

Agenda
Pretrial Release & Supervision Committee Meeting
 May 3, 2018
 12:00 – 2:00 p.m.

Administrative Office of the Courts
 Scott M. Matheson Courthouse
 450 South State Street
Council Room, 3rd Floor, N31

12:00	Welcome and Introduction of New Members	Discussion	Tab 1	Judge George Harmond
12:15	Approval of Minutes	Discussion / Action	Tab 2	Judge George Harmond
12:20	Update: <ul style="list-style-type: none"> • PSA Efforts • Rules of Criminal Procedure 	Discussion	Tab 3	Keisa Williams Judge Brendan McCullagh
1:00	What's next? <ul style="list-style-type: none"> • Customized DMFs • Pretrial Supervision Programs • Tracking Pretrial Outcomes (court & jail release data) • Fine Schedule • Prioritization of Committee's charge 	Discussion / Action	Tab 4	Judge George Harmond Keisa Williams
2:00	Adjourn	Action		Judge George Harmond

Committee Web Page: <https://www.utcourts.gov/utc/pretrial-release/>

Meeting Schedule: Meetings are held in the Matheson Courthouse, Judicial Council Room, from 12:00 to 2:00 unless otherwise stated.

Meeting Schedule:

July 12, 2018
 September 6, 2018
 November 1, 2018

Tab 1

Tangaro Law

Cara Tangaro
Attorney At Law

I was a prosecutor in Salt Lake County for seven years and have been a private criminal defense attorney for almost ten years. As a private criminal defense attorney, I have appeared in a majority of the courts throughout the State including (St. George, Cedar City, Vernal, Duchesne, Tooele etc). I also have a unique perspective as I have a public defender contract through Salt Lake County as well.

I am committed to giving my time to make a positive impact on criminal defense both those who can afford to hire me and indigent clients. I am a member of the Utah State Bar Commission for the Third District, a member of a committee who assists the Indigent Defense Commission, a member of the Utah Supreme Court Advisory Committee for the Rules of Criminal Procedure, past President of Utah Association of Criminal Defense Lawyers and an active member of a solo practitioner and small firm community of practitioners. Along with this I also mentor young lawyers and law students.

I am particularly interested in pretrial detention issues as it is handled differently throughout the state and I believe that prosecutors in particular jurisdictions have too much ex parte input which can forever impact a criminal defendant and their ability to be out of custody and thoroughly engaged in their representation.

Currently, it seems that there is an ad hoc approach to pretrial release that gives little guidance to the Judiciary. I think that it is important to pursue evidence based practices so that those who are truly dangers or flight risks are being treated differently from those who are not.



CARA M. TANGARO

35 West Broadway Suite 203 • Salt Lake City, Utah 84101 • (801) 673-9984
cara@tangarolaw.com

EDUCATION

Juris Doctor, University of Utah, Salt Lake City, Utah, 2001
BS Political Science, Santa Clara University, 1996
Gonzaga University in Florence / Studies Abroad

AWARDS

Utah Business Magazine, Legal Elite in Criminal Law

COMMITTEES

- Utah State Bar Commissioner
- Supreme Court's Advisory Committee on the Utah Rules of Criminal Procedure

CONTRACTS

Salt Lake Legal Defender Conflict Contract
Federal Court CJA Panel Member

EXPERIENCE

- 4/13 - present **Tangaro Law, P.C., Salt Lake City, Utah**
Defense Attorney, Solo Practitioner
- Manage state and federal criminal caseload including plea negotiations, dispositions, pretrial motions, preliminary hearings, trials, and sentencing
 - Handle all aspects of client relations from initial consultations through closure of case
 - Qualified to handle Capital Homicide cases
- 6/10-4/13 **Hutchison, Neider, & Tangaro P.C., Ogden and Salt Lake City, Utah**
Defense Attorney
- Manage all aspects of state and federal criminal caseload
- 09/08-6/10 **Keith Barton and Associates, South Jordan, Utah**
Defense Attorney
- Lead counsel on all types of misdemeanor and felony cases including homicides and cases involving unlawful sex.
- 11/01 – 09/08 **Salt Lake County District Attorney's Office, Salt Lake City, Utah**
Deputy District Attorney
- Managed criminal felony caseload including plea negotiations, dispositions, pretrial motions, preliminary hearings and trials
 - Prosecuted and went to trial on over twenty felony cases including a Capital Homicide case

Kimberly M. Crandall

801-651-9278 | kcrandall@slco.org

February 22, 2018

To Whom It May Concern:

Please consider me for the Judicial Council Standing Committee on Pretrial Release and Supervision. I have been a Deputy District Attorney with the Salt Lake County District Attorney's Office for seventeen years. For the last ten years I have prosecuted special victim cases against adult defendants. In that role I have been in the courtroom almost every day. While the last couple of years I have been handling special victim cases out of the West Jordan Courthouse I will be soon moving to the homicide team based in the District Attorney downtown office. I appreciate your consideration for the Standing Committee.

Please contact me at 801-651-9278 or kcrandall@slco.org if you have any questions or concerns.

Sincerely,

Kimberly M. Crandall

KIMBERLY MCKINNON CRANDALL

SUMMARY

I am a trial attorney with seventeen years of experience in criminal court. As a career prosecutor, I have learned the importance of public service and good judgment to balance the needs of society, victims, and defendants. In my daily work I interact with the legal community, law enforcement, and the community at large. For the last nine years, I have had the opportunity to prosecute special victim cases where while exercising my judgment and discretion, I strive to reach resolutions that achieve some level of justice.

LEGAL EXPERIENCE

**Deputy District Attorney
Salt Lake County District Attorney's Office**

**01/2001 to Current
Salt Lake City, Utah**

Conducted over fifty felony jury trials, ranging from homicide, child sexual abuse cases, adult sexual abuse cases, physical child abuse, domestic violence assault, and general felony cases.

Tried cases before judges in the Third District Court, both Matheson and West Jordan Divisions.

Screen cases with police agencies to initiate prosecution, requiring hours of reading and reviewing the materials to determine which cases to file in accordance with Utah law.

Screen cases every week to every other week at Children's Justice Center as part of the Multi-Disciplinary Team. As prosecutor lead meeting and decision maker but also element of peer review.

Draft Informations, probable cause statements, and summaries of cases, motions, briefs and other court documents as necessary for vertical prosecution.

Weekly meetings with both child and adult victims, requiring sensitivity to their situations and needs.

Trainer with Children's Justice Center on Salt Lake based National Institute of Child Health and Human Development Child Forensic Interviewing.

Member of a specific prosecution team throughout tenure. Work with teammates to staff cases and have common and mutual understanding of prosecution to ensure fairness.

Staff cases with both other District Attorney staff as well as Administration of District Attorney's Office.

Make weekly appearances in court for the law and motion calendar.

Managed caseload of around 70 special victim and homicide cases at a time.

**Law Clerk
United States Attorney's Office**

**12/1998 to 5/2000
Salt Lake City, Utah**

Researched legal issues and wrote memoranda as directed by Assistant United States Attorneys.

Prepared, drafted, and revised into final form Motions and Briefs to the United States District Court, District of Utah, and the United States Tenth Circuit Court of Appeals.

EDUCATION

Juris Doctorate
University of Utah, S.J. Quinney College of Law

May 2000
Salt Lake City, Utah

Bachelor of Arts: English
Westminster College

May 1995
Salt Lake City, Utah

COMMUNITY INVOLVEMENT

School Community Council
Viewmont Elementary

09/2016 to Present
Murray, Utah

Chair of School Community Council and in role schedule and coordinate meetings and then listen to and value diverse opinions.

In role as Chair conduct the the meetings, makes assignments, and reports on assignments. School Community Council oversees and makes decisions with School Trust Land money. Council has input with other school budget needs.

BAR STATUS

Admitted and member in good standing of Utah Bar (8826).



Utah Sentencing Commission

Gary Herbert
Governor

Marshall Thompson
Director

Utah State Capitol Complex
East Office Bldg Ste E330
Salt Lake City UT 84114
(801) 538-1031 FAX: (801) 538-1024
www.sentencing.utah.gov

October 27, 2017

Hello,

I am interested in becoming a member of the Judicial Council's Standing Committee on Pretrial Release and Supervision. While most of my work deals with what happens after a trial is over, the pretrial issues are often inseparable. If pretrial detention appears to be arbitrary, then the eventual trial and sentence will often appear to be unjust as well.

The use of a pretrial assessment tool that would give judges more information is a new development that I have followed closely. Finding a balance between public safety, judicial economy, and individual rights is an important subject that is close to my heart. For these reasons, I would be honored to have the opportunity to serve as a committee member. I have included a copy of my resume. I do not have any current or past committee assignments. Thank you for your time.

Sincerely,

Marshall Thompson

Marshall Thompson
Utah State Capitol Complex, Senate Building, Suite 330
Salt Lake City, Utah 84114
801-425-2823
marshallthompson@utah.gov

EDUCATION

J. Reuben Clark Law School, Brigham Young University, Provo, Utah—J.D., cum laude, May 2013

- Harvard Law and Policy Review, Official Blogger, www.hlpronline.com
- International Law and Management Review, Associate Editor
- Certificate in Human Rights Law from the International Bar Association
- Certificate in International Humanitarian Law from the American Red Cross
- Research assistant to Professor Brigham Daniels

E.W. Scripps School of Journalism, Ohio University, Athens, Ohio—M.S. in Journalism, April 2010

- John R. Wilhelm foreign correspondence scholarship

Utah State University, Logan, Utah—B.A. in Journalism, April 2004

EXPERIENCE

- Utah Sentencing Commission, Director, Sept. 2017 to current
- Salt Lake Legal Defender Association, Appellate Attorney, Sept. 2016 to Sept. 2017
- Thompson Appeals, Appellate Attorney, Jan. 2015 to Sept. 2016
- Utah Court of Appeals, Judge Gregory K. Orme, Law Clerk, Jan. 2014 to Jan. 2015
- Third Judicial District Court, Judge Royal Hansen, Legal Intern, Fall 2012
- Human Rights First, Washington, D.C., Business and Human Rights Legal Intern, Summer 2012
- High Road for Human Rights, Legal Intern (Sex Trafficking Issues), Summer 2011
- Eco Everest Expedition, Mt. Everest, Nepal, Base Camp Manager and Communications, April to Sept. 2010
- Advent Creative Marketing Group, Logan, Utah, Owner/Marketing Director, April 2008 to April 2010
- The Standard-Examiner, Ogden, Utah, Reporter, Aug. 2007 to April 2008
- Associated Press, Jerusalem, Visiting Journalist, March 2007 to June 2007
- U.S. Army Reserve, Iraq, South Korea, Kosovo, Sergeant and Military Journalist, 2000-2008

COMMUNITY SERVICE

- Executive Committee Member for the Emerging Legal Leaders section of And Justice for All, 2015–2017
- Executive Committee Member for the Appellate Section of the Utah Bar, 2015–2016

SELECTED PUBLICATIONS

- The Legality of Armed Drone Strikes against U.S. Citizens within the United States, 2013 BYU L. REV. 153 (2013)
- Exposed in Iraq: Sexual Harassment and the Hidden Rank Structure of the U.S. Army, in MEN SPEAK OUT: VIEWS ON GENDER, SEX, AND POWER (Shira Tarrant ed., 2013)
- Tortured Morals: The Illegality and Immorality of the Enhanced Interrogation Program from an LDS Perspective, in WIELDING THE SWORD IN DEFENSE OF PEACE: 2013 LDS NATIONAL SECURITY SYMPOSIUM (forthcoming 2015) (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2247797)
- Time to repeal authority to use military force, SALT LAKE TRIBUNE, Jan. 12, 2013, <http://www.sltrib.com/sltrib/opinion/55601005-82/military-war-aumf-repeal.html.csp>
- Meg Roggensack and Marshall Thompson, Facebook: Before You Buy, HUFFINGTONPOST.COM, May 17, 2012, http://www.huffingtonpost.com/human-rights-first/facebook-before-you-buy_b_1524521.html



Keisa Williams <keisaw@utcourts.gov>

Pretrial Release & Monitoring

2 messages

Todd Kiser <toddkiser@utah.gov>
To: keisaw@utcourts.gov

Wed, Mar 28, 2018 at 2:38 PM

Good afternoon, I wanted to let you know that my new Deputy Commissioner, Reed Stringham, will be replacing Brett Barratt on this committee.

Below is a short bio, please let me know if you need additional information.

"I graduated from BYU Law School. I spent the last 32 years working in the Utah Attorney General's office. For about 25 of those years I defended state agencies and school districts in tort, employment and civil rights lawsuits. During the last three years I served as counsel to the Utah Insurance Department. I am now the Department's Deputy Commissioner. " Reed Stringham

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Todd E. Kiser, Commissioner
Utah Insurance Department
State Office Building, Room 3110 | [350 North State Street | Salt Lake City, UT 84114](#)
801-538-3804 | ToddKiser@utah.gov

Tab 2

Pretrial Release and Supervision Committee

Matheson Courthouse
Council room
450 South State St.
Salt Lake City, Utah 84111

January 11, 2018
12:00 – 2:00 p.m.

Draft

Members Present

Judge George Harmond – Temporary Chair
Brett Barratt
Jacey Skinner
Lt. Cory Kiddle, attending for Undersheriff Scott Carver
Pat Kimball
Judge Brendan McCullagh
Katie Miner, attending for Senator Lyle Hillyard
Dominic Sanone, attending for Wayne Carlos
Judge Brook Sessions, attending for Judge Rick Romney

Members Excused

Wayne Carlos
Undersheriff Scott Carver
Judge Angela Fonnesebeck
Representative Eric Hutchings
Brent Johnson
Judge Rick Romney
Adam Trupp
Senator Lyle Hillyard

Staff

Keisa L. Williams
Jeni Wood - recording secretary
Rick Schwermer
Judge Matthew Bates

Guests

Renea Cowley, Foxley & Pignanelli

(1) Welcome.

Judge George Harmond welcomed the committee to the meeting. Judge Harmond noted he is the temporary chair. Judge Harmond addressed the committee vacancies. Judge Harmond welcomed Lt. Cory Kiddle, Katie Miner, Dominic Sanone, and Judge Brook Sessions, who are present on behalf of members who were unable to attend.

(2) Approval of Minutes for January 5, 2017 and March 16, 2017.

Judge Harmond next addressed the minutes from the previous two meetings. There being no changes to either set of minutes, Judge Brendan McCullagh moved to approve the January 5, 2017 and the March 16, 2017 minutes. Brett Barrett seconded the motion and it passed unanimously.

(3) Update on PSA Education Efforts.

Keisa Williams updated the committee on her efforts to educate stakeholders across the state. The Utah State Bar sponsored two trainings on the PSA. There will be a special CLE in Second District in February including judges, defense counsel, and prosecutors practicing in 2nd District. That CLE will be interactive using hypothetical case studies. Implementation of the PSA has been temporarily paused. The PSA will be implemented, but we do not have a new go-live date yet. Jacey Skinner noted it has been helpful to educate legislators on the PSA. Ms. Williams

presented two mock-ups of the Public Safety Assessment Report. Ms. Williams explained how the PSA will be used and where the information used to calculate the score will come from. Ms. Williams noted that judges must make a release decision within 24-hours after arrest with very limited information. The PSA will be provided at the same time as the probable cause affidavit to fill this informational gap. The PSA will be made publicly available on Xchange alongside the probable cause affidavit as soon as a judge determines that probable cause exists. The report will also become a part of the court record if the prosecutor chooses to file charges and a case is opened in CORIS.

Ms. Williams described the new automated probable cause system.

Ms. Williams noted the Judicial Council has approved the Harvard randomized control trial studies in Davis, Weber, and Utah counties. Lt. Cory Kiddle questioned whether a new PSA will be generated when the charges filed by the prosecutor are different from the original charges at the time of arrest. For example, an arrestee is charged with multiple offenses – one of them being violent – and then the prosecutor decides not to file charges on the violent offense. The judge's release decision would have been based on the original PSA including the violent offense. Any future release decisions made during the life of the case would need to take that into consideration. From the jail's perspective, the arrestee (now possibly deemed low risk) would be taking up bed space that could be used for a violent offender. Rick Schwermer asked the committee whether they felt the working group should consider including the ability to calculate a new PSA in this scenario. The committee discussed the question at length. Judge Harmond said this is a topic the PSA Working Group should address. Ms. Williams will take the question to that group at their next meeting.

(4) National Pretrial Landscape.

Ms. Williams stated that the national pretrial landscape is changing. There is a lot of national movement toward pretrial reform. Ms. Williams provided an overview of reform efforts in many states and described the differences between those states and what Utah is doing. Several states have passed constitutional and statutory amendments allowing for preventative detention, eliminating or severely limiting the use of monetary conditions of release, changing court procedures, and conducting indigency determinations. Utah is taking a more measured approach to pretrial reform. There are several ongoing federal court cases involving pretrial reforms. Ms. Williams provided an overview of those cases. The preliminary decisions in those cases have been in favor of pretrial reform efforts and some consider the absence of indigency determinations when setting monetary conditions of release to be unconstitutional in "right to bail" states. Utah is a right to bail state. Mr. Sanone read an excerpt from a research paper indicating that pretrial risk assessment tools, including the PSA, are ineffective. Mr. Barrett said in the past the fear was that the state would be sued because the tool was unconstitutional. Judge Harmond stated that many offenders sitting in jail pretrial cannot afford to post bail. Ms. Williams will continue to monitor pretrial release reforms in other states.

(5) Proposed Rules of Criminal Procedure.

Judge McCullagh discussed the public comments received for proposed amendments to rules 7, 7A, 7B, 7C, 9, and 9A of the Utah Rules of Criminal Procedure. Judge McCullagh said rule 7 and rule 9 were too complicated so the Rules of Criminal Procedure Committee split the rules.

Rule 7 has been split into four rules and rule 9 has been split into two rules. Judge McCullagh explained each of the rules.

(6) Priority List for Committee.

Judge Harmond addressed the committee's charge and duties under CJA Rule 3-116. Judge Harmond would like the committee to create a priority list. Ms. Williams stated although she is not a voting member, she has reviewed the requirements and recommends having court services and law enforcement attend future meetings to provide pretrial data. The committee should work with the jails to determine what data they collect, including the date/time upon which offenders are released from the jail, whether the detainees are awaiting trial or serving a sentence, and whether bond sureties are bringing defendants who violate pretrial conditions to the jail. Ms. Williams noted subcommittees can be created to address specific issues. The court has already programmed to capture pretrial outcome data once the PSA has been implemented and some is being captured now, such as FTAs and the date/time from arrest to the initial bail decision. Ms. Williams informed the committee of the court's automated court-reminder system. Mr. Sanone recommended eventually obtaining defendants' email addresses as well as their phone number. Judge McCullagh said CORIS has a place for the email address now. Judge Harmond would like the committee to review the document under Tab 4 and return to the next meeting with a proposed structured approach.

(7) Adjourn.

Mr. Sanone thanked the committee for allowing his participation. Mr. Barrett noted he is willing to help where the committee feels he will be best utilized. Ms. Williams has posted the committee vacancies with the Utah State Bar. Judge Harmond thanked Rene Cowley for her attendance.

The next meeting is scheduled for March 1, 2018, however, the committee would like to meet after the legislative session. Ms. Williams will send out a Doodle poll to establish the new meeting date. Judge Harmond noted the four other 2018 meetings will remain the same, May 3, 2018; July 12, 2018; September 6, 2018; and November 1, 2018. There being no further business, the meeting adjourned at 1:33 pm.

Tab 3

1 **Rule 7. Initial Proceedings for Class A misdemeanors and Felonies.**

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

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

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

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

8 (a)(4) of rights concerning pretrial release, including bail; and

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

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

17 (c) **Release conditions.**

18 (c)(1) If counsel are present and prepared, the court must address whether the defendant is
19 entitled to pretrial release pursuant to Utah Code § 77-20-1, and if so, what if any conditions the
20 court will impose to reasonably ensure the continued appearance of the defendant, integrity of
21 the judicial process, and safety of the community. The court must utilize the least restrictive
22 conditions needed to meet those goals.

23 (c)(2) The determination of pretrial release eligibility and conditions may be reviewed and
24 modified upon application by either party based on a material change in circumstances, or other
25 good cause.

26 (d) **Continuances.** If counsel are not prepared, the court shall allow up to a seven day
27 continuance of the hearing to allow for preparation, including notification to any victims. The
28 court may allow more than seven days with the consent of the defendant.

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

30 (e)(1) The court must inform the defendant of the right to a preliminary examination and the
31 times for holding the hearing. If the defendant waives the right to a preliminary examination,
32 and the prosecuting attorney consents, the court must order the defendant bound over for trial.
33 (e)(2) If the defendant does not waive a preliminary examination, the court must schedule the
34 preliminary examination upon request. The examination must be held within a reasonable time,
35 but not later than 14 days if the defendant is in custody for the offense charged and not later than
36 28 days if the defendant is not in custody. These time periods may be extended by the magistrate
37 for good cause shown. Upon consent of the parties, the court may schedule the case for other
38 proceedings before scheduling a preliminary hearing.
39 (e)(3) A preliminary examination may not be held if the defendant is indicted.

Effective May 1, 2018

1 **Rule 7A. Procedures for Arraignment on Class B or C misdemeanors, or infractions.**

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

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

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

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

9 (a)(4) of rights concerning pretrial release, including bail; and

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

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

18 **(c) Release conditions.**

19 (c)(1) If counsel are present and prepared, the court must address whether the defendant is
20 entitled to pretrial release pursuant to Utah Code § 77-20-1, and if so, what if any conditions the
21 court will impose to reasonably ensure the continued appearance of the defendant, integrity of
22 the judicial process, and safety of the community. The court must use the least restrictive
23 conditions needed to meet those goals.

24 (c)(2) The determination of pretrial release eligibility and conditions, may be reviewed and
25 modified upon application by either party based on a material change in circumstances, or other
26 good cause.

27 **(d) Continuances.** If defense counsel is not present or not yet prepared, the court must allow up
28 to a seven day continuance of the hearing to allow for preparation. The court may allow more
29 than seven days with the consent of the defendant.

30 **(e) Entering a plea.**

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

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

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

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

Effective May 1, 2018

1 **RULE 7B. Preliminary Examinations**

2
3 (a) **Burden of proof.** At the preliminary examination, the state has the burden of proof and
4 proceeds first with its case. At the conclusion of the state's case, the defendant may testify under
5 oath, call witnesses, and present evidence. The defendant may also cross-examine adverse
6 witnesses.

7 (b) **Probable cause determination.** If from the evidence the magistrate finds probable cause to
8 believe that the crime charged has been committed and that the defendant has committed it, the
9 magistrate must order that the defendant be bound over for trial. The findings of probable cause
10 may be based on hearsay, in whole or in part. Objections to evidence on the ground that it was
11 acquired by unlawful means are not properly raised at the preliminary examination.

12 (c) **If no probable cause.** If the magistrate does not find probable cause to believe the crime
13 charged has been committed or the defendant committed it, the magistrate must dismiss the
14 information and discharge the defendant. The magistrate may enter findings of fact, conclusions
15 of law, and an order of dismissal. The dismissal and discharge do not preclude the state from
16 instituting a subsequent prosecution for the same offense.

17 (d) **Witnesses.** At a preliminary examination, the magistrate, upon request of either party, may
18 exclude witnesses from the courtroom and may require witnesses not to converse with each other
19 until the preliminary examination is concluded.

20 (e) **Written findings.** If the magistrate orders the defendant bound over for trial, the magistrate
21 must execute a bind-over order and include any written findings in the case record.

Effective May 1, 2018

1 **Rule 7C. Material Witnesses-Procedure for Bond and Warrants.**

2
3 **(a) Bond.** When a magistrate has good cause to believe that any material witness in a pending
4 case will not appear and testify unless bond is required, the magistrate may fix a bond with or
5 without sureties and in a sum considered adequate for the appearance of the witness.

6 **(b) Warrant.** If the witness fails or refuses to post the bond with the clerk of the court, the
7 magistrate may issue a warrant and commit the witness to jail until the witness complies or is
8 otherwise legally discharged. If the witness is arrested on a warrant issued by the magistrate, the
9 custodial authority shall notify the issuing magistrate before the end of the next business day, and
10 the magistrate shall provide a hearing for the witness within three days or, upon a showing of
11 good cause, within a reasonable period of time after being notified of the arrest.

12 **(c) Examining witness.** If the witness does provide bond when required, the witness may be
13 examined and cross-examined before the magistrate in the presence of the defendant and the
14 testimony shall be recorded. The witness shall then be discharged.

15 **(d) Use of testimony.** If the witness is unavailable or fails to appear at any subsequent hearing or
16 trial when ordered to do so, the recorded testimony may be used at the hearing or trial in lieu of
17 the personal testimony of the witness.

Effective May 1, 2018

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

2
3 (a)(1) Probable cause determination. A person arrested and delivered to a correctional facility
4 without a warrant for an offense must be presented without unnecessary delay before a
5 magistrate for the determination of probable cause and whether the suspect qualifies for pretrial
6 release under Utah Code § 77-20-1, and if so, what if any conditions of release are warranted.

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

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

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

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

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

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

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

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

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

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

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

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

(b) Magistrate availability.

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

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

(c) Time for review.

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

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

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

(c)(4)(A) If no information has been filed by 5:00pm on the fourth calendar day after the defendant was booked, the release conditions set under subsection (a)(2)(B) shall revert to recognizance release.

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

(c)(4)(C) If the time periods in this subsection (c)(4) expire on a weekend or legal holiday, the period expires at 5:00pm on the next business day.

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

Effective May 1, 2018

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

2 (a) When a peace officer or other person arrests a defendant pursuant to a warrant and the
3 arrested person cannot provide any condition or security required by the judge or magistrate
4 issuing the warrant, the person arrested must be presented to a magistrate within 24 hours after
5 arrest. The information provided to the magistrate must include the case number, and the results
6 of any validated pretrial risk assessment.

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

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

11 (d) If the arrested person meets the conditions, or provides the security required by the warrant,
12 the person must be released and instructed to appear as required in the issuing court.

13 (e) Any posted security must be forwarded to the court issuing the warrant.

Effective May 1, 2018

Tab 4

PRETRIAL RELEASE AND SUPERVISION COMMITTEE

Committee Membership

- | | |
|--------------------------------|---|
| (2) district court judges | (1) representative of a county pretrial services agency |
| (1) juvenile court judge | (1) representative of the Utah Insurance Department |
| (2) justice court judges | (1) representative of the UCCJJ |
| (1) prosecutor | (1) commercial surety agent |
| (1) defense attorney | (1) state senator |
| (1) county sheriff | (1) state representative |
| (1) representative of counties | (1) court's general counsel or designee |

CJA Rule 3-116. Pretrial Release and Supervision Committee.

The committee shall study pretrial release and supervision practices, and make regular reports and recommendations concerning those practices to the Judicial Council.

(1) Duties of the committee. The committee shall:

(A) work to implement the recommendations of the Report to the Utah Judicial Council on Pretrial Release and Supervision Practices;

(B) study and make recommendations regarding pretrial release and supervision generally, including the following:

- (i). studying current pretrial release and supervision practices, the efficacy of such practices, and making recommendations for changes to those practices as necessary;
- (ii). developing and recommending written guidelines to the Judicial Council to be used for setting financial and non-financial conditions of pretrial release;
- (iii). assisting and advising counties on implementing a statewide pretrial risk assessment tool and developing procedures for distributing the assessment results to judges;
- (iv). assisting and advising counties to develop pretrial supervision programs;
- (v). determining what pretrial release and supervision data are necessary to accurately assess pretrial release and supervision practices, and making recommendations on how pretrial release and supervision data collection practices can be improved including which organizations should collect the data and how it should be collected;
- (vi). recommending training for judges, lawyers, and other stakeholders on pretrial release and supervision practices;
- (vii). recommending, if necessary, appropriate statutory and rule changes; and
- (viii). providing ongoing monitoring and assessment of Utah's pretrial release and supervision practices; and

(C) on an annual basis, the committee shall report its progress to the Judicial Council.

Pretrial Release Study Committee Recommendations

1. Persons arrested for or charged with crimes are presumed innocent. There should be a presumption in favor of pretrial release, free from financial conditions.
2. Individuals arrested for or charged with minor offenses should not be held in custody pending the resolution of their cases.
 - a. For example, class B and C misdemeanors, other than DUI, domestic violence, and offenses involving a continued breach of the peace, should be initiated by issuance of a citation and release on recognizance with reporting instructions.
 - b. When these types of charges are filed by Information, service should be by summons, rather than a warrant.
3. Uniform and consistent practices for making pretrial release and supervision decisions should be promulgated, and judges throughout the state should review those decisions as the case progresses.
 - a. The recommendations of the Board of District Court Judges regarding pretrial release and monetary bail practices should be promptly implemented.
4. Each person booked into jail should receive a pretrial risk assessment, using a validated instrument, and current assessment results should be available at each stage where a pretrial release and supervision decision is made.
 - a. Judges should evaluate pretrial release and supervision, taking into account the assessment and all other relevant factors.
 - b. Individuals who present a low pretrial risk should be released on their own recognizance without any conditions other than appearance in court.
 - c. Individuals who present a moderate pretrial risk, or for whom conditions to release are necessary, should be released with the least restrictive conditions necessary to meet the pretrial risk presented.
 - d. For individuals who present a high pretrial risk, the court should determine whether the offender can be held without monetary bail. If so, the court should order no pretrial release and revisit that decision as appropriate. If not, under current law, the court must set monetary bail and should order the least restrictive conditions necessary to meet the pretrial risk presented.
5. Pretrial supervision practices and procedures, that are appropriate to the size and needs of the community involved, should be developed and implemented.
 - a. Because release conditions will be imposed, and alternatives to jail detention ordered, a mechanism to monitor and enforce them should be implemented.
 - b. The court or local governments should consider an automated system that uses phone calls, texts, or other technology to remind defendants of upcoming court dates.

6. Pretrial release is an individualized decision. Judges should not set monetary bail based solely on the level of offense charged.
 - a. The Uniform Fine and Bail Schedule should not be used to set monetary bail. Rather, the schedule should be used only to determine the amount of fines a defendant should remit to avoid the need for a court appearance in non-mandatory appearance cases (traffic citations, for example).
 - b. The Uniform Fine and Bail Schedule should be renamed “Uniform Fine Schedule.”
7. Prosecutors and defense counsel should provide more and better information at pretrial release or bail hearings to help judges make informed, individualized evaluations of the risk of pretrial release.
8. The laws and practices governing monetary bail forfeiture should be improved and updated so that when monetary bail is used, the incentives it is designed to create can be furthered.
9. The Council should create a standing committee on Pretrial Release and Supervision Practices that includes representatives of all stakeholders to stay abreast of current practices in this area, develop policies or recommendations on pretrial release and supervision practices, to assist in training and data collection, and to interface with other stakeholders.
10. Uniform, statewide data collection and retention systems should be established, improved, or modified.
 - a. Accurate risk assessments require correct and easily accessible data. Existing data systems are inadequate. They should be improved to permit these tools to operate effectively.
 - b. All stakeholders should collect and share consistent data on pretrial release and supervision to facilitate a regular and objective appraisal of the effectiveness of various pretrial release and supervision practices.
 - c. The committee on pretrial release and supervision practices should help determine what data should be collected, how to collect it, and how best to study the efficacy of release and supervision practices.
11. Judges, lawyers, and other stakeholders should receive regular training on current best practices in the area of pretrial release and supervision practices.
12. The public in general and the media in particular should be educated about pretrial release and supervision practices issues.

Board of District Court Judges Recommendations for a Uniform Process for Setting Bail

The Board recommends that the judiciary adopt a more uniform process for probable cause review and the setting of bail throughout the State. Any uniform process should include the following components:

- **Schedule for Probable Cause Review.** Probable cause statements for warrantless arrests should be reviewed electronically within 24 hours of arrest. URCrP 7(c)(1). To meet the twenty-four hour deadline, district court judges must review probable cause statements two times per day, once in the morning and once in the afternoon. This must occur both on weekdays and weekends.
- **Bail Set at The Time of Probable Cause Review.** If the judge finds probable cause, the judge shall immediately make a bail determination. URCrP 7(c)(3)(B). Any electronic system should allow (1) the reviewing magistrate to see the Uniform Bail Schedule amount for the offense; (2) the reviewing magistrate to enter a bail amount, and impose conditions of release; and (3) the arresting officer to enter information relevant to the setting of bail, including those factors enumerated in the Utah Constitution and in the Utah Code. See, Utah Const., art. I, sec. 8; Utah Code § 77-20-1(2)(a)-(d).
- **Informations Filed Within 72 Hours of Booking (Failure to File Deadline).** If the prosecutor decides to file charges, she should do so within 72 hours of booking. Failure to file timely shall result in release of the detained person unless the prosecutor obtains from the Court an order extending the time to file.
- **Orders for Release Upon Declination of Prosecution.** If the prosecutor declines to file charges before the date scheduled for initial appearance, the prosecutor shall provide proof of declination to the clerk and the court should enter a written order authorizing the release of the arrestee.
- **Automatic Right to Readdress Bail Set at Time of Probable Cause Review.** At the initial appearance, the arrested person shall have the right to readdress the bail amount set by the magistrate at the time of probable cause review or to wait to readdress bail upon notice to the prosecutor. This allows the arrested person the opportunity to be represented by counsel and to be heard regarding factors relevant to the setting of bail.
- **Subsequent Motions to Modify Bail.** After a bail hearing has been held and bail set, any further motion to modify the bail must be made in advance of a hearing, with notice to the prosecutor, and “may be made only upon a showing that there has been a material change in circumstances.” Utah Code § 77-20-1(5) and (6).

Finally, the Board believes that two broader concerns merit consideration by the subcommittee and the Council.

- **Limited Information at The Time Bail Is Set.** When bail is set immediately upon a finding of probable cause, the reviewing magistrate has no information or indictment, no recommendation from pre-trial release, and no other reliable records. By statute, conditions of release are imposed in the discretion of the magistrate to ensure the appearance of the accused, ensure the integrity of court processes, prevent contact with victims and witnesses by the accused, and ensure the safety of the public. But the probable cause statement alone generally includes little information that might guide the

discretion of the magistrate in setting conditions of release designed to serve these important objectives.

- **The Uniform Bail Schedule and Excessive Bail.** The federal and state constitutions forbid the setting of excessive bail. Section 77-20-1 grants the court broad discretion in making bail determinations. However, Rule 7 requires that the bail amount coincide with the Uniform Bail Schedule absent a substantial cause for deviation. For an arrestee with no prior criminal history and substantial ties to the community, bail which coincides with the Uniform Bail schedule may be excessive.