

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

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

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

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

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

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

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

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

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

27 (c)(2) A copy of the motion, and supporting memorandum shall be served on the
28 prosecuting attorney. An opposing memorandum may be filed within 7 days after receipt
29 of the application, or shorter time as the court deems necessary. A hearing on the
30 application shall be held within 7 days of the court receiving either the opposing
31 memorandum or an indication that no opposing memorandum will be filed. If no
32 opposing memorandum is filed, the hearing will be held within 14 days after the
33 application is filed with the court.

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

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

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

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

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

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

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

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

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

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

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

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

67 (h) For purposes of this rule, "term of sentence" or "sentence" shall include:

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

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

71 | Effective ~~March 6, 2018~~October 1, 2020