

**Rule 27B**

**Effective: November 1, 2015**

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

(a) The procedures in this rule shall be used in determining whether to stay the payment of any fines or periods of incarceration pending the resolution of an appeal for a hearing de novo, pursuant to Utah Code §78A-7-118(3). This rule shall also govern stays in all appeals involving violations of Title 41, Chapter 6a, Part 5, DUI and Reckless Driving, or any local ordinance as described in Utah Code §41-6a-501(2)(a)(iii).

(b) Periods of incarceration of ~~less than 30~~28 days or less.

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

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

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

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

(c) Periods of incarceration of ~~30 days or greater~~longer than 28 days.

(c)(1) After, or at the time of, the filing of a notice of appeal, if a stay is desired, the defendant shall file a written motion requesting a stay of a sentence term of incarceration of 30 days or more. That motion shall be accompanied by a memorandum indicating the legal basis for the appeal and that the appeal is not being taken for purposes of delay. The memorandum shall also address why the defendant is not a flight risk; and why the defendant does not pose a danger to any other person or the community.

(c)(2) A copy of the motion, and supporting memorandum shall be served on the prosecuting attorney. An opposing memorandum may be filed within 57 days after receipt of the application, or shorter time as the court deems necessary. A hearing on the application shall be held within 57 days of the court receiving either the opposing memorandum or an indication that no opposing memorandum will be filed. If no opposing memorandum is filed, the hearing will be held within ~~10~~14 days after the application is filed with the court.

(c)(3) The court shall order the defendant released unless it finds by a preponderance of the

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evidence that:

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

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

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

(c)(4) The court ordering release pending appeal under subsection (c)(3) shall order that release on the least restrictive condition or combination of conditions set forth in Rule 27(c) that the court determines will reasonably assure the appearance of the person as required and the safety of persons and property in the community.

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

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

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

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

(g)(1) Such petition shall be in writing and accompanied by the notice of appeal filed in the justice court, the original motion for a stay and accompanying papers filed in the justice court, if any, and any orders or findings of the justice court on the issue. The petition shall be served on the opposing party.

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

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

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(h) For purposes of this rule, “term of sentence” or “sentence” shall include:

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

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