

1 **Rule 27. Stays of sentence pending motions for new trial or appeal from courts of record.**

2 (a) **Staying sentence terms other than incarceration.**

3 (a)(1) A sentence of death is stayed if a motion for a new trial, an appeal or a petition for other
4 relief is pending. The defendant shall remain in the custody of the warden of the Utah State
5 Prison until the appeal or petition for other relief is resolved.

6 (a)(2) When an appeal is taken by the prosecution, a stay of any order of judgment in favor of the
7 defendant may be granted by the court upon good cause pending disposition of the appeal.

8 (a)(3) Upon the filing of a motion for a new trial or a notice of appeal, and upon motion of the
9 defendant, the court may stay any sentenced amount of fines, conditions of probation (other than
10 incarceration) pending disposition of the motion for a new trial or appeal, upon notice to the
11 prosecution and a hearing if requested by the prosecution.

12 (a)(4) A party dissatisfied with the trial court's ruling on such a motion may petition for relief in
13 the court with appellate jurisdiction.

14 (b) **Staying sentence terms of incarceration.** A defendant sentenced, or required as a term of
15 probation, to serve a period of incarceration in jail or in prison, shall be detained, unless released
16 by the court in conformity with this rule.

17 (b)(1) **In general.** Before a court may release a defendant after the filing of a motion for a
18 new trial or notice of appeal, the court must:

19 (b)(1)(A) issue a certificate of probable cause; and

20 (b)(1)(B) determine by clear and convincing evidence that the defendant:

21 (b)(1)(B)(i) is not likely to flee; and

22 (b)(1)(B)(ii) does not pose a danger to the physical, psychological, or
23 financial and economic safety or well-being of any other person/individual
24 or the community if released under any conditions as set forth in
25 subsection (c).

26 (b)(2) A defendant shall file a written motion in the trial court requesting a stay of the
27 sentence term of incarceration.

28 (b)(2)(A) That motion shall be accompanied by a copy of the filed motion for a
29 new trial or notice of appeal; a written application for a certificate of probable
30 cause; and a memorandum of law. The memorandum shall identify the issues to
31 be presented in the motion for a new trial proceedings or on appeal and support
32 the defendant's position that those issues raise a substantial question of law or fact
33 reasonably likely to result in reversal, an order for a new trial or a sentence that

34 does not include a term of incarceration in jail or prison. The memorandum shall
35 also address why clear and convincing evidence exists that the defendant is not a
36 flight risk and that the defendant does not pose a ~~danger to any other person or~~
37 ~~the community~~ as outlined in paragraph (b)(1)(B)(ii).

38 (b)(2)(B) A copy of the motion, the application for a certificate of probable cause
39 and supporting memorandum shall be served on the prosecuting attorney. An
40 opposing memorandum may be filed within 14 days after receipt of the
41 application, or within a shorter time as the court deems necessary. A hearing on
42 the application shall be held within 14 days after the court receives the opposing
43 memorandum, or if no opposing memorandum is filed, within 14 days after the
44 application is filed with the court.

45 (b)(3) The court shall issue a certificate of probable cause if it finds that the
46 motion for a new trial or appeal:

47 (b)(3)(A) is not being taken for the purpose of delay; and

48 (b)(3)(B) raises substantial issues of law or fact reasonably likely to result
49 in reversal, an order for a new trial or a sentence that does not include a
50 term of incarceration in jail or prison.

51 (b)(4) If the court issues a certificate of probable cause it shall order the defendant
52 released if it finds that clear and convincing evidence exists to demonstrate that
53 the defendant is not a flight risk and ~~that the defendant~~ does not pose a danger ~~to~~
54 ~~any other person or the community~~ as outlined in paragraph (b)(1)(B)(ii) if
55 released under any of the conditions set forth in subsection (c).

56 (b)(5) The court ordering release pending determination of a motion for a new
57 trial or appeal under subsection (b)(4) shall order release on the least restrictive
58 reasonably available condition or combination of conditions set forth in
59 subsection (c) that the court determines will reasonably ~~assure~~ ensure the
60 appearance of the ~~person~~ defendant as required and the safety of ~~persons and any~~
61 other individual, property ~~in, and~~ the community.

62 (b)(6) **Review of trial court's order.** A party dissatisfied with the relief granted
63 or denied under this subsection (b) may petition the court with appellate
64 jurisdiction in which the appeal is pending.

65 (b)(6)(A) If the petition is filed by the defendant, a copy of the petition,
66 the affidavit and papers filed in support of the original motion shall be
67 served on the Utah Attorney General if the case involves any felony
68 charge, and on the prosecuting attorney if the case involves only
69 misdemeanor charges.

70 (b)(6)(B) If the petition is filed by the prosecution, a copy of the petition
71 and supporting papers shall be served on defense counsel, or the defendant
72 if the defendant is not represented by counsel.

73 (c) **Conditions of release.** If the court determines that the defendant may be released pending
74 motion for a new trial proceedings or an appeal, it may release the defendant on the least
75 restrictive reasonably available condition or combination of conditions that the court determines
76 will reasonably assure-ensure the appearance of the person-defendant as required and the safety
77 of persons and any other individual, property ~~in~~, and the community. ~~The, which~~ conditions may
78 include, without limitation, that the defendant:

79 (c)(1) is admitted to appropriate bail;

80 (c)(2) not commit a federal, state or local crime during the period of release;

81 (c)(3) remain in the custody of a designated person who agrees to assume supervision of
82 the defendant and who agrees to report any violation of a release condition to the court, if
83 the designated person is reasonably able to assure the court that the person-defendant will
84 appear as required and will not pose a danger to the safety of any other person, property,
85 or the community;

86 (c)(4) maintain employment, or if unemployed, actively seek employment;

87 (c)(5) maintain or commence an educational program;

88 (c)(6) abide by specified restrictions on personal associations, place of abode or travel;

89 (c)(7) avoid all contact with the victim or victims of the crime(s), any witness or
90 witnesses who testified against the defendant and any potential witnesses who might
91 testify concerning the offenses if the appeal results in a reversal or an order for a new
92 trial;

93 (c)(8) report on a regular basis to a designated law enforcement agency, pretrial services
94 agency or other agency;

95 (c)(9) comply with a specified curfew;

96 (c)(10) refrain from possessing a firearm, destructive device or other dangerous weapon;

97 (c)(11) refrain from possessing or using alcohol, or any narcotic drug or other controlled
98 substance except as prescribed by a licensed medical practitioner;

99 (c)(12) undergo available medical, psychological or psychiatric treatment, including
100 treatment for drug or alcohol abuse or dependency;

101 (c)(13) execute an agreement to forfeit, upon failing to appear as required, such
102 designated property, including money, as is reasonably necessary to assure the
103 appearance of the defendant as required, and post with the court such indicia of
104 ownership of the property or such percentage of the money as the court may specify;

105 (c)(14) return to custody for specified hours following release for employment, schooling
106 or other limited purposes; and

107 | (c)(15) satisfy any other condition that is reasonably necessary to ~~assure~~ensure the
108 | appearance of the defendant as required and ~~to assure~~ the safety of ~~persons and~~any other
109 | individual, property, and ~~in~~ the community.

110 (d) **Amended conditions of release.** The court may at any time for good cause shown amend the
111 order granting release to impose additional or different conditions of release.

112 | Effective ~~November 1, 2019~~October 1, 2020