



# Administrative Office of the Courts

Chief Justice Matthew B. Durrant  
Utah Supreme Court  
Chair, Utah Judicial Council

September 5, 2019

Hon. Mary T. Noonan  
State Court Administrator  
Catherine J. Dupont  
Deputy Court Administrator

## MEMORANDUM

**TO: Supreme Court's Advisory Committee on the Rules of Criminal Procedure**

**FROM: Judicial Council's Standing Committee on Pretrial Release and Supervision**

**RE: Proposed Amendments to URCrP 9 and 9A**

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In the fall of 2014, the Judicial Council formed a study committee charged with conducting a thorough assessment of existing pretrial practices in Utah. In a comprehensive [report](#) published in November 2015, the study committee identified several areas in need of improvement.

In anticipation of the study committee's report, and after conducting a state-wide survey of practice in each district, the 2015 Board of District Court Judges (BDCJ) unanimously recommended that the judiciary adopt a uniform process for reviewing probable cause statements, setting bail, and scheduling initial appearances. One of the Board's recommendations was that Informations be filed within 72 hours of booking ([Appendix A](#) of the study report, pg. 61).

In early 2016, the Council adopted the study committee's recommendations and created the [Standing Committee on Pretrial Release and Supervision](#). Our committee has been charged with working to implement those recommendations, one of which, formally adopted the 2015 Board's recommendations. The new time to file deadline in URCrP Rules 9 and 9A, while not quite meeting the 2015 BDCJ's 72-hr proposal, were certainly a significant step in the right direction. We commend your committee for the incredible amount of work expended in crafting those rules and we sincerely appreciate your efforts.

After careful review, this Committee is concerned that recent proposed amendments to URCrP Rules 9 and 9A are contrary to the intent of the Judicial Council to improve pretrial practices. Extending the failure to file deadline, in some instances to nearly twice that of the 2015 BDCJ's recommendations, increases the amount of time arrestees spend in custody while awaiting the filing of formal charges.

It is our understanding that the 2019 BDCJ was heavily involved in crafting the current proposals. While we have no doubt the amendments were made thoughtfully, they appear to be a departure from the original Board's recommendation. Having not been involved in the Board's discussions, the impetus behind those changes is unclear.

**The mission of the Utah judiciary is to provide an open, fair,  
efficient, and independent system for the advancement of justice under the law.**

As you are no doubt aware, even spending 24 hours in jail can have devastating collateral consequences for arrestees and their families. Extensive research by pretrial experts across the country have shown that incarceration, even for a short period of time, causes individuals to lose jobs, housing, child custody, and access to prescribed medications intended to treat mental health conditions. All of these life disruptions starkly increase the risk of recidivism for up to two years following an individual's arrest.

In addition, more than 24 cases in both state and federal courts have, or are currently addressing the question of whether it is an unconstitutional deprivation of due process and equal protection rights under the 14th Amendment to set monetary conditions of pretrial release without first considering, among other things, an arrestee's ability to pay the amount set.

While none of the cases are precedential at this time, we believe several are persuasive. This committee has begun to study whether Utah courts' and other criminal justice stakeholders' application of some of the State's pretrial release laws and court rules may not be constitutionally upheld if challenged in court. Many of the cases have held that it is unconstitutional not to make 'ability to pay' determinations within 24-48 hours of arrest. If that is true, changes to arrest practices and judicial procedures in Utah would necessarily include the timing and infrastructure problems identified by the BDCJ and your Committee.

We have been informed that you are considering creating a subcommittee to take another look at URCrP 9 and 9A. We respectfully request that one member of the Standing Committee on Pretrial Release and Supervision be included on that subcommittee. We continue to be impressed by your incredible dedication to the Court and hope to work closely with you on these important issues.