judiciary provides the best opportunities for the public to access court services.

- Some court patrons lack sufficient internet access, have limited means to purchase or maintain the necessary hardware, or are not comfortable with technology generally. This can impair or completely prevent the individual from appearing or effectively advocating their position in the case.
- Even for the users most comfortable with virtual hearings, technical problems outside of the individual's control can present barriers to accessing justice. Virtual platforms obviously depend on reliable networks and sufficient bandwidth. Some court patrons may use a less-than-optimal network that disrupts the hearing, making it difficult for the court to hear them and difficult for the patrons to follow what is taking place in the hearing. The demand for internal network bandwidth by court staff and judges

sometimes exceeds supply, causing disruptions to virtual hearings and other network uses.

- Virtual hearings are also more prone to create issues with the quality of the audio recording of the court proceedings. Disruptions from other court patrons in the same hearing, bandwidth constraints and fluctuations, and sometimes limitations of the virtual platform itself have compromised the quality of the audio recordings that constitute “the record.” Recording quality concerns span the spectrum from minor annoyance in some cases to rendering the record completely useless during the transcription process. The diminishment of reliable recording quality is a clear and significant problem, particularly if issues in a case evade meaningful and complete appellate review due to a compromised recording.

The platform providers and our internal IT team have done much to improve the quality of the virtual hearing recordings and specific additional improvements are anticipated to be completed in the near future. With support from the Judicial Council, the IT and facilities teams are installing kiosks in courthouses throughout the state that provide reliable access to virtual hearings. The IT team has also been working hard to secure expanded bandwidth and provide support and training along with the necessary hardware and software.

## **Technology Considerations**

Instituting virtual hearings in the Utah courts at the onset of the pandemic required the judiciary to purchase and roll out new technology, train judicial officers and employees, collaborate with system partners, and increase IT team support. A forward-looking and effective virtual hearings strategy will require additional and upgraded hardware and software, continual network monitoring and improvements, and significant time to fully implement.

### ***Hardware and Software***

The Utah courts have invested significant time and resources into establishing a baseline hardware and software foundation for conducting virtual hearings. These previous investments, coupled with planned upgrades, position the courts to continue using virtual and hybrid hearings into the future.

Early in the pandemic, the Utah courts determined that Webex was the virtual meeting technology platform best suited to the needs of the judiciary. The number of Webex accounts available to judicial officers and court employees has gradually increased since the beginning of the pandemic as licensing needs and available resources have allowed. The judiciary currently has approximately 1,900 Webex licenses for state and local courts. Most of the state courts' computers have been upgraded to meet the minimum standards for Webex, but some outdated computers remain in use and will need to be replaced.

Beyond the necessary software licensing and the computers to operate that software, other hardware and technology upgrades in the courtrooms statewide have been necessary to conduct efficient and effective virtual and hybrid hearings. Numerous courtroom upgrades such as rolling media carts, additional monitors to display proceedings to the parties, and video cameras have been purchased and installed to support both virtual and hybrid hearings. In the near future, additional upgrades will be installed in courtrooms to better facilitate remote appearances, the presentation of evidence, and other related functionalities. Important additional upgrades to hardware and software are planned including: enabling simultaneous interpretation; allowing Webex audio to be recorded directly to the courts' official audio recording platform "For The Record" (FTR); and cloud migration of FTR data.

### ***Network Requirements***

The increased use of virtual court hearings and meetings has at times placed a nearly overwhelming load on the courts' network capabilities and bandwidth. This voluminous data transmission burden has resulted in slow network response times for critical systems to function well. It is anticipated that these challenges will not be fully resolved until an ARPA-funded<sup>2</sup> network upgrade is completed in December 2024. This upgrade is intended to optimize system performance through the creation of discrete network connections to route network traffic for the courts' internal applications (CORIS, CARE, etc.) separately from external applications (Webex, Google services, etc.).

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<sup>2</sup> "ARPA" is the American Rescue Plan Act of 2021 (H.R. 1319), enacted on March 11, 2021.

### ***Other Technology-related Considerations and Challenges***

While the advancements and expanded use of technology are critical to the successful ongoing use of virtual and hybrid hearings, there are some challenges that the courts should anticipate and prepare for:

- judicial officer and court staff training will remain a significant need;
- reliance for support from the IT team will increase and add additional pressures on a small support staff tasked with handling high support volume;
- supply chain issues for hardware and devices will likely present ongoing challenges into the foreseeable future; and
- upgrades such as Webex kiosks, permanent cameras in all courtrooms, an accessible and intuitive public portal, FTR migration to the cloud, simultaneous interpretation, and other changes will be implemented gradually through December 2024, which will require the courts to adopt some short-term solutions while coping with the necessary time to complete these critical technology upgrades.

#### **GPWG Recommendation**

Continue to invest in IT staff necessary to support virtual and hybrid hearings and to provide training to employees, judges and commissioners.



# Court User Survey

During the summer of 2022, the Utah State Bar’s Access to Justice Commission, in partnership with the Utah Judicial Council, conducted a limited survey of court users (primarily in the Third District) about their experiences with virtual hearings from the fall of 2021 through the spring of 2022. The results, which provide useful information for the judiciary, are found in “Utah Survey of Court Users: The Impact of Remote Hearings on Access to Justice, June 2022.”<sup>3</sup>

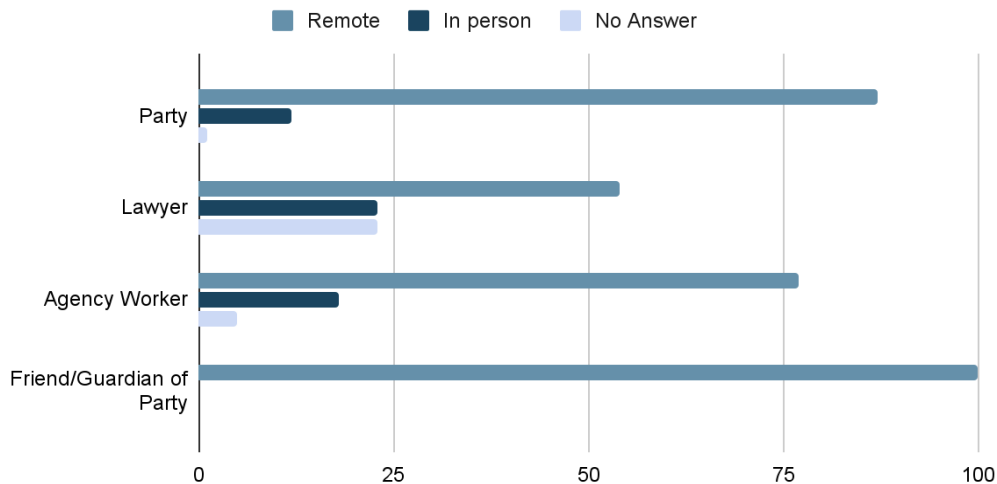
At the time the report was published, a total of 212 individuals had provided survey responses, including 116 parties, 68 lawyers, 22 government agency workers, and 5 friends/guardians of a party. These individuals participated in a variety of hearings in district court (criminal and civil), juvenile court (delinquency and child welfare), and justice court (criminal, traffic, and small claims).

The most conclusive survey result was that 75% of respondents across all types of survey participants expressed a preference for virtual hearings.<sup>4</sup> Parties were the most likely group to prefer virtual hearings (87%), followed by agency workers (77%) and lawyers (54%).<sup>5</sup> See Figure 1.

While the preference of court users is only one consideration among many, it is strong evidence that there is value in conducting certain court proceedings through virtual hearings.

Figure 1. Hearing Preference by Type of Participant

Source: Utah Survey of Court Users: The Impact of Remote Hearings on Access to Justice, June 2022.



<sup>3</sup> See **Appendix B** for the Utah State Bar Access to Justice Commission full survey report.

<sup>4</sup> Respondents were asked “For your court hearing or activity today, which do you prefer?” and were given two choices: “I prefer participating in person at the courthouse” and “I prefer participating remotely (by video, phone, or virtually).”

<sup>5</sup> 100% of “friends / guardians of party” preferred virtual hearings, though the sample size of this group was five individuals.

## Judicial Discretion vs. Patron Preference

There are many approaches the Judicial Council could adopt regarding the ongoing use of virtual hearings. In discussing various approaches, the GPWG weighed three main considerations: patron preference, consistency, and judicial discretion.

**Consistency.** There is value in having a consistent approach throughout the state. Court patrons know what to expect and can plan accordingly. Attorneys know whether a hearing is likely to be quick because it is virtual or whether the hearing will involve significant travel time to and from the courthouse. This is especially helpful for attorneys who practice in front of multiple judicial officers in different districts. It matters even more for non-profit legal service providers; they provide legal services across the state and have minimal administrative support to keep track of and cope with varying requirements. These agencies and other stakeholders have expressed a preference for statewide consistency.

**Patron Preference.** Public perception and participation are significantly impacted by the type of hearing. When attorneys, parties, and other court patrons can choose whether to access court remotely or in person, they are better able to manage their work and family obligations, schedules, finances, transportation, and personal safety. Court administration in Ohio has found that court users rank the courts higher in access and fairness when they are allowed to choose the venue because it allows them to participate in the process instead of just having the court process happen to them.

**Judicial Discretion.** Every hearing involves unique circumstances and people, and the judicial officer is in the best position to determine whether a virtual hearing or in-person hearing best serves the interests of justice given those unique factors. Additionally, our state comprises diverse geographic regions with unique strengths, needs, and characteristics. It is difficult to craft a single approach to determining whether hearings will be held virtually or in person that adequately serves the needs of all districts. Maximizing judicial discretion also allows judges to consider the impact virtual or in-person hearings have on their individual staff members.

The GPWG discussed and ultimately rejected an approach used by some states that establishes presumptions or mandates for every type of hearing. Though this approach establishes consistency, it almost completely ignores judicial discretion and the reality that every case is different. The GPWG also worried that complete judicial discretion discounts the feedback received from external stakeholders and leads to practices that are inconsistent for similar types of hearings.

In an effort to give appropriate weight to all three of these considerations, the GPWG recommends the following approach.

- 1. Judicial discretion**

Judicial officers consider the factors discussed below in “Considerations for Judicial Officers” and other information relevant to the case, hearing, and parties and then determine whether a hearing will be in-person or virtual.

## 2. **Court Patron Requests**

- a. Where an in-person hearing is scheduled and a participant requests that they be allowed to participate virtually, the judicial officer must allow them to participate virtually if the participant shows good cause, which permission shall not be unreasonably withheld.
- b. Where a virtual hearing is scheduled and a participant requests that they be allowed to participate in person, the judicial officer must allow them to participate in person if the participant shows good cause, which permission shall not be unreasonably withheld.

## 3. **Good Cause**

A good cause standard should be established, as discussed below in “Amending Court Rules.”

## 4. **Court Technology**

- a. Courtroom technology must provide remote participants the same opportunity as in-person attendees to hear, view, and participate in the court proceeding.
- b. Each district should develop a digital evidence plan to standardize how digital evidence is managed within the district.

## 5. **Remote Attendee Obligations**

- a. A person who attends a court proceeding virtually must use a device and an internet connection that will contemporaneously transmit video and audio with sufficient quality to ensure a clear, verbatim record of the proceeding. If that technology is unavailable, the person must attend the court proceeding in person. The judicial officer may choose to require only audio transmission.
- b. Remote attendees must observe the same courtroom decorum as those attending in person, including appropriate courtroom attire, behavior, and language.
- c. Remote attendees must appear from a location that does not disrupt the court proceeding and allows the attendee to participate without distractions.
- d. Attendees must never appear in a court proceeding while operating a vehicle.
- e. Attorneys appearing remotely must be on time and not delay a court proceeding by overscheduling remote appearances.

### **GPWG Recommendation**

Judicial officers should have discretion to determine whether a hearing will be in person or virtual. If a court patron requests to participate in a way other than the way identified by the judicial officer and demonstrates a valid reason, the judicial officer should be required to grant the request. Court rules should be adopted to implement this approach.

# Considerations for Judicial Officers

## ***Juvenile Courts***

Addressing the individual needs of children and families is one of the foundational components of the Utah Juvenile Court. This approach extends to and influences decisions on appropriateness and effectiveness of conducting a hearing in-person or virtually. Maintaining judicial discretion in making these decisions is vital to preserving the defining characteristics of the juvenile court and ensuring an individualized approach to each case.

While the decisions on in-person and virtual hearings should be made based on unique circumstances of each case and each hearing, some juvenile court proceedings are more suitable to conduct virtually while other proceedings are more suitable for an in-person setting.

### **Virtual**

The following juvenile court hearing types may be more appropriate to conduct virtually.

- Delinquency:
  - Detention Hearings
  - Expungements
  - Entire delinquency cases (*contingent on the factors listed below*)
  - Entire delinquency cases where minors are in an out-of-county placement
- Child Welfare:
  - Custody of Refugee Minor cases (CCS Petitioner)
  - Immigrant Status cases
  - Child Welfare Reviews (*contingent on the factors listed below*)
  - Child Welfare Post Termination Reviews

### **In Person**

The following juvenile court hearing types may be more suitable to conduct in-person.

- Delinquency:
  - Trials
  - Evidentiary Hearings
  - Hearings on Motions to Suppress that include testimony
  - Competency hearings
  - Order to Show Cause/Contempt hearings
  - Criminal Information or Bind over cases that involve evidence
  - Any case where a party requests an in-person appearance
- Child Welfare:
  - Trials
  - Evidentiary hearings
  - Shelter hearings
  - Adjudication/Pretrial hearings
  - Disposition

- Permanency hearings
- Voluntary Relinquishment
- Order to Show Cause/Contempt hearings
- Any case where a party requests an in-person appearance
- Other Cases/Hearings
  - Treatment Courts
  - Petitions for Marriage
  - Judicial Bypass petitions
  - Emancipation petitions
  - Protective Orders
  - Adoption (*with an option for virtual attendance for family members out of the area*)

In making decisions on scheduling an in-person or virtual hearing, juvenile court judges should consider:

- Individual needs of youth and parents:
  - access to technology, including availability of Webex kiosks or other similar accommodations to facilitate participation in a virtual hearing;
  - transportation and travel challenges, including distance of residence from the courthouse (out of county, etc);
  - accommodation for youth enrolled in school; and
  - accommodation for working parents.
- Case Circumstances:
  - feasibility of a virtual hearing or transport for an incarcerated parent;
  - whether a case is high-profile;
  - whether a youth or parent would benefit from face-to-face interaction with the judge;
  - youth or parent lack of engagement;
  - youth is in a remote out of home placement and transport is not feasible; and
  - youth or parent display a lack of understanding of court processes or orders.
- Hearing Circumstances:
  - whether the hearing is a procedural or substantive type hearing;
  - whether evidence is being presented; and
  - whether witness testimony is required.

Juvenile court judges should additionally consider comfort level, preferences, and health accommodations of parties and teams. It may be beneficial at the time the next hearing is being scheduled to provide an opportunity for parties and participants to express their preferences regarding an in-person or virtual setting.

**GPWG Recommendation**

Juvenile court judges should consider the factors listed in this section when deciding whether a hearing will be in person or virtual.

***Justice and District Courts***

Post-pandemic, justice court judges and district court judges will continue to have the option to use in-person and virtual hearings to effectively accomplish the mission of the courts. While the state courts IT department has made significant improvements to the technology and hardware that make virtual hearings possible, the judiciary should continue to make additional investments in technology to better accommodate virtual hearings, facilitate hybrid hearings, and improve the evidence-presentation process for all hearing types in every courtroom throughout the state. Regardless of the type of hearing, an accurate audio record must be maintained.

Judicial discretion is paramount when deciding whether to hold an in-person or virtual hearing. Given the unique characteristics of each court, court location, and case, district court judges must have individual discretion to determine which hearing type will best promote the open, fair, and efficient administration of justice in each proceeding. In-person and virtual hearings offer different benefits and efficiencies, so judges will need to decide whether proceeding in person or virtually will best address the unique circumstances of each hearing.

It is also important to understand the technical limitations that impact virtual hearings. For example, some county jails have limited capacity for virtual hearings and cannot accommodate the number or length of virtual hearings a court may desire to hold.

The GPWG recommends justice court judges and district court judges consider principles of procedural fairness, factors outlined in court rule, and the following factors where relevant (listed in no particular order):

- Does an existing statute, rule, or principle of law require an in-person hearing? Can the mandatory nature of that requirement be waived by the parties (or by a single party)?
- Do all parties have sufficient access to technology for virtual hearings?
- What is the substantive or procedural importance of the hearing?
- Which type of hearing best promotes access to justice for the parties?
- Are the parties more comfortable with a virtual hearing (e.g., high-conflict domestic cases, protective order hearings, and civil stalking injunction hearings)?
- Does the type of hearing allow the parties to have access to counsel of their choice?
- Would the parties or their counsel be required to travel long distances for an in-person hearing?
- Is there a significant cost to a party for an in-person hearing (e.g., money, time, lost work, child care, cost of transportation from jail for civil proceeding, etc.)?
- Do the parties have a stated preference for a certain type of hearing? If so, how and when do parties state their hearing-type preference?

- Are the judge and court staff able to manage a virtual or hybrid courtroom effectively?
- Does the hearing make efficient use of judicial resources, facilities, and court personnel?
- Will a party be prejudiced from requiring an in-person, virtual, or hybrid hearing?
- Will the type of hearing unreasonably delay the progress of the case, increase expense, or complicate resolution of any issue?
- Will the type of hearing unreasonably limit the court's ability to assess credibility, voluntariness, or comprehension?
- Is there a fairness concern because one party has easier access to the courthouse, or greater facility with technology, and is seeking a strategic advantage?
- Does the type of hearing allow for greater access to effective interpretation services?
- Is there enough time to give notice for people to make appropriate arrangements—especially where there is a change from one hearing type to another?
- Does the type of hearing—particularly virtual and hybrid hearings—allow parties to share documents?
- In virtual and hybrid hearings, will the participants have prior or simultaneous access to documents, photos, etc., that are submitted to the courtroom?

#### **GPWG Recommendation**

Justice court judges and district court judges should consider the factors listed in this section when deciding whether a hearing will be in person or virtual.

### ***Appellate Courts***

The appellate courts have only one hearing type to consider in evaluating moving into a post-pandemic judicial environment—oral arguments. Oral arguments never have witnesses and very rarely utilize any form of evidentiary exhibits.

Likewise, procedural fairness in appellate hearings is accomplished by parties being able to clearly present their arguments and communicate with the members of the bench, and respond in rebuttal where appropriate, to opposing counsel's arguments. This of course has historically been accomplished by in-person oral arguments. Throughout the COVID-19 pandemic this was accomplished entirely via virtual hearings.

One aspect of procedural fairness that was not considered prior to the pandemic was that our appellate courts hear cases from all eight judicial districts while being housed in the Third District. This presents the question: how does this geographical arrangement impact litigants? For example, represented parties of an appeal originating in the Fifth District would possibly pay more for their appeal as their counsel is required to travel several hundred miles to Salt Lake City. Allowing for virtual appearances for these parties and attorneys, if able to be done equitably, would eliminate a procedural hurdle for the geographically distant party and increase procedural fairness.

Utah's appellate courtrooms are currently undergoing a significant technology overhaul that will allow both parties, as well as the appellate judges, to appear in person or virtually. The

technology allows one party to appear virtually while the other appears in-person, and allows one or more judges to appear remotely while the others appear in-person.

### ***Considerations for Deciding on In-person vs. Virtual Oral Argument***

- What are the locations of parties and the costs of travel? Does requiring one party to travel a significantly greater distance to the courthouse create fairness issues?
- What are the unintended impacts of having appellate courts that operate from only one courthouse in the state? Does this geographic reality impact decisions to file appeals?
- Would in-person or virtual oral argument increase the diversity of the appellate bar? Would it increase the diversity of the appellate bench?
- Which method(s) do the parties prefer for making their oral arguments?
- Which method does the appellate bench prefer for holding oral argument? Because oral argument is designed to be an opportunity for judicial officers to ask questions presented in briefing, does this preference hold more weight than the preference of the parties?
- Does the type of case matter in making the decision on remote vs. in-person?

#### **GPWG Recommendation**

Appellate court judges should consider the factors listed in this section when deciding whether a hearing will be in person or virtual.



## Recommended Best Practices for Virtual Hearings

The experiences of judicial officers and court staff with virtual hearings over the past two years helped the GPWG identify best practices for the ongoing use of virtual hearings. The following pages of this report provide both court-wide recommendations and recommendations for specific groups including judges and court staff, court patrons, attorneys, and the prison and jails.

### ***Court-wide Recommendations:***

1. Each court location should update judicial officers, court staff, patrons, attorneys, and community partners (e.g., the prison and jails) on relevant Webex updates and process changes. This may include a page on the court website for updates and regular revisions to posted Webex guides.
2. Each court calendar should clearly indicate if a hearing is scheduled to be held in person or through a virtual or hybrid hearing. If the calendar setting is for a virtual or hybrid hearing, the Webex link for the hearing should be included on the calendar for the parties, public, and media to access, as appropriate (i.e., some hearings – such as adoptions – are not open to the general public or media and would therefore not have a publicly-accessible Webex link).
3. A party who shows up at the courthouse for a virtual hearing – whether due to calendaring confusion or inability to access a virtual hearing on their own – should be provided access to participate in the virtual hearing. To facilitate this access, kiosks should be available at every courthouse for patrons to participate in virtual hearings as needed.
4. To address current challenges with the courts' network bandwidth, it is recommended that court employees working at a court location avoid using the wireless network and instead connect to the wired network whenever and wherever possible.
5. Court employees working at the same court location who attend a virtual meeting should gather as a group in a single location to attend the meeting from a single device and network connection as this reduces bandwidth pressure on the courts' network.
6. The public wireless networks in each court location share a statewide connection, resulting in limited capacity to support parties, attorneys, and members of the public who may expect to use the courts' public wireless network to attend remote hearings. These court participants should connect to virtual hearings using networks other than the courts' public wireless networks at the courthouse.

## Recommendations for Specific Groups – Judicial Officers & Court Staff:

JUDICIAL OFFICERS & COURT STAFF		
1	<b>Notices:</b> <i>Contents</i>	All notices for virtual hearings should include at a minimum the following information (taking into consideration Rule 43 of the Utah Rules of Civil Procedure): <ul style="list-style-type: none"> <li>• the date and time of the hearing;</li> <li>• the type of hearing – virtual, hybrid, or in-person;</li> <li>• the purpose of the hearing;</li> <li>• how to join the hearing, including: <ul style="list-style-type: none"> <li>– the Webex link (or how to access that link);</li> <li>– if permitted, how to call-in for the hearing;</li> <li>– whether participant video must be enabled;</li> <li>– how to access virtual hearing kiosks at a court location;</li> </ul> </li> <li>• what to expect at a virtual hearing;</li> <li>• how to file, serve, and present evidence;</li> <li>• what patrons should tell their witnesses;</li> <li>• contact information for technical assistance (<i>see Recommendation #5</i>);</li> <li>• the process for submitting and presenting evidence (<i>see Recommendation #8</i>); and</li> <li>• how to request interpretation or accommodation (<i>see Recommendation #12</i>).</li> </ul>
2	<b>Notices:</b> <i>Plain Language</i>	Notices should be easy to understand (i.e., in plain language, avoiding abbreviations or having standard abbreviations; etc.).
3	<b>Notices:</b> <i>Hearing Changes</i>	If a hearing is changed from in person to virtual or vice versa after notice was sent, a new timely notice should be provided to all participants.
4	<b>Notices:</b> <i>Self-Represented Parties</i>	If a self-represented party has provided an email address, notices should be sent by email. When possible, MyCase should be the preferred method for such communication.
5	Technical Assistance for Virtual Hearing Participants	Each court location should have a technical assistance phone number that is included on every hearing notice. Ideally this number should be specific to each court location, but at a minimum should connect the participant to a qualified individual who can: <ol style="list-style-type: none"> <li>a) assist the participant to resolve technical issues; AND</li> <li>b) communicate immediately with the judicial officer’s judicial assistant that the participant is attempting to connect to the virtual hearing but is experiencing technical issues.</li> </ol>
6	Calendar Capacity	Virtual hearings may take longer and should be scheduled appropriately.

<b>JUDICIAL OFFICERS &amp; COURT STAFF</b>		
<b>7</b>	Webex Greeting	Participants should be greeted by a screen in Webex to confirm for participants and the public that they are in the right virtual location. For example, the screen could display the name of the judge, the time hearings are scheduled to begin, and what to do while waiting.
<b>8</b>	<b>Instructions:</b> <i>Evidence</i>	Judicial officers and judicial assistants should provide participants with clear instructions on how to submit and present evidence to the court during a virtual hearing.
<b>9</b>	<b>Instructions:</b> <i>Expectations</i>	If possible, any specific expectations of the parties should be clearly communicated to the parties in advance (e.g., if a camera is required for the party's participation in the hearing, if parties are expected to have spoken/negotiated before the hearing or if breakout rooms will be available for that purpose, etc.). These expectations could be provided in a flier, district-level standing order, or the Judicial Council may want to create a rule.
<b>10</b>	<b>Instructions:</b> <i>Hearing Processes</i>	The judicial officer or judicial assistant should provide hearing-specific instruction on virtual hearing processes (e.g., how a party/attorney should inform the court when their case is ready to be called). "How to" materials could be created for attorneys new to virtual hearings (how to find the calendar/hearing information, tips on how to communicate with clients if they are not in the same location during the hearing, how to prepare clients, how interpretation works during hearings, communicating with opposing side in advance of the hearing, use of breakout rooms, how to present evidence, etc.)
<b>11</b>	<b>Instructions:</b> <i>Use of Webex</i>	The courts should provide clear instructions explaining how to use Webex. "How to" materials could be created for all Webex users. Materials for attorneys new to virtual hearings might include how to find the calendar/hearing information, tips on how to communicate with clients if they are not in the same location during the hearing, how to prepare clients, how interpretation works during hearings, communicating with opposing side in advance of the hearing, use of breakout rooms, how to present evidence, etc.
<b>12</b>	Interpretation & Accommodation	When an interpreter is needed, judicial assistants should make arrangements for simultaneous interpretation if possible (or direct the party or attorney on how to arrange for simultaneous interpretation). The process for requesting other accommodations should be clearly communicated to participants.
<b>13</b>	Ongoing Training	Judicial officers and judicial assistants should receive ongoing training on Webex and other necessary virtual hearing technology.

JUDICIAL OFFICERS & COURT STAFF		
14	Experience Sharing	The courts should provide regular opportunities for judicial officers, court staff, patrons, and stakeholders to share their feedback on the use of the virtual hearings.

**Recommendations for Specific Groups – Court Patrons:**

COURT PATRONS		
1	Decorum Expectations	<p>Participants <b>SHOULD</b>:</p> <ul style="list-style-type: none"> <li>a) remember that a virtual courtroom is subject to the same standards of behavior and decorum as in-person court;</li> <li>b) dress appropriately for a court appearance;</li> <li>c) be focused on the proceedings by pre-arranging care for other obligations that may need attention during the hearing (i.e., children, pets, etc.); and</li> <li>d) if late for a hearing, remain in the Webex proceeding until the judicial officer has finished calling through the other scheduled hearings before alerting the judicial officer.</li> </ul> <p>Participants <b>SHOULD NOT</b>:</p> <ul style="list-style-type: none"> <li>e) speak over another party or an interpreter;</li> <li>f) interrupt when joining a virtual hearing that has already started (remain muted until their case is called); and</li> <li>g) eat, drink, smoke, or drive during the hearing.</li> </ul>
2	Technology Expectations	<p>Participants <b>SHOULD</b>:</p> <ul style="list-style-type: none"> <li>a) <b>Location</b> – plan on joining the virtual hearing from a suitable location that is quiet, private, and allows the participant to focus;</li> <li>b) <b>Camera</b> – have video enabled and be visible to the court when participating in a proceeding, choosing a camera angle that avoids background distractions;</li> <li>c) <b>Lighting</b> – avoid camera angles that position a window or other bright light behind the participant (this often results in poor video quality and obscures the participant’s face);</li> <li>d) <b>Audio</b> – be aware of and try to minimize background noises;</li> <li>e) <b>Calling in on a non-smartphone</b> – avoid joining a virtual hearing via a non-smartphone, as it will limit Webex functionality (e.g., the participant won’t be able to be moved into a separate virtual room to talk with an attorney); and</li> <li>f) <b>Bandwidth</b> – use a network with sufficient bandwidth for a stable connection to the virtual hearing OR use a computer kiosk at the courthouse to join a virtual proceeding.</li> </ul>

## Recommendations for Specific Groups – Attorneys:

ATTORNEYS		
1	Expectations	<p>Expectations for attorneys should be outlined and disseminated. For example, attorneys <b>SHOULD</b>:</p> <ul style="list-style-type: none"> <li>a) <b>Title &amp; Name</b> – ensure their Webex name displays their title followed by their full name (i.e., Defense Attorney Atticus Finch);</li> <li>b) <b>Camera</b> – have video enabled and be visible to the court when participating in a proceeding, choosing a camera angle that avoids background distractions;</li> <li>c) <b>Audio</b> – be aware of and try to minimize background noises, and use a quality microphone to help ensure an accurate record;</li> <li>d) <b>Attire</b> – dress appropriately for a court appearance;</li> <li>e) <b>Simultaneous hearings</b> – log into multiple simultaneous hearings only if the attorney can effectively manage participation in each hearing, ensuring appropriate, timely, and responsive communication with each court; and</li> <li>f) <b>NEVER</b> drive during an appearance.</li> </ul>

## Recommendations for Specific Groups – Prison & Jails:

PRISON & JAILS		
1	Stakeholder Meetings	<p>Stakeholder meetings should be held to discuss and establish best practices between the courts and the prison / jails, including:</p> <ul style="list-style-type: none"> <li>a) communication processes to notify the correctional facility if a hearing will be in person or virtual so appropriate transportation or virtual appearance can be arranged;</li> <li>b) the need for each correctional facility to provide at least two Webex-equipped rooms per court calendar to facilitate attorney / client communication in a breakout room, while the court moves forward with other cases in the remaining room.</li> <li>c) the need for each correctional facility to have a dedicated phone that an interpreter can use to provide simultaneous interpretation during the hearing to an inmate with limited english proficiency.</li> </ul>

## **Amending Court Rules**

### ***Court Rule Amendment Recommendations - Appearing in Court***

A foundational principle of our pre-pandemic understanding was that appearing in court meant being physically present in the courtroom. In limited circumstances judicial officers and practitioners would utilize phone conferences, and, with exception to some in-custody first appearances taking place remotely from jails, video conferencing was seldom used across the state. As a result, most rules and practices did not contemplate the use of virtual meeting technology or—at a minimum—indicated a strong preference for in-person appearances. With the rapid advancement in courtroom technology experienced over the last several years, this strong preference for in-person appearances seems to be an increasingly outdated approach to the administration of justice.

Pursuant to the Utah Constitution, the Supreme Court is obligated “to adopt rules of procedure and evidence” and the Judicial Council is obligated “to adopt rules for the administration of the courts of the state.” Court rules are essential to the mission of the Utah judiciary to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law. Throughout the pandemic the interpretation of the meaning of this mission has evolved. The Supreme Court and Judicial Council amended or suspended application of certain rules to accommodate necessary pandemic-related changes to previously established practice. In large part, court rules are still built on a pre-pandemic understanding of the needs of judicial officers, court staff, and patrons. This section will provide recommendations our rulemaking bodies should consider when creating and amending rules in a post-pandemic judiciary.

### ***Recommendations to Supreme Court***

The Green Phase Workgroup acknowledges that many of the necessary changes found in this section implicate the direct authority of the Utah Supreme Court. As presented in *Judicial Discretion v. Patron Preference*, the GPWG recommends the Supreme Court establish a “good cause” standard that hearing participants must demonstrate in requesting to appear opposite the decision of the judicial officer. The GPWG recommends the Supreme Court charge its various advisory committees with defining the “good cause” standard through rule. The Supreme Court’s advisory committees are uniquely suited for this task because of their diverse practitioner composition, and practice of incorporating stakeholder comments into their decision-making process. Finally, the GPWG recommends that the Supreme Court establish an appeal process when a hearing participant believes a judicial officer is not appropriately applying the “good cause” standard as defined in the relevant procedural rules. Because the “good cause” standard may vary between procedural rule chapters, it will likely be necessary for each procedural rule chapter to define an appeal process.

**GPWG Recommendation**

The Supreme Court establish a "good cause" standard that hearing participants must demonstrate in requesting to appear opposite the decision of the judicial officer. The Supreme Court should define "good cause" and establish an appeal process when a hearing participant believes a judicial officer is not appropriately applying the "good cause" standard as defined in the relevant procedural rules.

***Recommendations to the Judicial Council***

During the pandemic, districts accommodated email filing for self-represented litigants who were not able to file electronically because in-person filing was not an option. That practice proved helpful to many self-represented litigants. The GPWG discussed whether the courts should continue to allow email filing by self-represented litigants. Due to the significant workload email filing adds to clerical staff, the GPWG recommends that all initial filings by self-represented litigants be made in person or via US mail. The GPWG also recommends that the Judicial Council amend its rules to specifically authorize self-represented litigants to make subsequent filings (after the initial filing) in a case through email. Notwithstanding the above, the GPWG recommends that a patron seeking a civil protective order or civil stalking injunction be allowed to file their initial request via email due to the significant access and safety concerns implicated in these proceedings.

**GPWG Recommendation**

All initial filings by self-represented litigants should be made in person or via US mail. The Judicial Council should amend its rules to specifically authorize self-represented litigants to make subsequent filings (after the initial filing) in a case through email. Notwithstanding the above, a patron seeking a civil protective order or civil stalking injunction be allowed to file their initial request via email due to the significant access and safety concerns implicated in these proceedings.

***Constitutional Considerations***

Rulemaking bodies should explore the constitutional concerns surrounding the use of in-person and virtual hearings, most importantly whether in-person and virtual hearings are constitutionally equivalent. For example, Rule 26(a)(1) of the Utah Rules of Juvenile Procedure provides that minors have a right "to appear in person and to defend in person or by counsel." Rule 17.5 of the Utah Rules of Criminal Procedure identifies certain types of hearings that can be held via contemporaneous transmission, while prohibiting others, and allowing for waiver of the prohibition with mutual agreement of the parties. Our historical analysis of when parties were entitled to in-person hearings may not be current with recent technological advances and the availability of virtual resources. The GPWG recommends that the judiciary's rulemaking bodies balance the increasing need for opportunities to improve access to justice, while simultaneously ensuring court rules and practices do not violate principles of due process.

### ***Initial Rule Amendments to Consider***

In addition to rule-making bodies providing guidance on the new “good cause” standard, there are other procedural and administrative rules that may benefit from amendment or clarification. The GPWG has formulated a list of the rules with the most perceptible need for attention, which is included under **Appendix C** of this report.



## **Stakeholder Input**

The GPWG distributed a draft of this report to community stakeholders and government agencies, requesting their feedback.

### ***Community Stakeholders***

The most common feedback from community stakeholders was that options for virtual participation in court proceedings should continue and that court patrons should be able to request the opportunity to participate virtually even if the judicial officer has determined that the proceeding will be in person. Stakeholders explained that even though virtual hearings have some limitations and are not the best option in all circumstances, they have significantly expanded access to justice.

Multiple stakeholders expressed appreciation for virtual hearings while also noting a need for additional technical support for virtual hearing participants. Many participants will not have experience with Webex and may experience difficulties accessing a virtual hearing and navigating through Webex. Resources with detailed explanations about how to participate in a virtual hearing and employees or volunteers dedicated to assisting virtual hearing participants would help people overcome difficulties prior to and during their virtual hearing.

Two stakeholders noted that the health concerns regarding the pandemic are still very real and very serious for some people and asked for appropriate consideration of the circumstances of those people.

Stakeholders provided many additional recommendations, which are listed below.

- Coordinate with community organizations likely to provide access to technology and support efforts to strengthen these services.
- Provide dedicated staff to assist users experiencing technical problems with a virtual hearing.
- Establish consistent policies to determine whether hearings will be virtual or in person.
- Each court should have a single, consistent link used to access virtual hearings.
- For virtual calendars involving multiple cases, establish a consistent way to notify the court that a participant is prepared for their case to be called and a way to notify a participant that their case will be called next.
- Provide greater access to breakout rooms for conversations with clients and for negotiations among parties.
- Make reasonable accommodations for patrons with disabilities.
- Allow hearing participants to participate virtually upon a finding of good cause even if the court has determined the hearing will be in person.
- Provide better instructions accessing a virtual hearing and explaining the expectations for participants. This may be a short video or an information sheet.
- Provide links for all public virtual hearings in a central location on the courts' website.

- Establish consistent procedures for entering evidence in virtual hearings.
- Ask virtual hearing participants if another person is in the room in order to determine whether someone is trying to influence the participant.
- Develop procedures for patrons to participate in virtual hearings without sacrificing privacy.
- Expand the availability of court kiosks for pro se people to use for printing, scanning, and filing documents.
- In both virtual hearings and in-person hearings, allow appropriate time for participants to process questions and communicate with the judicial officer.
- Shift the approach of courts to make judicial officers seem approachable and encourage staff to help people navigate the complexities of court.
- Consider offering extended hours to accommodate people who work during the day.

### ***Government Agencies***

The Utah Department of Corrections (UDC) expressed hope that the courts would not change policies that would result in them needing to conduct more transports. UDC noted that increasing the number of transports would impact their capacity to handle other work. The Division of Juvenile Justice and Youth Services similarly expressed a hope that detention hearings could be held virtually. They noted that for youth in a community placement in their county, their case managers would plan to request in-person hearings when they felt it was necessary.

## Future Questions

The judiciary will continue to learn about the utility of virtual hearings in coming months. Periodic review of these recommendations and policies based on these recommendations is important. The judiciary should gather and analyze data, including data from court patrons and stakeholders as well as data about virtual and in-person hearings, to see how virtual hearings are serving the public and advancing the mission of the judiciary.

### **GPWG Recommendation**

The judiciary should gather and analyze data, including data from court patrons and stakeholders as well as data about virtual and in-person hearings, to see how virtual hearings are serving the public and advancing the mission of the judiciary.

There will certainly be additional questions that arise regarding the use of virtual hearings. The GPWG is willing to consider and make recommendations on any additional issues that would be helpful to the Judicial Council and Supreme Court.

## Recommendations

- Continue to invest in IT staff necessary to support virtual and hybrid hearings and to provide training to employees and judicial officers.
- Judicial discretion vs. patron preference
  1. **Judicial discretion**

Judicial officers consider the factors discussed below in “Considerations for Judicial Officers” and other information relevant to the case, hearing, and parties and then determine whether a hearing will be in-person or virtual.
  2. **Court Patron Requests**
    - a. Where an in-person hearing is scheduled and a participant requests that they be allowed to participate virtually, the judicial officer must allow them to participate virtually if the participant shows good cause, which permission shall not be unreasonably withheld.
    - b. Where a virtual hearing is scheduled and a participant requests that they be allowed to participate in person, the judicial officer must allow them to participate in person if the participant shows good cause, which permission shall not be unreasonably withheld.
  3. **Good Cause**

A good cause standard should be established, as discussed below in “Amending Court Rules.”
  4. **Court Technology**
    - a. Courtroom technology must provide remote participants the same opportunity as in-person attendees to hear, view, and participate in the court proceeding.
    - b. Each district should develop a digital evidence plan to standardize how digital evidence is managed within the district.
  5. **Remote Attendee Obligations**
    - a. A person who attends a court proceeding virtually must use a device and an internet connection that will contemporaneously transmit video and audio with sufficient quality to ensure a clear, verbatim record of the proceeding. If that technology is unavailable, the person must attend the court proceeding in person. The court may choose to require only audio transmission.
    - b. Remote attendees must observe the same courtroom decorum as those attending in person, including appropriate courtroom attire, behavior, and language.
    - c. Remote attendees must appear from a location that does not disrupt the court proceeding and allows the attendee to participate without distractions. Attendees must never appear in a court proceeding while operating a vehicle.

- Juvenile court judges should consider the following factors when deciding whether a hearing will be in person or virtually.
  - Individual needs of youth and parents:
    - access to technology, including availability of Webex kiosks or other similar accommodations to facilitate participation in a virtual hearing;
    - transportation and travel challenges, including distance of residence from the courthouse (out of county, etc);
    - accommodation for youth enrolled in school; and
    - accommodation for working parents.
  - Case Circumstances:
    - feasibility of a virtual hearing or transport for an incarcerated parent;
    - whether a case is high-profile;
    - whether a youth or parent would benefit from face-to-face interaction with the judge;
    - youth or parent lack of engagement;
    - youth is in a remote out of home placement and transport is not feasible; and
    - youth or parent display a lack of understanding of court processes or orders.
  - Hearing Circumstances:
    - whether the hearing is a procedural or substantive type hearing;
    - whether evidence is being presented; and
    - whether witness testimony is required.
  - Judges should additionally consider comfort level, preferences, and health accommodations of parties and teams.
- Justice court judges and district court judges should consider the following factors when deciding whether a hearing will be in person or virtually.
  - Does an existing statute, rule, or principle of law require an in-person hearing? Can the mandatory nature of that requirement be waived by the parties (or by a single party)?
  - Do all parties have sufficient access to technology for virtual hearings?
  - What is the substantive or procedural importance of the hearing?
  - Which type of hearing best promotes access to justice for the parties?
  - Are the parties more comfortable with a virtual hearing (e.g., high-conflict domestic cases, protective order hearings, and civil stalking injunction hearings)?
  - Does the type of hearing allow the parties to have access to counsel of their choice?
  - Would the parties or their counsel be required to travel long distances for an in-person hearing?
  - Is there a significant cost to a party for an in-person hearing (e.g., money, time, lost work, child care, cost of transportation from jail for civil proceeding, etc.)?

- Do the parties have a stated preference for a certain type of hearing? If so, how and when do parties state their hearing-type preference?
- Are the judge and court staff able to manage a virtual or hybrid courtroom effectively?
- Does the hearing make efficient use of judicial resources, facilities, and court personnel?
- Will a party be prejudiced from requiring an in-person, virtual, or hybrid hearing?
- Will the type of hearing unreasonably delay the progress of the case, increase expense, or complicate resolution of any issue?
- Will the type of hearing unreasonably limit the court's ability to assess credibility, voluntariness, or comprehension?
- Is there a fairness concern because one party has easier access to the courthouse, or greater facility with technology, and is seeking a strategic advantage?
- Does the type of hearing allow for greater access to effective interpretation services?
- Is there enough time to give notice for people to make appropriate arrangements—especially where there is a change from one hearing type to another?
- Does the type of hearing—particularly virtual and hybrid hearings—allow parties to share documents?
- In virtual and hybrid hearings, will the participants have prior or simultaneous access to documents, photos, etc., that are submitted to the courtroom?
- Appellate court judges should consider the following factors when deciding whether a hearing will be in person or virtually.
  - What are the locations of parties and the costs of travel? Does requiring one party to travel a significantly greater distance to the courthouse create fairness issues?
  - What are the unintended impacts of having appellate courts that operate from only one courthouse in the state? Does this geographic reality impact decisions to file appeals?
  - Would in-person or virtual oral argument increase the diversity of the appellate bar? Would it increase the diversity of the appellate bench?
  - Which method(s) do the parties prefer for making their oral arguments?
  - Which method does the appellate bench prefer for holding oral argument? Because oral argument is designed to be an opportunity for judicial officers to ask questions presented in briefing, does this preference hold more weight than the preference of the parties?
  - Does the type of case matter in making the decision on remote vs. in-person?
- Court-wide best practices
  - Each court location should update judicial officers, court staff, patrons, attorneys, and community partners (e.g., the prison and jails) on relevant Webex updates

and process changes. This may include a page on the court website for updates and regular revisions to posted Webex guides.

- Each court calendar should clearly indicate if a hearing is scheduled to be held in person or through a virtual or hybrid hearing. If the calendar setting is for a virtual or hybrid hearing, the Webex link for the hearing should be included on the calendar for the parties, public, and media to access, as appropriate (i.e., some hearings – such as adoptions – are not open to the general public or media and would therefore not have a publicly-accessible Webex link).
- A party who shows up at the courthouse for a virtual hearing – whether due to calendaring confusion or inability to access a virtual hearing on their own – should be provided access to participate in the virtual hearing. To facilitate this access, kiosks should be available at every courthouse for patrons to participate in virtual hearings as needed.
- To address current challenges with the courts’ network bandwidth, it is recommended that court employees working at a court location avoid using the wireless network and instead connect to the wired network whenever and wherever possible.
- Court employees working at the same court location who attend a virtual meeting should gather as a group in a single location to attend the meeting from a single device and network connection as this reduces bandwidth pressure on the courts’ network.
- The public wireless networks in each court location share a statewide connection, resulting in limited capacity to support parties, attorneys, and members of the public who may expect to use the courts’ public wireless network to attend remote hearings. These court participants should connect to virtual hearings using networks other than the courts’ public wireless networks at the courthouse.
- Best practices for judicial officers and court staff

<b>JUDICIAL OFFICERS &amp; COURT STAFF</b>		
<b>1</b>	<b>Notices:</b> <i>Contents</i>	<p>All notices for virtual hearings should include at a minimum the following information (taking into consideration Rule 43 of the Utah Rules of Civil Procedure):</p> <ul style="list-style-type: none"> <li>• the date and time of the hearing;</li> <li>• the type of hearing – virtual, hybrid, or in-person;</li> <li>• the purpose of the hearing;</li> <li>• how to join the hearing, including:               <ul style="list-style-type: none"> <li>– the Webex link (or how to access that link);</li> <li>– if permitted, how to call-in for the hearing;</li> <li>– whether participant video must be enabled;</li> <li>– how to access virtual hearing kiosks at a court location;</li> </ul> </li> <li>• what to expect at a virtual hearing;</li> </ul>

JUDICIAL OFFICERS & COURT STAFF		
		<ul style="list-style-type: none"> <li>• how to file, serve, and present evidence;</li> <li>• what patrons should tell their witnesses;</li> <li>• contact information for technical assistance (see <i>Recommendation #5</i>);</li> <li>• the process for submitting and presenting evidence (see <i>Recommendation #8</i>); and</li> <li>• how to request interpretation or accommodation (see <i>Recommendation #12</i>).</li> </ul>
2	<b>Notices:</b> <i>Plain Language</i>	Notices should be easy to understand (i.e., in plain language, avoiding abbreviations or having standard abbreviations; etc.).
3	<b>Notices:</b> <i>Hearing Changes</i>	If a hearing is changed from in person to virtual or vice versa after notice was sent, a new timely notice should be provided to all participants.
4	<b>Notices:</b> <i>Self-Represented Parties</i>	If a self-represented party has provided an email address, notices should be sent by email. When possible, MyCase should be the preferred method for such communication.
5	Technical Assistance for Virtual Hearing Participants	Each court location should have a technical assistance phone number that is included on every hearing notice. Ideally this number should be specific to each court location, but at a minimum should connect the participant to a qualified individual who can: <ul style="list-style-type: none"> <li>a) assist the participant to resolve technical issues; AND</li> <li>b) communicate immediately with the judicial officer's judicial assistant that the participant is attempting to connect to the virtual hearing but is experiencing technical issues.</li> </ul>
6	Calendar Capacity	Virtual hearings may take longer and should be scheduled appropriately.
7	Webex Greeting	Participants should be greeted by a screen in Webex to confirm for participants and the public that they are in the right virtual location. For example, the screen could display the name of the judge, the time hearings are scheduled to begin, and what to do while waiting.
8	<b>Instructions:</b> <i>Evidence</i>	Judicial officers and judicial assistants should provide participants with clear instructions on how to submit and present evidence to the court during a virtual hearing.



JUDICIAL OFFICERS & COURT STAFF		
9	<b>Instructions:</b> <i>Expectations</i>	If possible, any specific expectations of the parties should be clearly communicated to the parties in advance (e.g., if a camera is required for the party's participation in the hearing, if parties are expected to have spoken/negotiated before the hearing or if breakout rooms will be available for that purpose, etc.). These expectations could be provided in a flier, district-level standing order, or the Judicial Council may want to create a rule.
10	<b>Instructions:</b> <i>Hearing Processes</i>	The judicial officer or judicial assistant should provide hearing-specific instruction on virtual hearing processes (e.g., how a party/attorney should inform the court when their case is ready to be called). "How to" materials could be created for attorneys new to virtual hearings (how to find the calendar/hearing information, tips on how to communicate with clients if they are not in the same location during the hearing, how to prepare clients, how interpretation works during hearings, communicating with opposing side in advance of the hearing, use of breakout rooms, how to present evidence, etc.)
11	<b>Instructions:</b> <i>Use of Webex</i>	The courts should provide clear instructions explaining how to use Webex. "How to" materials could be created for all Webex users. Materials for attorneys new to virtual hearings might include how to find the calendar/hearing information, tips on how to communicate with clients if they are not in the same location during the hearing, how to prepare clients, how interpretation works during hearings, communicating with opposing side in advance of the hearing, use of breakout rooms, how to present evidence, etc.
12	Interpretation & Accommodation	When an interpreter is needed, judicial assistants should make arrangements for simultaneous interpretation if possible (or direct the party or attorney on how to arrange for simultaneous interpretation). The process for requesting other accommodations should be clearly communicated to participants.
13	Ongoing Training	Judicial officers and judicial assistants should receive ongoing training on Webex and other necessary virtual hearing technology.
14	Experience Sharing	The courts should provide regular opportunities for judicial officers, court staff, patrons, and stakeholders to share their feedback on the use of the virtual hearings.

- Best practices for court patrons

COURT PATRONS		
1	Decorum Expectations	Participants <b>SHOULD:</b> h) remember that a virtual courtroom is subject to the same

COURT PATRONS		
		<p>standards of behavior and decorum as in-person court;</p> <ul style="list-style-type: none"> <li>i) dress appropriately for a court appearance;</li> <li>j) be focused on the proceedings by pre-arranging care for other obligations that may need attention during the hearing (i.e., children, pets, etc.); and</li> <li>k) if late for a hearing, remain in the Webex proceeding until the judicial officer has finished calling through the other scheduled hearings before alerting the judicial officer.</li> </ul> <p>Participants <b>SHOULD NOT</b>:</p> <ul style="list-style-type: none"> <li>l) speak over another party or an interpreter;</li> <li>m) interrupt when joining a virtual hearing that has already started (remain muted until their case is called); and</li> <li>n) eat, drink, smoke, or drive during the hearing.</li> </ul>
2	Technology Expectations	<p>Participants <b>SHOULD</b>:</p> <ul style="list-style-type: none"> <li>g) <b>Location</b> – plan on joining the virtual hearing from a suitable location that is quiet, private, and allows the participant to focus;</li> <li>h) <b>Camera</b> – have video enabled and be visible to the court when participating in a proceeding, choosing a camera angle that avoids background distractions;</li> <li>i) <b>Lighting</b> – avoid camera angles that position a window or other bright light behind the participant (this often results in poor video quality and obscures the participant’s face);</li> <li>j) <b>Audio</b> – be aware of and try to minimize background noises;</li> <li>k) <b>Calling in on a non-smartphone</b> – avoid joining a virtual hearing via a non-smartphone, as it will limit Webex functionality (e.g., the participant won’t be able to be moved into a separate virtual room to talk with an attorney); and</li> <li>l) <b>Bandwidth</b> – use a network with sufficient bandwidth for a stable connection to the virtual hearing OR use a computer kiosk at the courthouse to join a virtual proceeding.</li> </ul>

- Best practices for attorneys

ATTORNEYS		
1	Expectations	<p>Expectations for attorneys should be outlined and disseminated. For example, attorneys <b>SHOULD</b>:</p> <ul style="list-style-type: none"> <li>g) <b>Title &amp; Name</b> – ensure their Webex name displays their title followed by their full name (i.e., Defense Attorney Atticus Finch);</li> <li>h) <b>Camera</b> – have video enabled and be visible to the court when participating in a proceeding, choosing a camera angle that avoids background distractions;</li> <li>i) <b>Audio</b> – be aware of and try to minimize background noises, and</li> </ul>

ATTORNEYS		
		<p>use a quality microphone to help ensure an accurate record;</p> <p>j) <b>Attire</b> – dress appropriately for a court appearance;</p> <p>k) <b>Simultaneous hearings</b> – log into multiple simultaneous hearings only if the attorney can effectively manage participation in each hearing, ensuring appropriate, timely, and responsive communication with each court; and</p> <p>l) <b>NEVER</b> drive during an appearance.</p>

- Best practices for jails and prisons

PRISON & JAILS		
1	Stakeholder Meetings	<p>Stakeholder meetings should be held to discuss and establish best practices between the courts and the prison / jails, including:</p> <p>d) communication processes to notify the correctional facility if a hearing will be in person or virtual so appropriate transportation or virtual appearance can be arranged;</p> <p>e) the need for each correctional facility to provide at least two Webex-equipped rooms per court calendar to facilitate attorney / client communication in a breakout room, while the court moves forward with other cases in the remaining room.</p> <p>f) the need for each correctional facility to have a dedicated phone that an interpreter can use to provide simultaneous interpretation during the hearing to an inmate with limited english proficiency.</p>

- The Supreme Court should establish a “good cause” standard that hearing participants must demonstrate in requesting to appear opposite the decision of the judicial officer. The Supreme Court should charge its various advisory committees with defining the “good cause” standard through rule. The Supreme Court should establish an appeal process when a hearing participant believes a judicial officer is not appropriately applying the “good cause” standard as defined in the relevant procedural rules. Because the “good cause” standard may vary between procedural rule chapters, it will likely be necessary for each procedural rule chapter to define an appeal process.
- All initial filings by self-represented litigants should be made in person or via US mail. The Judicial Council should amend its rules to specifically authorize self-represented litigants to make subsequent filings (after the initial filing) in a case through email. Notwithstanding the above, a patron seeking a civil protective order or civil stalking injunction be allowed to file their initial request via email due to the significant access and safety concerns implicated in these proceedings.
- The judiciary should gather and analyze data, including data from court patrons and stakeholders as well as data about virtual and in-person hearings, to see how virtual hearings are serving the public and advancing the mission of the judiciary.



# APPENDIX A

## ***Green Phase Working Group Members***

- Hon. Ryan Harris, *Utah Court of Appeals*
- Hon. Renee Jimenez, *Third District Juvenile Court*
- Hon. Michael Leavitt, *Fifth District Juvenile Court*
- Hon. Richard Mrazik, *Third District Court*
- Hon. Don Torgerson, *Seventh District Court*
- Hon. Danalee Welch-O'Donnal, *Grand County Justice Court*
- Brody Arishita, *Chief Information Officer*
- Linda Ekker, *Clerk of Court – Sixth District*
- Becky Faatau, *Judicial Assistant – Third District*
- Brett Folkman, *Trial Court Executive – First District*
- Chris Morgan, *Trial Court Executive – Sixth District*
- Joyce Pace, *Trial Court Executive – Fifth District*
- Russell Pearson, *Trial Court Executive – Eighth District*
- Nathanael Player, *Self-Help Center Director*
- Glen Proctor, *Trial Court Executive – Second District*
- Calli Stephensen, *Judicial Assistant – Fourth District*
- Shannon Treseder, *Clerk of Court – Second District*
- Pleasy Wayas, *Self-Help Center Attorney*

## ***Green Phase Working Group Staff***

- Shane Bahr, *District Court Administrator*
- Michael Drechsel, *Assistant State Court Administrator*
- Ron Gordon, *State Court Administrator*
- Meredith Mannebach, *Assistant District Court Administrator*
- Daniel Meza Rincon, *Assistant Juvenile Court Administrator*
- Jim Peters, *Justice Court Administrator*
- Neira Siaperas, *Deputy Court Administrator*
- Nick Stiles, *Appellate Court Administrator*
- Sonia Sweeney, *Juvenile Court Administrator*

# **APPENDIX B**

## ***Survey Report***

*Utah Survey of Court Users:  
The Impact of Remote Hearings  
on Access to Justice, June 2022*



# UTAH SURVEY OF COURT USERS: THE IMPACT OF REMOTE HEARINGS ON ACCESS TO JUSTICE

June 2022



## PREPARED BY

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Researcher | Utah Access to Justice Commission

**Appendix B** - Utah Survey of Court Users

## Access to Justice Commission: Court User Survey Workgroup

Justice Christine Durham, Amy Sorenson, Pamela Beatse, Nancy Sylvester, Keenan Carroll, Judge Susan Eisenman, Judge Clem Landau, David McNeill, Judge Richard Mrazik, Kim Paulding, Nathanael Player, Keri Sargent.

## Acknowledgment

Members of the Court User Survey Workgroup of the Access to Justice Commission would like to thank everyone who responded to the survey. They would like to thank the Third District judicial teams and judges who are participating in this Court User Survey project including District Court Judge Richard Mrazik, Justice Court Judge Clemens Landau, and Juvenile Court Judge Susan Eisenman. They would also like to thank the National Center for State Courts, in particular Danielle Hirsch, Alisa Kim, and Zachary Zarnow, and the Utah Courts team, in particular Heidi Anderson, Todd Eaton, and Jace Kinder, who gave support and technical assistance building and distributing the survey.



# KEY RESULTS



## Benefits of Remote Hearings

1. Increased Job Stability
2. Economic Savings
3. Improved Access to Court
4. Personal Safety

Professionally conducted.  
Clear audio and video. Saves a  
lot of time, money and travel.



**77%** of participants are from the **Third Judicial District**.

**Treated with Courtesy and Respect**  
Court patrons and practitioners think the court treats them professionally.



**Done in Reasonable Amount of Time**  
Participants believe their activities are completed in timely manner.



**Quality Sound and Video**  
Respondents say Webex sound and video are ample to conduct activities.



## Categories of Survey Participants



- Party (54.72%)
- Lawyer (32.55%)
- Agency Worker (10.38%)
- Family/Guardian/Friend (2.36%)

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## Summary

When Governor Gary Herbert declared a state of emergency to enable the State of Utah to respond to novel coronavirus disease 2019 (COVID-19) on March 6, 2020, the landscape of justice changed rapidly. Since March 13, 2020, the Utah Supreme Court and the Utah Judicial Council have issued numerous Administrative Orders governing court operations during the pandemic to protect the public from the spread of disease. During this time, and out of necessity, the Utah State Courts relied on the use of Webex to conduct remote hearings and other court business statewide. Along the way, tools and processes were initiated to allow for fully remote hearings. Some are now working on returning to in-person hearings.

In the fall of 2021, the Access to Justice Commission (“ATJ Commission”) began studying remote hearings in Utah by conducting a survey of Utah court patrons and practitioners. The ATJ Commission initially partnered with the National Center for State Courts as part of a national review. The Commission then narrowed its focus to a Utah-specific survey. The data from this survey is the basis for this report. The focus of this study was determining whether and how remote hearings resulted in access to equal justice for people in Utah.

Based on the data collected, Utah court patrons and practitioners strongly prefer remote hearings, at least for some types of court hearings and activities. Court operations over Webex are done with courtesy and in a timely manner. While there are occasional issues, Webex sound and video are highly rated. Most importantly, remote hearings have increased access to equal justice for many people. Survey respondents list benefits that include being better able to provide representation in rural Utah, not having to miss work, and not having to pay for childcare and travel as strong benefits. Based on these due process and convenience factors, Utah courts should work to include remote access moving forward.

## Method

A sample of data from Utah court patrons and practitioners was collected through two different online surveys. The first was prepared by the National Center for State Courts as a Utah-specific questionnaire using Qualtrics (“NCSC Survey”).<sup>6</sup> Data through the NCSC survey currently includes 101 responses, collected from September 24, 2021, through June 5, 2022, with continuing responses anticipated.

The second was developed by the Access to Justice Commission Court User Survey Workgroup using SurveyMonkey (“ATJ Survey”).<sup>7</sup> Data from the ATJ survey currently includes 119 responses, collected from March 14 through June 5, 2022, with responses continuing to

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<sup>6</sup> National Center for State Courts Qualtrics Court User Survey *available at* [https://ncsc2.iad1.qualtrics.com/jfe/form/SV\\_bIYBug4VwsbQhnM](https://ncsc2.iad1.qualtrics.com/jfe/form/SV_bIYBug4VwsbQhnM).

<sup>7</sup> Access to Justice Commission SurveyMonkey Court User Survey *available at* <https://utahcourts.surveymonkey.com/r/CTT5WB3>.

accumulate. At present there are 220 individual records. Seven responses were excluded due to incomplete information, for a total sample of 213.

## Limitations

There are limitations to the data collected through this survey of Utah court patrons and practitioners. Survey responses were primarily collected through a pilot program in the Third Judicial District. The combined responses are sufficient to draw several conclusions, but the data is less certain for some types of court use. For example, certain districts are under- or unrepresented, in part as a natural consequence of state population distribution and in part due to the constraints of the pilot study. Surveys were mostly collected by sending a link by email, reducing responses from call-in users. In addition, the survey did not collect any responses from jurors or witnesses, so it includes limited information on the efficacy of remote hearings for jury trials or complex litigation. To keep the survey small, important questions were not asked and they merit further study such as the impact of remote hearings on privacy or on victims of abuse.

## Survey Participants

Surveys were sent or given to parties (plaintiffs and defendants), lawyers, agency workers, family members, and friends after they appeared in a Utah court. Agency workers include people from the Department of Child and Family Services, the Division of Juvenile Justice Services, and other court advocates. The sample population is based on respondents' ability and willingness to participate, not a scientific or fully representative sample. One district court, one justice court, and one juvenile court judicial team sent surveys to their court patrons.<sup>8</sup> Starting in April, the Access to Justice Office of the Utah State Bar sent surveys to participants in the Third District immediate occupancy and debt collection calendars. The ATJ Office also sent surveys to volunteer attorneys in their programs. Links to the online surveys were provided through a variety of channels, including by email, text message, insertion in the Webex chat, and QR code.



## Survey Content

The NCSC survey included 24 multipart questions and took approximately 5 minutes to complete. The ATJ survey was reduced to 19 questions that were included in the NCSC survey. The typical time spent completing this survey was 2 minutes and 2 seconds.



Both surveys included qualitative and quantitative questions about demographics, accessing remote proceedings, type and location of court use, their preferences, and other aspects of their experiences. The objective was to understand how court patrons and practitioners experienced virtual services in Utah courts. Data includes matching responses combined from surveys.

## Survey Data and What It Tells Us

The 213 survey respondents combined from the NCSC and ATJ Surveys represent a population of parties (116), lawyers (69), agency workers (22), and family members and friends (5) who are diverse in their age, method of accessing the remote hearing, location, and type of court use. They represent actual court patrons and practitioners who appeared in a Utah district, justice, or juvenile court from fall 2021 to spring 2022. The NCSC Survey was slanted towards plaintiffs and defendants who comprised 90% of NCSC Survey respondents. The ATJ Survey respondents included more nonparties: 55% lawyers and 19% agency workers. Because court uses include juvenile matters, respondents included minors.

Respondents provided feedback in these key areas:

1. Stating a preference to participate in-person or remotely.
2. Evaluating whether the court team treated everyone with courtesy and respect.
3. Assessing if they got their court business done in a reasonable amount of time.
4. Rating the quality of Webex sound and video.

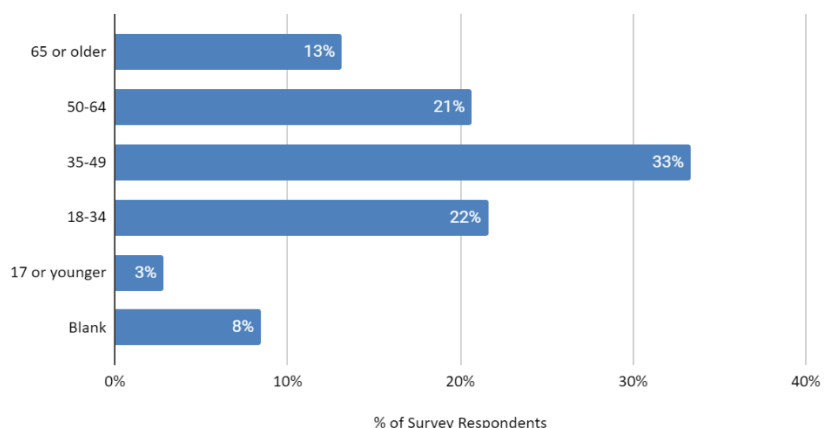
### Age of Respondents

There were 199 respondents who self-identified their age by selecting from a range of ages. Most people were between 18 years and 49 years old (55%):

- 47 respondents aged 18 - 34 years (22%)
- 72 respondents aged 35 - 49 years (33%)

Minor children aged 17 or younger were 3% of the sample. The remainder included 21% respondents aged 50 - 64, 13% aged 65 or older and the remaining 8% did not respond to this field.

Age of Survey Respondents



### Accessing Court

#### Hearings or Other Activities

The combined survey provided these options for how respondents accessed court: face-to-face at the courthouse, remotely using a court kiosk, remotely using a personal computer or laptop, remotely using a cell phone, iPad, or tablet, remotely from jail, prison, or detention center, remotely from a hospital, and other. Most respondents appeared remotely either using a personal

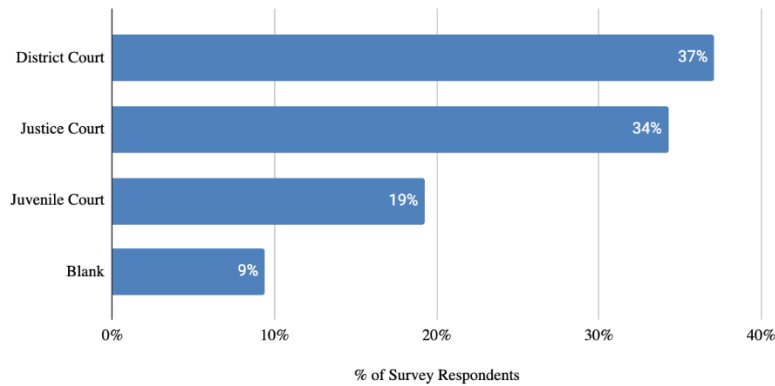
#### Appendix B - Utah Survey of Court Users

computer or laptop (109) or using a cell phone, iPad, or tablet (71). There were some respondents who attended in-person (9) or used a court kiosk (2).

### Locations Where Respondents Attended Court

Respondents appeared in district court (37%), justice court for small claims or criminal cases (34%), and juvenile court (19%).

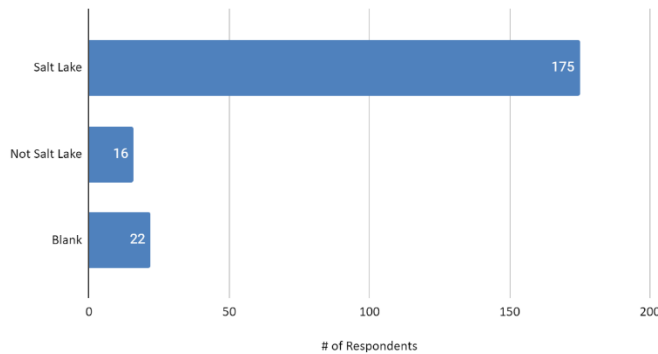
Survey Respondents Participated in District, Justice, and Juvenile Courts



The ATJ Survey asked specifically about judicial district, while the NCSC did not. The ATJ Survey included responses from the 1st, 2nd, 3rd, 4th, 5th, and 7th Districts; however, most were from the Third District (77%).

All respondents were able to self-identify by county, but most were from Salt Lake County (176 responses in Salt Lake County, 22 blank for this field, and 16 responses from outside of Salt Lake County).

Location of Survey Respondents (By County)



### Types of Court Use

Patrons and practitioners used the court for a wide variety of civil and criminal legal matters, including conducting administrative business such as making a payment.

This is the breakdown:

Types of Court Use	Total
Traffic/Ticket	53
Criminal/probation	35

Civil matter	26
DCFS/Child welfare case	23
Landlord/Tenant/Eviction	12
Juvenile delinquency	11
Divorce/Custody/Support	7
Other: firearm at SLC international security check, infraction possession of marijuana, DUI, adoption, DASLC operations	5
Specialty court (Drug, Mental health, Veterans)	4
Other: Domestic Violence/Sexual Abuse	4
Small claims	3
Protective Order or Civil Stalking Injunction	3
Multi-issue hearing (criminal + civil)	2
Guardianship/Conservatorship	1
Estate/Trust	1
To make a payment	1

### Open-Ended Responses

The survey asked this open-ended response question, “Please provide additional comments or suggestions about your experience today,” to allow respondents the opportunity to further comment on their experiences and give additional insights. Most people gave positive comments about their experiences but there were a few negative reactions. Overall, these open-ended responses tell a story of why there is such a strong preference for remote hearings, suggestions for continuing remotely, some of the problems, and why remote hearings remove access to justice obstacles for many.

Here are some examples of participant open responses received:

*Ease:* “Much easier to do virtually than find time, transportation, parking.”

**Appendix B** - Utah Survey of Court Users

**Less Intimidating:** “I felt the judge was more relaxed with the virtual court. I was much more comfortable at my work rather than standing in front of him. I felt it much easier to speak to him though I could see him and he could see me it was much calmer.”

**Increased Representation:** “I would not have been able to accept and represent in this case if it were not conducted remotely as it was in St. George and I am in Salt Lake.”

**Better Access:** “Love WebEx. Very efficient and allows for the best access to justice.”

**Economic Savings:** “I appreciate the flexibility and savings in gas!”

**New Standard:** “I think it’s nice to do the small cases remotely. The big cases could be used for the court such as criminal prosecutions since they require a lot of time .... Not everyone has the gas money nor the time to attend a hearing due to the demands from their job. It should be the new standard going forward after the pandemic so you guys can handle case loads faster.”

**Too Lax:** “The hearing was a couple of weeks ago, and I thought the time permitted for argument was excessive and the judge should have done more to require opposing counsel to conduct himself with professionalism and civility.”

**No Covid Restrictions:** “Court hearings should be in person, perhaps other than simple scheduling matters. No Covid restrictions should be imposed on any participants. Mask wearing should be discouraged, particularly for parties, attorneys, and judges.”

**Tech Issues:** “Horrible. I was never able to join the court proceedings because I never received the email with the link. I received an email a few days before, saying that an additional email would be sent to me, but I never received that email, and thus, could not join the court proceedings. This is not my fault at all.”

**Need Clear Instruction:** “... It may benefit a defendant to have a knowledge of each step involved in a case provided by the prosecution, including any possible deviations. Step by step knowledge of procedures would have greatly reduced the intimidation. (A ‘timeline’, printed chronological order of appointments and the purpose of each would save court staff countless hours answering the same questions that inevitably are asked and give confidence to all parties.)”

**Inefficiency of In-person:** “Remote hearings should be the default, except where testimony or evidence need be presented. In-person attendance is wasteful and inefficient.”

**Job Stability:** “Webex allows my clients to attend more hearings and still keep their jobs. It is vastly more efficient.”

**Time & Money Savings:** “Professionally conducted. Clear audio and video. Saves a lot of time and travel.”



## Key Findings

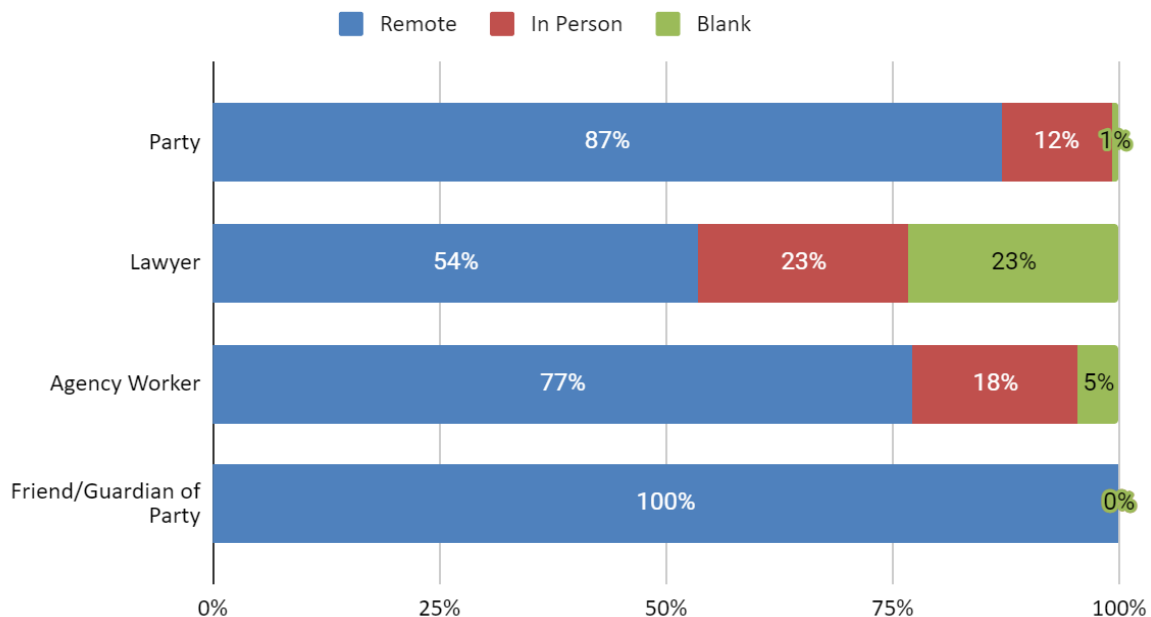
This court user survey reveals important benefits to holding remote hearings. Remote hearings have made court more accessible, whether the participant was young or old, in the metro area or more rural, in small claims or district court. Participants believe remote hearings are usually handled professionally and they feel respected. They recognize Webex provides adequate sound and video. They appreciate the convenience as well as the savings in time and money.



**75% of all Utah participants prefer remote hearings** regardless of how they accessed court, their age, or location.

The most conclusive finding from the Court User Survey is that every type of participant strongly prefers remote access. Seventy-five percent of all survey respondents prefer remote hearings and only sixteen percent selected in-person (the other nine percent left this field blank). Comparing this preference by type of participant reveals interesting information. Based on this

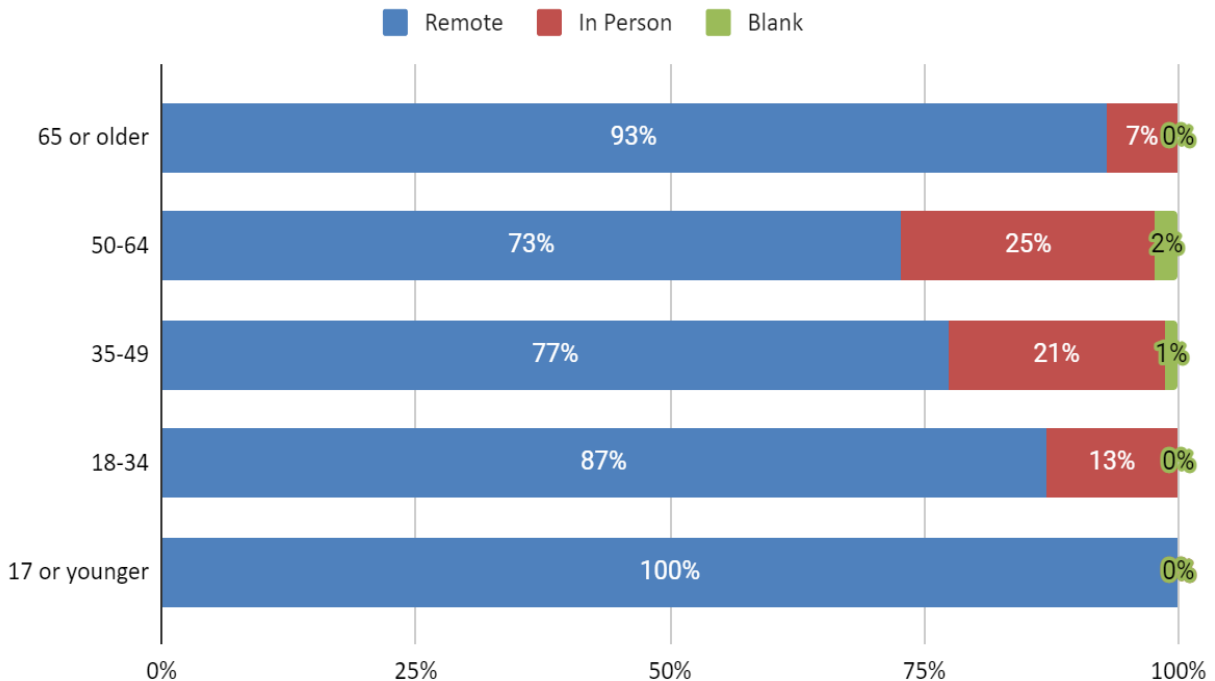
### All Types of Participants Prefer Remote Access



breakdown, it becomes clear that lawyers are participants who most want court to be in-person. Yet even this category shows that the majority of lawyers prefer remote access. Moreover, the people with the most to gain or lose – plaintiffs and petitioners, defendants and respondents, and their family, guardians, or friends – overwhelmingly prefer remote court hearings. This same trend can be found when considering preference of access by age.

The robust preference for remote access is found in every age range. As one might expect, younger users would rather appear in court remotely. In fact, 100% of participants under the age of 17 selected this option. More surprisingly, 93% of older adults 65 years or over also expressed a clear preference for attending virtually. Perhaps this is due to mobility, transportation, or other factors, but it dispels the stereotype of older people struggling with technology. Participants aged 50-64 were the most likely to select the in-person option, and still 73% of this range preferred remote hearings. Ultimately, no matter what age the participant was, they prefer to access court remotely by either computer, laptop, or phone.

### People of All Ages Prefer Remote Access



Even the type of court did not impact this preference for remote access by court patrons and practitioners. In fact, 78% of district court, 84% of justice court, and 85% of juvenile court participants all expressed preference for remote hearings. This data displays the importance of asking and acting on information instead of doing what might seem easier or more intuitive.



Utah survey participants are **treated with courtesy and respect** by the court.

There is a clear showing that survey participants feel they are treated with courtesy and respect by the judicial team and the judge. In the survey, respondents were asked to rate this by strongly agreeing, agreeing, being neutral, disagreeing, or strongly disagreeing. Out of 213 responses, 84% agreed with this statement with 70% “strongly agreeing.”

#### Appendix B - Utah Survey of Court Users



3.

Utah survey participants get **court business done in a reasonable amount of time** whether they participate remotely or in-person.

Survey participants were asked if they were able to get their court business done in a reasonable amount of time by strongly agreeing, agreeing, being neutral, disagreeing, or strongly disagreeing. Out of 213 responses, 76% agreed with this statement with 58% “strongly agreeing.” While this is somewhat lower than their courtesy and respect rating, it is still a very positive response.



4.

The **quality of Webex sound and video are suitable** for conducting the court business of Utah survey participants.

The Webex platform provides adequate sound and video quality, which allows survey respondents to participate in remote hearings. The NCSC and ATJ Surveys asked this question differently, so responses cannot be combined.<sup>9</sup> However, the results show participants generally had a very positive view of Webex sound and video quality. For example, 72% of NCSC Survey respondents said they experienced no issues with being able to hear or be heard. Sound quality was rated even higher by ATJ Survey respondents: only 2 people said the sound quality was “Very Bad” and nobody selected “Bad.” This means that less than two percent negatively rated Webex sound quality. Moreover, 81.3% of NCSC Survey respondents said they experienced no issues with being able to see or be seen. Again, video was rated even higher by ATJ Survey respondents: less than one percent gave a negative rating; only 1 respondent said the quality was “Very Bad” and none selected “Bad.” This data shows most participants were satisfied that they could adequately hear and/or see during their remote hearing.

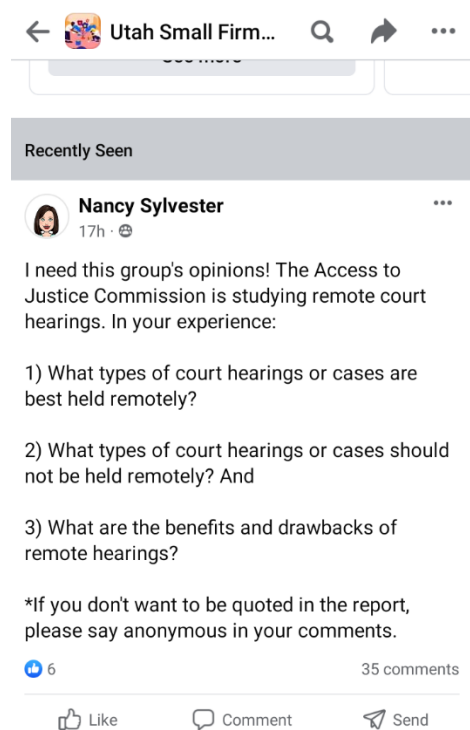
## Snapshot: Dialogue from Lawyers in the Field

The data from the combined surveys provides useful information, yet it does not allow for conversation. The Court User Survey Workgroup recognized this and wanted to provide a channel for lawyers to discuss their personal experiences with remote court hearings. To collect this more qualitative information, they posted a query to the Utah Small Firm Attorney Network (USFAN), which is a Facebook group with over 900 Utah lawyers. USFAN actively discussed the merits and drawbacks of remote hearings. They also gave several suggestions on which types of hearings or cases were best suited for remote court. Other group members could respond and

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<sup>9</sup> The NCSC Survey asked, “Were there any issues with the sound or audio that made it difficult to hear or be heard?” and “Were there any issues with the video that made it difficult to see or be seen?” The possible responses to both were “All of the time,” “Most of the time,” “Some of the time,” or “None of the time.” The ATJ Survey asked, “If you ATTENDED BY WEBEX, rate the quality of the SOUND” and “If you ATTENDED BY WEBEX, rate the quality of the VIDEO.” The possible responses to both ATJ questions were “Very bad,” “Bad,” “Neutral,” “Good,” “Very Good,” and “Not Applicable.”

react to each comment.<sup>10</sup> Some interesting themes, considerations, and suggestions are represented in their dialogue.



The group strongly supported the continuation of remote court for most hearings. As to which are best done remotely, many agreed evidentiary hearings, especially those involving witness testimony or complex, voluminous documents should be done in-person whenever possible. For instance, Scott Wiser received 15 “likes” for this comment, “I think Webex should be the default for everything short of trials and evidentiary hearings, and even then Webex appearances should be liberally granted for good cause ....” Some advocated for remote hearings being the standard even when they include live testimony. Melissa Bean explained, “I’ve been pleased with almost everything by remote access – even live testimony ... I honestly can’t think of many cases that would necessitate in-person hearings.” Yet others noted technology issues can sometimes require reconstructing the record to make sure it is clear. Many suggested a hybrid approach where the lawyer and/or the parties could choose.

Group members acknowledged there can be drawbacks to remote hearings. Common weaknesses discussed were the lack of spontaneous negotiations and problem-solving or the occasional technical glitch. There was also some back-and-forth debate on the ability of the judge to make assessments of the truthfulness and character of witnesses. Marco Brown said he believed that the judge really needs to see a witness live and in-person. There were counterexamples, e.g., “I find that having the four parties on the screen actually allows the judge to really ‘see’ a party’s tells<sup>11</sup> much easier than in court.”

A significant part of the Group’s dialogue centered on issues involving access to equal justice and fairness. Many people highlighted the benefits of remote hearings:

1. Remote hearings allow *greater access to lawyers*, especially in rural areas. Justin Caplin shared, “An attorney can take hearings in Kanab and Cedar and Beaver, Panguitch, and even more remote cities and counties without having to drive 1 to 3 hours each way.”
2. All participants receive a *cost savings in transportation and childcare*.
3. Clients have *lower legal costs*. Christopher M. Guymon explained, “Instead of charging my client for 1+ hours per hearing, I often only need to charge .2 or .3 hours, so often I

<sup>10</sup> Some patterns and key ideas from the USFAN group are presented here, and the full Facebook dialogue, with replies and reactions, is attached as Exhibit A.

<sup>11</sup> Webster’s Dictionary defines a “tell” as an inadvertent behavior or mannerism that betrays a poker player’s true thoughts, intentions, or emotions. In this context, the commentor is likening a party’s revealing gestures, expressions, etc., to a poker player’s tell.

would say remote hearings save my clients a significant amount of money.” Jill Coil added, “It’s also allowed my attorneys to take in more clients. Now with us going back to court case load must go down which means we can’t serve as many.”

4. Remote hearings *help stabilize jobs for clients who do not have to miss work*. This is true because “A party can participate in a remote hearing from home or from the office without having to take a half day or full day off from work to drive downtown, especially when the majority of time at the courthouse is waiting for the other several cases to be called before theirs.”
5. Appearing virtually or on the phone *saves time and is more convenient* for clients and practitioners. “As a single parent and solo practitioner,” Sarah Larsen said, “I have really appreciated having most things remote” as it saves her time from not having to commute to be with her family.

Some lawyers noted that when dealing with indigent people or those who are incarcerated, additional issues need to be considered. If they do not have access to internet or a phone, it is important to have these resources available to them in a convenient and private location. Also, allowing incarcerated people to conduct “any and all civil hearings” remotely is important because “they have to pay separately for transport on civil issues,” said Brandon L. Merrill. While these anecdotal experiences and ideas are not quantitatively verified, they provide context and important qualitative information to help fill in some of the information missing from the Court User Survey.

## Snapshot: A View from the Bench

Judges were not included the Court User Survey. However, Utah Judge Angela Fonesbeck shared a view “of the benefits and pitfalls of Webex or other virtual hearing platforms, and how they coincide with professional ethics and a lawyer’s responsibilities to the court and clients” in the July/August Utah Bar Journal.<sup>12</sup> Judge Fonesbeck acknowledges remote hearings have expanded access to equal justice for many people. She notes that for court patrons it is a less costly option that reduces the cost of legal representation, limits time away from work and removes transportation issues.<sup>13</sup> Remote hearings also benefit lawyers by increasing productivity and preventing delays. Even witnesses benefit, especially if they are out-of-town or need protection.

Yet there are drawbacks to the system. Judge Fonesbeck explains that presenting evidence and properly identifying people can be challenging.<sup>14</sup> Technology problems can make it difficult to hear or participate. She suggested there are also negative intangible consequences to virtual hearings like the informal nature of the proceedings including people wearing pajamas, revealing clothing, or appearing in public places.<sup>15</sup> Judge Fonesbeck gives concrete ways that many of these obstacles in remote hearings can be overcome by following the guidelines and rules

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<sup>12</sup> Judge Angela Fonesbeck, *Navigating the Half-Empty/Half-Full Dichotomy of Virtual Court Hearings*, July/August Vol. 35, No. 4 UTAH BAR JOURNAL, 13-16, p. 13 (2022).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 14.

<sup>15</sup> *Id.*

provided in the Utah Code of Judicial Administration and the Supreme Court Rules of Professional Practice.<sup>16</sup> Ultimately, she expressed that virtual hearings “have both virtue and vice that can be successfully navigated by the court, the attorneys, and the participants” as long as they each actively work together.<sup>17</sup> This balanced and nuanced approach can maximize the advantages and minimize the shortcomings of remote hearings.

## Comparison with Other State Reporting

Utah responses align with similar data collected from other states which did not have the same study limitations. For example, the DC Bar Foundation commissioned a study on the perspectives of family law litigants on remote hearings and published the report in December 2021.<sup>18</sup> The DC report showed that “remote hearings worked well for most people. Most study participants reported being satisfied with their remote proceedings” in a diverse array of family law case types, including child custody, child support, domestic violence, and divorce.<sup>19</sup> Specifically, the DC report found that:

- 73% appreciated not having to find and pay for transportation to/from the courthouse,
- 62% appreciated not having to take time off work or school,
- 60% appreciated not having to find childcare, and
- 72% felt safer and less threatened by the opposing party.<sup>20</sup>

The Texas Office of Court Administration partnered with the National Center for State Courts to study the use of remote hearings and the impact on judicial workload.<sup>21</sup> The Texas report also highlighted the benefits of remote hearings for court users including “not needing to take time off work, locate transportation, or find childcare.” and noting it can be “emotionally easier” for some parties to not be in the same room.<sup>22</sup>

While Utah has a court environment that is distinct from these states, the similarity of these findings further validate this report: providing options and support for remote hearings improves the court experience and increases access to justice for many patrons and practitioners.

## Obstacles to Participation in Remote Hearings

While remote hearings promote access to justice for many, there are obstacles to participating in remote hearings. Commonly cited examples include language barriers, accessibility, and

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<sup>16</sup> *Id.* at 15-16.

<sup>17</sup> *Id.* at 16.

<sup>18</sup> DC Bar Foundation, *Litigant Perspectives on Remote Hearings in Family Law Cases: A Survey Study Conducted with the DC Family Law Learning Network*, (December 2021), accessed June 12, 2022, available at [https://www.dcbfoundation.org/files/ugd/3ddb49\\_2c2da451535e4f9f8de6ab2baf575a54.pdf](https://www.dcbfoundation.org/files/ugd/3ddb49_2c2da451535e4f9f8de6ab2baf575a54.pdf).

<sup>19</sup> *Id.* at i.

<sup>20</sup> *Id.* at 8.

<sup>21</sup> National Center for State Courts Court Consulting Division, *The Use of Remote Hearings in Texas State Courts: The Impact on Judicial Workload*, accessed June 12, 2022, available at <https://www.ncsc.org/media/ncsc/files/pdf/newsroom/TX-Remote-Hearing-Assessment-Report.pdf>.

<sup>22</sup> *Id.* at 9.

technological challenges.<sup>23</sup> These obstacles have been and continue to be overcome through strategic planning and targeted resources.

Court patrons may be non-English speakers or have only a limited understanding. They also may lack full literacy or comprehension. Potential solutions include providing translation services, making court documents and instructions available in other languages, and preparing explainer videos that can be distributed online, via email, and by text message.

Court patrons and practitioners may have a recognized disability under the Americans with Disabilities Act<sup>24</sup> or experience other accessibility issues. These are often referred to as the “digital divide” meaning lack of or poor connectivity to internet or Wi-Fi signal, limited access to email, restrictions on phone minutes or data plans and other barriers to remote access.<sup>25</sup> Solutions to accommodate ADA disabilities can include offering closed captioning, keyboard accessibility, screen reader support, and having automatic transcripts available.<sup>26</sup> To bridge the digital divide, having a call-in only option for remote hearings is essential. Other solutions include court use kiosks and working with libraries and other community partners to help provide access.

Remote hearings require some level of technical proficiency in either internet or phone use. For some it can be challenging to access the necessary technology. However, similar to the above discussion on accessibility, having strong partnerships with libraries, social service providers, and other community partners can help provide needed support. Other solutions include providing explainer videos and clear instructions written in plain language. Having staff available to provide support and troubleshooting if video or sound issues occur can help correct problems that may arise.

Acknowledging there are obstacles to remote hearings is not a sufficient reason to require in-person attendance at court. Instead, this recognition can be the touchstone for change and progress. In fact, organizations like the National Center for State Courts continue to develop and release guidelines, best practices, and ways to overcome problems to effectively manage hybrid and fully remote hearings. These efforts become even more important when looking at the barriers many Utah communities face when seeking legal representation.

## Barriers to Accessing Legal Representation

Deciding whether Utah State Courts will go back in-person or continue to offer remote attendance will affect all Utahns. However, it will hit some Utah communities much more than

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<sup>23</sup> See e.g., California Commission on Access to Justice, *Remote Hearings and Access to Justice During Covid-19 and Beyond*, PPP & Cal Remote Hearings Guide - NCSC (National Center for State Courts), accessed June 12, 2022, available at

[https://www.ncsc.org/\\_data/assets/pdf\\_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf](https://www.ncsc.org/_data/assets/pdf_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf).

<sup>24</sup> 42 U.S. Code § 12101 et seq.

<sup>25</sup> USLegal.com definition: “digital divide,” available at

<https://definitions.uslegal.com/d/digital-divide/#:~:text=Digital%20divide%20refers%20to%20the,technology%20and%20those%20who%20cannot.>

<sup>26</sup> California Commission on Access to Justice, *supra*.

### Appendix B - Utah Survey of Court Users

others. There is a vast divide in how many lawyers are available based solely on where the person needing legal representation lives. This division plainly emerges when comparing the cases filed per attorney to the number of attorneys available in each Utah county.

Utah has 29 counties, and there are 8677 active attorneys in Utah.<sup>27</sup> In its directory, the Utah State Bar lists the county associated with each lawyer’s preferred address. Legal representation deficiencies in many counties appear when this information is compared to the number of 2021 Utah district, justice, and juvenile court cases filed.

*Table 1: Lawyers by County Compared to Cases Filed*

Utah County	# of Active Attorneys	Cases Per Attorney (District, Justice, and Juvenile for FY2021)
Beaver	1	5,043
Garfield	2	1,487
San Juan	5	1,439
Juab	6	1,240
Emery	6	758
Kane	6	594
Piute	1	533
Box Elder	27	489
Duchesne	13	483
Carbon	21	387
Millard	14	377
Sevier	17	350
Sanpete	16	316
Tooele	53	304
Daggett	2	298
Rich	4	265
Uintah	34	262
Grand	17	254
Wayne	2	251
Iron	62	221
Weber	321	168
Morgan	11	154
Cache	166	133
Wasatch	74	120
Washington	340	117
Utah	1260	77
Davis	656	77
Summit	204	46

Table 1 shows access to legal representation by county where the red shades indicate the least access to attorneys and the blue shades signify the greatest access.

As the reds lighten and then turn to blue, the communities have an increasing ability to find a lawyer.

(See next page for blue shading)

<sup>27</sup> Active attorneys are those included in the Utah State Bar attorney database who are in good standing and listed as “AttUnder3,” “AttActive,” or “AttEmerit.”



Utah County	# of Active Attorneys	Cases Per Attorney (District, Justice, and Juvenile for FY2021)
Salt Lake	5211	39

A person living in Salt Lake County can hire a local lawyer located near where they live and by the courthouse. A person living in Iron or Uintah County most likely can choose from several lawyers.

However, a person living in Beaver, Piute, Garfield, or San Juan will almost certainly struggle to find an attorney unless they can pay for and hire an out-of-town lawyer. Making the decision to continue offering remote hearings, at least for some people, cases, and circumstances can alleviate this disparity.

## Recommendations

1. Utah courts should continue offering remote hearings. At a minimum, remote hearings are strongly preferred and more efficient for at least some hearings and types of actions.
2. Non-binary options for remote participation should be available, where some parts of the case may be held virtually or by video while other parts are in-person. This will remove barriers to making an appearance in court for both patrons and practitioners.
3. Hybrid options for appearing remotely should be used for ADA accommodations; resolving mobility issues for older adults; reducing the economic impact of in-person court caused by getting time off work; the cost of traveling to court and obtaining childcare; and promoting patron safety.
4. Clear explainers of common court procedures (like how to use Webex) should be created using plain language. These materials should be provided in written form and by video, which is then emailed and texted to court users as well as posted online. Written instructions can be translated into other languages as well.
5. Utah courts should conduct further study to determine which hearings and types of actions are best done remotely and which are better held in-person. They may consider expanding this court user survey to additional judicial teams statewide for this purpose.

## **APPENDIX C**

### ***Rule Amendment Proposals:***

Utah Rules of Criminal Procedure  
Utah Rules of Civil Procedure  
Utah Rules of Juvenile Procedure  
Utah Rules of Evidence  
Utah Rules of Appellate Procedure  
Utah Code of Judicial Administration

Rule Amendments – Utah Rules of Criminal Procedure	
<p><a href="#">Rule 17</a> – The trial.</p> <p><a href="#">Rule 17.5</a> – Hearings with contemporaneous transmission from a different location.</p>	<p>Need to consider <b>Rule 17</b> and <b>Rule 17.5</b> in full.</p> <p>At the time of this report, the Supreme Court’s Advisory Committee on the Rules of Criminal Procedure is reviewing these rules.</p>
<p><a href="#">Rule 17(a)</a> – The trial.</p>	<p>At the time of this report, the Supreme Court’s Advisory Committee on the Rules of Criminal Procedure is reviewing this rule.</p> <p><b>Previously suspended / amended by the Administrative Order, dated 4/11/2022, as follows:</b></p> <p><i>In all cases tried to the bench, a defendant may waive the right to appear in person at trial and consent to appear through video conferencing if the defendant has an effective opportunity to participate, which includes the ability to view trial participants and to meaningfully interact with counsel of record in real time. “Trial participants” is defined to include the judge and testifying witnesses. The defendant’s waiver and consent must be on the record and the court must make findings that the waiver and consent are voluntary.</i></p>
<p><a href="#">Rule 17.5(b)</a> – Hearings with contemporaneous transmission from a different location.</p>	<p>At the time of this report, the Supreme Court’s Advisory Committee on the Rules of Criminal Procedure is reviewing this rule.</p> <p><b>Previously suspended for infractions by the Administrative Order, dated 4/11/2022, as follows:</b></p> <p><i>Rule 17.5(b)...is suspended in infraction cases and to the extent it requires the prosecution’s consent in other cases. The parties’ consent is not required for a bench trial by remote transmission in an infraction case and a defendant may consent to a bench trial in other cases. Bench trials will be conducted as scheduled unless the court determines it is not reasonably practical to do so in a particular case, given the issues and anticipated evidence.</i></p>
<p><a href="#">Rule 6</a> – Warrant of arrest or summons.</p>	<p>Need to consider <b>subsection (e)(1)(E)</b>, and potentially <b>subsection (e)(1)(D)</b>.</p>
<p><a href="#">Rule 14</a> – Subpoenas.</p>	<p>Need to consider <b>subsection (a)(8)</b>.</p>
<p><a href="#">Rule 15.5</a> – Out of court statement and testimony of</p>	<p>Need to consider <b>Rule 15.5</b> in full – how, if at all, does</p>

**Appendix C – Rule Amendments**

<p>child victims or child witnesses of sexual or physical abuse - Conditions of admissibility.</p>	<p>Webex impact this?</p>
<p><b>Rule 27</b> – Stays of sentence pending motions for new trial or appeal from courts of record.</p> <p><b>Rule 27A</b> – Stays pending appeal from a court not of record - Appeals for a trial de novo.</p> <p><b>Rule 27B</b> – Stays pending appeal from a court not of record - Hearings de novo, DUI, and reckless driving cases.</p>	<p>These rules address appearances, using the term “appear as required.” Clarification may be helpful.</p>
<p><b>Rule 41</b> – Unsecured Bonds.</p>	<p>Need to consider <b>subsection (b)(2)</b> use of “appears in court.” Clarification may be helpful.</p>

Rule Amendments – Utah Rules of Civil Procedure	
<a href="#">Rule 26.3</a> – Disclosure in unlawful detainer actions.	<b>Previously temporarily amended by the Administrative Order, dated 4/11/2022, as follows:</b>  <i>In unlawful detainer cases under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer, the plaintiff shall include a completed form declaration, disclosing information relevant to federal, state, and local COVID relief law. Such declaration shall be provided with the required Rule 26.3(b)(1) disclosures.</i>
<a href="#">Rule 55</a> – Default.	<b>Previously temporarily amended by the Administrative Order, dated 4/11/2022, as follows:</b>  <i>The court may not enter default judgment in unlawful detainer cases under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer, unless the plaintiff has submitted to the court a completed form declaration showing compliance with federal, state, and local COVID relief law. A sample form declaration will be available on the Utah State Courts website after review by the Judicial Council.</i>
<a href="#">Rule 7A</a> – Motion to enforce order and for sanctions.  <a href="#">Rule 7B</a> – Motion to enforce order and for sanctions in domestic law matters.	Need to consider <b>Rule 7A(c)(4)</b> and <b>Rule 7B(c)(4)</b> .
<a href="#">Rule 28</a> – Person before whom depositions are held.  <a href="#">Rule 30</a> – Depositions upon oral questions.  <a href="#">Rule 31</a> – Depositions upon written questions.	Need to consider <b>Rule 28</b> , <b>Rule 30</b> , and <b>Rule 31</b> in full.
<a href="#">Rule 32</a> – Use of depositions in court proceedings.	Need to consider <b>subsection (a)(3)</b> , which creates a potentially unnecessary distance limitation for depositions.
<a href="#">Rule 43</a> – Evidence.	Need to consider <b>Rule 43</b> in full.
<a href="#">Rule 77</a> – District courts and clerks.	Need to consider <b>Rule 77</b> in full.

Rule Amendments – Utah Rules of Juvenile Procedure	
<a href="#">Rule 7</a> – Warrants.	Need to consider <b>subsection (d)(1)</b> .
<a href="#">Rule 9</a> – Detention hearings; scheduling; hearing procedure	<b>Rule 9</b> does not currently reference how one is to appear for the detention hearings. Clarification may be helpful.
<a href="#">Rule 13</a> – Shelter hearing.	<b>Rule 13</b> does not currently reference how one is to appear for the shelter hearing. Clarification may be helpful.
<a href="#">Rule 18</a> – Summons; service of process; notice.	<b>Subsections (a)(3) &amp; (b)(3)</b> each deal with appearances, but (b)(3) specifically says “appears in court.”
<a href="#">Rule 22</a> – Initial appearance and preliminary examination in cases under Utah Code section 80-6-503.	<b>Rule 22</b> states that “the minor shall appear before the court as directed in the summons” (per Rule 18).
<a href="#">Rule 23A</a> – Hearing on factors of Utah Code section 80-6-503; bind over to district court.	Rule 23A(c) states:  The court may consider any written report or other materials that relate to the minor’s mental, physical, educational, trauma, and social history. Upon request by the minor, the minor’s parent, guardian, or other interested party, the court shall require the person preparing the report, or other material, <b>to appear and be subject to direct and cross-examination.</b>
<a href="#">Rule 26</a> – Rights of minors in delinquency proceedings.	Need to consider <b>subsection (a)(1)</b> , which requires a minor to appear “in person.”
<a href="#">Rule 34</a> – Pretrial hearing in non-delinquency cases.	Need to consider <b>subsection (f)</b> requires appearing in-person or by counsel.
<a href="#">Rule 29B</a> – Hearings with remote conferencing from a different location (delinquency).	Need to consider <b>Rule 29B</b> in full..
<a href="#">Rule 37B</a> – Hearings with remote conferencing from a different location (child welfare).	Need to consider <b>Rule 37B</b> in full.
<a href="#">Rule 50</a> – Presence at hearings.	Need to consider <b>Rule 50</b> in full.

### Rule Amendments – Utah Rules of Evidence

<p><a href="#">Rule 615</a> – Excluding Witnesses</p>	<p><b>Rule 615</b> governs a party’s request to exclude a witness from a proceeding while another witness is testifying.</p> <p>Some practitioners have reported problems with multiple witnesses appearing from a single location making enforcement of the exclusionary rule difficult or impossible.</p>
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### Rule Amendments – Utah Rules of Appellate Procedure

<p><a href="#">Rule 29</a> – Oral Arguments</p>	<p><b>Rule 29</b> details how oral arguments are to be held. The rule already contemplates oral arguments being held via video conference (subsection (a)(3)), however, it does not provide a standard for approving or denying a request.</p>
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### Rule Amendments – Utah Code of Judicial Administration

<p><a href="#">Rule 2-205</a> – Expedited rulemaking procedure.</p> <p><a href="#">Rule 11-105(5)(B)</a> – Supreme Court Action on Rule Modifications.</p>	<p><b>Previously suspended by the Administrative Order, dated 4/11/2022, as follows:</b></p> <p><i>Rules 2-205 and 11-105(5)(B) of the Utah Rules of Judicial Administration are suspended to the extent they require a rule amendment that has been adopted on an expedited basis to be immediately published for comment and to be published for 45 days. Rule amendments will be published for public comment as directed by the body that adopts the rule, including reducing the time for public comment.</i></p>
<p><a href="#">Rule 4-404(2)(B)</a> – Jury Selection and Service.</p> <p><a href="#">Rule 4-404(6)(C)(I)</a> – Jury Selection and Service.</p>	<p><b>Previously suspended / amended by the Administrative Order, dated 4/11/2022, as follows:</b></p> <p><i>[(2)(B)] The calculation of time for determining juror terms of availability under rule 4-404(2)(B) of the Utah Rules of Judicial Administration is suspended. The suspension will be lifted for a particular court when jury trials resume in that court.</i></p> <p><i>[(6)(C)(I)] The summons may be by first class mail delivered to the address provided on the juror qualification form, <u>by email to the email address provided on the [...] form</u>, or by telephone.</i></p>
<p><a href="#">Rule 4-503</a> – Mandatory Electronic Filing</p>	<p>The Judicial Council should amend this rule to accommodate email filing in some circumstances.</p>
<p><a href="#">Rule 2-103</a> – Open and closed meetings.</p>	<p>While the Judicial Council already provides notice to the public about its meetings (through the Utah Public Notices website), the Judicial Council should consider including in</p>

### Appendix C – Rule Amendments

	that notice the Webex link to the meeting.
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