

Agenda
Pretrial Release & Supervision Committee Meeting
 January 11, 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 Notice of Member Vacancies	Discussion		Judge George Harmond
12:10	Approval of Minutes for January 5, 2017 and March 16, 2017	Discussion / Action	Tab 1	
12:15	Update: PSA Education Efforts <ul style="list-style-type: none"> • Mock-ups of PSA Report 	Discussion	Tab 2	Keisa Williams
12:20	National Pretrial Landscape	Discussion		Keisa Williams
1:00	Proposed Rules of Criminal Procedure	Discussion	Tab 3	Brent Johnson
1:30	Priority List for Committee	Discussion / Action	Tab 4	Judge George Harmond
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:

March 1, 2018
 May 3, 2018
 July 12, 2018
 September 6, 2018
 November 1, 2018

Tab 1

Pretrial Release and Supervision Committee
Matheson Courthouse
Executive Dining Room
450 South State St.
Salt Lake City, Utah 84111

January 5, 2017

Draft

Members Present

Judge Paige Petersen- Chair
Brett Barratt
Patrick Corum
Judge Angela Foncesbeck (via phone)
Judge George Harmond
Robert Hilder
Senator Lyle Hillyard
Representative Eric Hutchings
Pat Kimball
Judge Brendan McCullagh
Judge Rick Romney (via phone)
Rick Schwermer
Judge Todd Shaughnessy
Jennifer Valencia (via phone)

Members Excused

Wayne Carlos
Brent Johnson
Adam Trupp
Sheriff Jim Winder

Staff

Keisa L. Williams
Jeni Wood - recording secretary

Guests

Jack Darrington, Intern for Senator Hillyard

(1) Welcome.

Judge Paige Petersen welcomed the committee to the meeting. The committee addressed the November 3, 2016 minutes. Patrick Corum moved to approve the minutes as written. Judge McCullagh seconded the motion. The motion carried unanimously.

(2) Update on PSA and Harvard Study.

Keisa Williams updated the committee on the Arnold Foundation onsite assessment. The assessment was a success and the Arnold Foundation has agreed to grant Utah a license to implement the PSA, provided Utah agrees to pay Justice System Partners to assist with implementation. Ms. Williams stated the Judicial Council has approved Utah's participation in the Harvard Randomized Control Trial (RCT) in Davis, Morgan, Weber and Utah counties, as well as working with the Arnold Foundation to implement the PSA. The Memorandum of Understanding is still in the draft stage. Representative Eric Hutchings questioned whether the funding was a one-time deal or whether there would be on-going funding required. Ms. Williams stated that the funding to implement the PSA was a one-time deal. No on-going funding is necessary to utilize the PSA moving forward.

Judge Petersen mentioned that the team from Justice System Partners (JSP) was very impressed with Utah's court structure and data systems. Judge Petersen noted she and a few members of the committee met with the presiding judges in the Harvard RCT counties. The judges each agreed to participate in the study. Ms. Williams said some of the judges expressed concern about potential equal protection violations when a judge receives the PSA score for one defendant, but not another. Ms. Williams said Chris Griffin from the Harvard Access to

Justice Lab explained that while the PSA is validated to predict risks for FTA, NCA and NVCA, the effectiveness of the PSA, separate from pretrial programs, has not been studied or determined. Because there is no data yet suggesting that the PSA, alone, provides one defendant with a benefit over another, there is no equal protection violation. The RCT will study the effectiveness of the PSA here in Utah. Once that study determines that the PSA – by itself - provides a benefit, we will terminate the study and judges will receive a PSA for all defendants. Ms. Williams said Harvard needs baseline data from all four (4) counties before they can make a final determination about the viability of conducting the RCT here in Utah. Ms. Williams said that Ron Bowmaster has been working on gathering the necessary data. Ron is hoping to have all the data to Harvard by the end of January. Judge Shaughnessy said the time table is basically to sign the MOU, start the onsite meetings with the working group and then in six months be up and running.

Ms. Williams said originally, the plan was to use Arizona for training in order to cut costs. However, the cost estimate was low enough that we may not need Arizona's assistance. Rick Schwermer said that if we used Arizona, we would most likely need to pay them a fee for their time and travel expenses. Ms. Williams has been in contact with the Arizona group and said they are more than willing to assist with whatever we need, even simple questions, regardless of whether we utilize them for training. Mr. Schwermer suggested not using Arizona since JSP is able to conduct the training at a much lower cost than was anticipated.

Representative Hutchings noted that this could be an opportunity for the Utah courts to train other states in the future. Pat Kimball said Salt Lake County Pretrial is in the process of revalidating the SLPRI. Judge Shaughnessy wondered about the cost of interfacing with the Department of Public Safety (DPS). Mr. Schwermer stated the courts would cover the DPS data costs through a CORIS rewrite. Senator Lyle Hillyard said he was concerned about what defendants might disclose during their initial interviews. Ms. Williams explained that the PSA does not require an interview with defendants, but uses static information only that will be pulled automatically from criminal history and CORIS data. Mr. Schwermer said he isn't sure how the algorithm scores pending charges.

The committee discussed the difficulty in obtaining contact information for defendants in order to provide automatic court reminder notices. Ms. Williams noted it could be part of the release decision/agreement, that defendants are required to give contact information for future court notices. Representative Hutchings noted there are quite a few citations where there is never a court appearance. Judge McCullagh said many times those defendants have multiple charges where they end up in court anyway. Mr. Corum said Utah County has found many of the defendants are high-risk but have had very little court involvement. Judge Shaughnessy said the Third District Court may be getting fingerprint equipment for the courthouse. This is especially important for defendants who have not been booked into jail yet. This would allow a report to immediately be generated.

Ms. Williams mentioned that she has been asked to provide an update on the PSA/Pretrial initiative to the Bail Bond Oversight Board meeting next week. Ms. Williams will update the committee after the meeting.

(3) Rule Amendments – Time to File Information.

Ms. Williams said that the Judicial Council has tasked the Pretrial Committee with creating or amending a rule or rules to establish a consistent statewide timeline for the filing of an Information. However, the Rules of Criminal Procedure Committee has already begun work on those rule changes, so Ms. Williams suggested that this committee allow the Rules of Criminal Procedure Committee to complete their amendments and present them here for review/edit prior to submission to the Judicial Council. Patrick Corum, Judge McCullagh and Brent Johnson are all members of the Rules of Criminal Procedure Committee. Judge McCullagh briefly described the potential changes and the reasoning for the changes and how this may affect the constitutional rights of individuals. A couple of the rule drafts have been completed already. Right now the Rules of Criminal Procedure Committee is working on URCrP Rule 7. This rule affects those who are booked without warrants. Judge Shaughnessy noted that one of the Arnold Foundation requirements is that an initial pretrial release decision be made within 24 hours. Judge McCullagh said they are working on including this requirement. Mr. Schwermer said Senator Hillyard has a bill file open to clarify this as well. The committee discussed exactly

which defendants this rule would apply to, including individuals whose case was initiated with a warrant. The committee agreed that they didn't want to mold the rules to fit high risk defendants, but instead the rules should apply to everyone. Judge Petersen expressed concern that there wouldn't be an OTN number assigned for defendants who appear in court without having been booked into jail. Currently defendants must schedule an appointment with the jail to be booked and unfortunately, the jail is six weeks out for scheduling. Judge Shaughnessy said he believed it may work best to have the jails provide a list of all defendants who were booked within the past 24 hours and the court could address all of them at once. Judge McCullagh noted that the Rules of Criminal Procedure Committee would be meeting in a couple of weeks to push this along. Patrick Corum and Judge McCullagh will report back to the committee with the proposed rules.

(4) Subcommittee Direction.

Ms. Williams mentioned there are currently three (3) subcommittees: Data Collection, chaired by Judge Fannesbeck; Legal and Processes, chaired by Brent Johnson; and Risk Assessment Tool & Monitoring Program, chaired by Patrick Corum. Ms. Williams said she is available to meet individually with the chairs to discuss each subcommittee charge in detail and help determine the process and direction each chair would like to take. Judge Angela Fannesbeck stated she is still fairly new to this committee and would like to meet with the subcommittee to discuss goals. Judge Petersen said she would like to be kept informed of the status of each subcommittee and will attend the subcommittee meetings in person or by phone, as her schedule allows. Judge Petersen encouraged the subcommittees to meet during the committee's off months. Ms. Williams will send out Doodle calendars to schedule each subcommittee meeting.

Senator Hillyard encouraged the committee to accomplish as much of its work as is appropriate through court rules rather than legislation. Judge Petersen asked the Legal and Processes Subcommittee to quickly review and report if there are any legislative issues that need to be addressed during this legislative session. Judge McCullagh does not believe there are any immediate legislative concerns. Judge Petersen will ask Brent Johnson to research the issue and report back. Mr. Schwermer said there are several bail bond industry-initiated issues before the legislature this term.

Judge Petersen asked the chairs of the subcommittees to notify her of their meeting dates and times.

(5) Adjourn.

The next meeting is scheduled for March 16, 2017. There being no further business, the meeting adjourned at 1:44 pm.

Pretrial Release and Supervision Committee

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

March 16, 2017

Draft

Members Present

Judge Paige Petersen- Chair
Brett Barratt
Wayne Carlos
Undersheriff Scott Carver
Judge George Harmond
Senator Lyle Hillyard
Brent Johnson
Pat Kimball
Judge Rick Romney
Judge Todd Shaughnessy
Jennifer Valencia (by phone)

Members Excused

Patrick Corum
Judge Angela Fonesbeck
Robert Hilder
Representative Eric Hutchings
Judge Brendan McCullagh
Adam Trupp

Staff

Keisa L. Williams
Jeni Wood - recording secretary

Guests

Dan Becker
Ray Wahl

(1) Welcome.

Judge Paige Petersen welcomed the committee to the meeting. Judge Petersen welcomed Undersheriff Scott Carver to the committee. Mr. Carver will replace Sheriff Jim Winder on the committee. Judge Petersen said Robert Hilder is quite ill and may need to be replaced.

(2) Update on PSA and Harvard Study.

Keisa Williams updated the committee on the Arnold Foundation PSA risk assessment. Ms. Williams said the MOU and contracts have been signed and on May 12, 2017, the Working Group will meet with Justice System Partners (JSP) for the first implementation meeting. Ms. Williams noted several people from the court's IT staff will attend as well. The anticipated go-live date is November 13, 2017 for Davis, Morgan, Weber and Utah Counties. Salt Lake County will follow. Ms. Williams said Salt Lake County Pretrial Services has decided to use the PSA instead of the SLPRI. If the Harvard Access to Justice Lab determines that a study will be viable, they will conduct a side-by-side comparison of the PSA and the SLPRI. A side-by-side comparison of a dynamic tool versus a static tool has not done before in any state that Ms. Williams is aware of. Ms. Williams said the comparison study will be free and will answer the debate in the Pretrial Industry right now about the effectiveness and necessity of offender interviews. Judge Petersen explained that the working group's task is to conduct the actual implementation of the PSA tool.

(3) Subcommittee Updates.

Ms. Williams noted that Judge Fonesbeck and Patrick Corum were unable to attend the meeting; therefore Ms. Williams will be updating the committee on the Data Collection and Risk Assessment Tool and Monitoring Subcommittees.

Risk Assessment Tool & Monitoring Subcommittee. Ms. Williams said the subcommittee is reaching out to districts/counties throughout the state to gather information about current or planned pretrial programs. Ms. Williams discussed a few current programs. Judge George Harmond discussed the Carbon County pretrial

program and said it's difficult to get detailed information on this program because the majority of the individuals under supervision are coming through the justice courts. Judge Harmond said one of the issues they are working to address is what to do with individuals who violate the terms of their pretrial release. Judge Petersen said Summit County is confronting the same problem. Pat Kimball said Salt Lake County Pretrial has been trying to find a solution to that problem for 40 years. Unfortunately, there isn't a perfect universal answer for every defendant. Salt Lake County usually tries to get defendants back on track and in compliance. Judge Todd Shaughnessy said one of the challenges is finding the right pretrial employees to be in charge of the defendants. Those people need training and the right mindset. Undersheriff Scott Carver said supervision and the importance of training is so important because each defendant is different and officers' response should be considered on a case by case basis. Mr. Carver said recently an officer wrote three (3) warrants on the same four (4) defendants in one month. They kept being released and then absconding. Ms. Williams said her hope is that in that example, a pretrial risk assessment would have indicated that those individuals presented a high risk for failing to appear and specific release conditions could have been tailored for them to avoid that problem.

Data Collection. Ms. Williams discussed the data collection subcommittee. She noted the first meeting was mostly an overview and explanation of the PSA and pretrial practices because several members were not on the committee and had never seen any of the data or presentations on the PSA. Ms. Williams and Judge Fannesbeck are working to develop a more in-depth agenda for the next meeting including specific assignments.

Legal & Processes. Brent Johnson updated the committee on the legal & processes subcommittee. Mr. Johnson said the initial meeting was a basic discussion and introductions. Mr. Johnson said much of the subcommittee's work will be to develop a pretrial release guide for judges and revising rules necessary to accomplish those goals. Mr. Johnson staffs the criminal procedure advisory committee and that committee has nearly completed a revision to Rule 7 which will apply to pretrial release. Mr. Johnson said the subcommittee will need to wait to see what the Legislature does during the interim session in regard to the legislative audit before they can address many of the recommendations therein.

(4) Legislative Audit. A Performance Audit of Utah's Monetary Bail System.

Mr. Johnson provided an update on the recent legislative session. Two bills affecting pretrial release passed during the session. The first involved jail release orders. Currently jail release orders are only used in domestic violence cases. They will now be required in some sexual abuse cases as well. The other bill was SB 167. Early on, it was suggested that the bill took away the ability of judges to use cash only bail, at which point the Legislative Liaison Committee noted that they would oppose the bill. Ultimately, the committee took no position on the bill because it did not eliminate the ability to use cash only bail. The bill, as passed, requires surety bonds and cash bail to be set at equal amounts. For example, a judge couldn't order a defendant released on a \$5,000 surety bond or \$500 cash bail. The judge in that example would be required to set cash bail at \$5,000; thus incentivizing defendants to use a surety agent in order to post the lower cash amount.

Mr. Johnson reviewed the legislative audit. He stated that this is the second of two legislative audits on cash bail. The first legislative audit, completed last year, addressed whether the use of cash bail was lawful. That audit concluded that the use of cash bail is lawful. This second audit was ordered to determine the effectiveness of cash bail versus surety bail. Mr. Johnson said the surety bond companies opposed the audit's results because they felt it wasn't comprehensive enough. Wayne Carlos agreed. The audit was presented during a hearing at the beginning of the legislative session and ultimately, it was sent to the interim committee for a detailed review this summer.

Mr. Johnson highlighted the three (3) main provisions of the audit. Area 1: Is cash bail effective? Mr. Johnson noted there seems to be a lack of understanding on the part of the legislature regarding the definition of various terms. Specifically, cash bail and cash only bail are commonly misunderstood and used interchangeably when, in fact, they are different. Mr. Johnson said when someone mentions cash bail, for the most part, they mean cash only bail. Mr. Johnson said in answering the first question as to whether cash bail is effective, the audit concluded that while cash bail was used infrequently, when used, it resulted in higher appearance rates than

surety bonds. The auditors sent a survey to judges throughout the state. A survey of judges indicated that the Court's rules and the statute are ambiguous and may be conflicting regarding the use of cash bail. Therefore, judges are confused about their ability to order cash bail. Mr. Johnson said his subcommittee will review those rules.

Area 2: Pretrial release decisions need to be evidence-based and account for risk. Mr. Johnson said the audit recommended a process for adopting a validated risk assessment instrument and provide this instrument to all judicial officers in the state. Additionally it recommended the development of a case management system that incorporates a pretrial service module to track mission-critical pretrial data. The audit also recommended collecting and reporting key outcome metrics. Mr. Johnson said this Committee is on track to address those recommendations. Any inconsistencies in the statutes and rules will be addressed and revised. This will give guidance to not only judges but clerks as well.

Area 3: Bail forfeiture processes. The audit recommended reducing statutory timeframes for processing forfeitures from six months to between one and three months to better align with other states. It also recommended requiring all forfeiture notifications to be processed electronically. The third recommendation was to design a forfeiture process that improves court appearances and reduces the number of automatic bond exonerations. The fourth recommendation was to provide ongoing training. The fifth and final recommendation was to adopt a court date reminder notification system.

Judge Shaughnessy asked Senator Hillyard how the interim legislative session will work. Senator Hillyard provided a detailed explanation of the interim session, including dates and times of the meetings.

Bret Barrett discussed terminology and said there is clearly an issue with terms being misunderstood by the insurance department, the judiciary, the judges, and the bail bondsmen. Mr. Barrett said the Insurance Department issued a bulletin last fall because people, other than licensed bail bondsmen, were creating their own loans with defendants and bailing them out. Judge Shaughnessy agreed that term clarification would be a good idea in order to create consistency. Judge Shaughnessy stated that judges may prefer setting cash only bail because the forfeiture process is more efficient. Judge Shaughnessy noted cash bail is only returned to the person who posts it, not to the defendant. Senator Hillyard said he thinks there should be a reasonable amount of bail set. He was concerned that some of the bail amounts were set incredibly high, leaving defendants with no option to bail out of jail. Judge Shaughnessy noted there is a percentage of the arrested population that has the financial ability to post bail; however, there is also a group that has absolutely no resources to bail out no matter how low the bail is set. Judge Harmond said he believes there are a considerable amount of people who fall in the second category. Wayne Carlos said many people have additional resources through friends and family.

Mr. Johnson said the auditor directed some of the recommendations to the Administrative Office of the Courts and some of the recommendations to the Legislature.

(5) Adjourn.

Ms. Williams discussed the July 6th meeting date. Ms. Williams suggested moving the meeting to July 13th to avoid absences due to the 4th of July holiday. The next meeting is scheduled for May 4, 2017. There being no further business, the meeting adjourned at 1:10 pm.

Tab 2



Public Safety Assessment Report

(Date Created: 09/25/2017 19:45:59)

SID:	123456	Name:	Jane Doe	Gender:	F
PC ID:	001	Arrest Date:	09/25/2017	Birth Date:	01/01/0001

New Violent Criminal Activity Flag: No

New Criminal Activity Scale

1	2	3	4	5	6
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Failure to Appear Scale

1	2	3	4	5	6
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Charge(s):

58-37-8(2)(H)(III) CONTROLLED SUBSTANCE SCHEDULE III, IV, V

Risk Factors:

1. Age at Current Arrest	40
2. Current Violent Offense	No
a. Current Violent Offense & 20 Years Old or Younger	No
3. Pending Charge at the Time of the Offense	No
4. Prior Misdemeanor Conviction	No
5. Prior Felony Conviction	No
a. Prior Conviction	No
6. Prior Violent Offense	0
7. Prior Failure to Appear in Past 2 Years	0
8. Prior Failure to Appear Older Than 2 Years	No
9. Prior Sentence to Incarceration	No

Recommendation: Release on Own Recognizance (ROR) – No Conditions



Decision Making Framework

(Date Created: 09/25/2017 19:45:59)

SID:	123456	Name:	Jane Doe	Gender:	F
PC ID:	001	Arrest Date:	09/25/2017	Birth Date:	01/01/0001

Charge(s):

58-37-8(2)(H)(III) CONTROLLED SUBSTANCE SCHEDULE III, IV, V

	NCA 1	NCA 2	NCA 3	NCA 4	NCA 5	NCA 6
FTA 1	ROR	ROR				
FTA 2	ROR	ROR	PRL1	PRL2	PRL3	
FTA 3		PRL1	PRL1	PRL2	PRL3	Detain
FTA 4		PRL1	PRL1	PRL2	PRL3	Detain
FTA 5		PRL2	PRL2	PRL3	PRL4	Detain
FTA 6				Detain	Detain	Detain

Release Types

1. Release on Own Recognizance (ROR) – No Conditions
2. Release with Conditions: PRL1, PRL2, PRL3, PRL4
3. Detain, if statutory requirements are met (Utah Code 77-20-1). If Released, Maximum Conditions recommended (and/or monetary bail).

Pretrial Release Conditions

1. PRL1: Where available, 1 phone contact per month or equivalent, court reminder notification
2. PRL2: Where available, 2 phone contacts per month, court reminder notification
3. PRL3: Where available, 1 face to face contact per week/month, court reminder notification
4. PRL4: Maximum conditions where available: PRL3 conditions, electronic monitoring, home detention, and/or drug testing
5. The court always has the discretion to consider monetary release conditions.



Public Safety Assessment Report

(Date Created: 09/25/2017 01:45:59)

SID:	123456	Name:	John Doe	Gender:	M
PC ID:	001	Arrest Date:	09/25/2017	Birth Date:	01/01/0001

New Violent Criminal Activity Flag:  YES

New Criminal Activity Scale

1	2	3	4	5	6
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Failure to Appear Scale

1	2	3	4	5	6
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Charge(s):

76-6-404	THEFT
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Risk Factors:

1. Age at Current Arrest	20
2. Current Violent Offense	Yes
a. Current Violent Offense & 20 Years Old or Younger	Yes
3. Pending Charge at the Time of the Offense	Yes
4. Prior Misdemeanor Conviction	Yes
5. Prior Felony Conviction	Yes
a. Prior Conviction	Yes
6. Prior Violent Offense	0
7. Prior Failure to Appear in Past 2 Years	1
8. Prior Failure to Appear Older Than 2 Years	Yes
9. Prior Sentence to Incarceration	No

Recommendation: Release with PRL4 Conditions: Maximum conditions where available:

PRL3 conditions, plus electronic monitoring, home detention, and/or drug testing



Decision Making Framework

(Date Created: 09/25/2017 01:45:59)

SID:	123456	Name:	John Doe	Gender:	M
PC ID:	001	Arrest Date:	09/25/2017	Birth Date:	01/01/0001

Charge(s):

76-6-404	THEFT
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	NCA 1	NCA 2	NCA 3	NCA 4	NCA 5	NCA 6
FTA 1	ROR	ROR				
FTA 2	ROR	ROR	PRL1	PRL2	PRL3	
FTA 3		PRL1	PRL1	PRL2	PRL3	Detain
FTA 4		PRL1	PRL1	PRL2	PRL3	Detain
FTA 5		PRL2	PRL2	PRL3	PRL4	Detain
FTA 6				Detain	Detain	Detain

Release Types

1. Release on Own Recognizance (ROR) – No Conditions
2. Release with Conditions: PRL1, PRL2, PRL3, PRL4
3. Detain, if statutory requirements are met (Utah Code 77-20-1). If Released, Maximum Conditions recommended (and/or monetary bail).

Pretrial Release Conditions

1. PRL1: Where available, 1 phone contact per month or equivalent, court reminder notification
2. PRL2: Where available, 2 phone contacts per month, court reminder notification
3. PRL3: Where available, 1 face to face contact per week/month, court reminder notification
4. PRL4: Maximum conditions where available: PRL3 conditions, electronic monitoring, home detention, and/or drug testing
5. The court always has the discretion to consider monetary release conditions.

Tab 3

PUBLIC COMMENTS TO UTAH RULES OF CRIMINAL PROCEDURE

Posted: June 27, 2017

Comment Period Closed: August 11, 2017

URCrP 007 Amend. The provisions in existing rule 7 are being divided into separate rules, each dealing with a different subject. Rule 7 will now address initial proceedings for class A misdemeanors and felonies.

URCrP 007A New. The rule addresses procedures for class B & C misdemeanors and infractions. The rule also adds specific provisions on pretrial release conditions.

URCrP 007B New. The rule addresses preliminary hearings. The rule generally reflects existing language.

URCrP 007C New. The rule addresses the procedures for material witnesses. The rule generally follows existing language.

URCrP 009 New. The new rule 9 will establish procedures for warrantless arrests. Of particular interest to practitioners may be the time-frames related to pretrial release decisions and deadlines for filing informations.

URCrP 009A New. The rule creates procedures for arrests pursuant to a warrant and includes specific procedures on pretrial release decisions.

4 thoughts on “Rules of Criminal Procedure – Comment Period Closed August 11, 2017”

1. **Martin V. Gravis**

June 28, 2017 at 2:02 am

Proposed Rule 007B does not reflect current law regarding preliminary hearings. Under current law the State cannot refile a case that was dismissed after the magistrate determined that the state had failed to show probable cause unless the state get permission from the court after showing that they have new evidence that was not available at the time of the first hearing.

2. **James Brady**

June 30, 2017 at 6:16 am

Proposed Rule 9(2), presents practical problems. Rule 9(g)(2) requires an information be filed within four days of arrest. When does the four day count begin? If a person is arrested at 1:00 am Monday, do we not count Monday and make Tuesday the first day of the four? If he is arrested at 11:30 pm

Monday night, is Tuesday the first day of the four? Suggestion: Clarification of whether the four day count begins at 12:01 am or at 8:00 am the morning following an arrest would help uniform application in the state.

Rule (9)(2) requires a person to be released if no information is filed by 5:00 pm on the fourth day. Who will be required to remain at work after 5 pm each day to confirm that the deadline was breached and issue an order to release a defendant after 5:00 pm? Or, will the defendant wait until the next business day to be released? If the defendant waits past 5:00 pm on a Friday, the business next day could be Monday or Tuesday.

Suggestion: Would the committee consider making the filing deadline 3:00 pm on the fourth day? This would allow clerks time to open a file, assign the case, file the information and confirm if any defendant is in custody without a timely information being filed the report that information to a judge and allow time for the judge to issue a release before the end of the work day?

Thanks.

Rule (9)(2)(a)

3. **James Brady**

June 30, 2017 at 6:26 am

Rule 7 does not identify a deadline for holding a first appearance on felonies or class A misdemeanors. Rule 9 sets a deadline of 24 hours following arrest for PC and pre-trial release review and sets a four day deadline to file the information. Is the Committee satisfied setting deadlines for PC and pre-trial release review, and for filing an information, but not setting a deadline for conducting a First Appearance hearing? Is this scheduling item intentionally left to be determined by each district, or each judge depending on the resources of their court location?

Thanks.

4. **Will Carlson**

July 28, 2017 at 3:50 pm

While proposed rule 007C generally follows existing language, prosecutors have discovered that existing language poses serious impracticalities in obtaining a material witness warrant against uncooperative witnesses. Under the rule, after a magistrate is given good cause to believe a material witness will not appear and testify, the magistrate must issue a bond rather than a warrant. A warrant is only an option if the witness (who the magistrate already has good cause to believe will not appear and testify) fails or refuses to post the bond. This process wrongly assumes that uncooperative witnesses will nevertheless keep the parties and court apprised of their location so that they can be served with notice of the bond and determine whether or not they will post the bond after already demonstrating evidence they will not cooperate with the proceeding. For transient and hiding witnesses, this procedural requirement effectively prevents a material witness warrant from ever being issued.

As an alternative, the rule should be amended to focus on 1- how a magistrate obtains good cause to believe a material witness is uncooperative, and 2- empower the magistrate to issue a material witness warrant when that good cause exists. The following is one possible draft:

MATERIAL WITNESS WARRANTS

(1) **WARRANT.** On motion of the prosecuting authority or the defendant, after an Information or an Indictment has been filed with a court, the court may issue a warrant, subject to reasonable bail, for the arrest of a material witness. The warrant shall issue only on a showing, by affidavit or on the record in open court, that the testimony of the witness is material and that

(a) The witness is refusing or has refused to obey a lawfully issued subpoena; or

(b) It is or is likely to be impractical to secure the presence of the witness by subpoena.

(2) **HEARING.** After the arrest of the witness, the custodial authority shall notify the issuing court before the end of the next business day. The court shall provide a hearing for the witness within 48 hours of arrest or, upon a showing of good cause, within a reasonable period of time after being notified of the arrest. The witness is entitled to be represented by a lawyer. Upon a request by an indigent witness in custody, the court shall appoint a lawyer to represent the witness.

(3) **RELEASE/DETENTION.** The witness may be released upon the posting of bail or upon compliance with other conditions set by the court. Prior to release, the court may order the witness to be examined and cross-examined before the court in the presence of the defendant and the testimony shall be recorded. If the witness is unavailable or fails to appear at any subsequent hearing or trial when ordered to do so, the recorded testimony may be used at the hearing or trial in lieu of the personal testimony of the witness.

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

2 (a) At the defendant's first appearance, the court shall 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 statements the
10 defendant does make may be used against the defendant in a court of law.

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

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

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

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

28 (f) The defendant shall be advised of the right to a preliminary examination and the times for
29 holding such hearing. If the defendant waives the right to a preliminary examination, and the
30 prosecuting attorney consents, the court shall order the defendant bound over for trial.

31 (g) If the defendant does not waive a preliminary examination, the court shall schedule the
32 preliminary examination. The examination shall be held within a reasonable time, but not later
33 than 14 days if the defendant is in custody for the offense charged and not later than 28 days if
34 the defendant is not in custody. These time periods may be extended by the magistrate for good
35 cause shown. Upon consent of the parties, the court may schedule the case for other proceedings
36 before scheduling a preliminary hearing.
37 (h) A preliminary examination may not be held if the defendant is indicted.

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

2 (a) The court, at a defendant's initial appearance shall inform the defendant:

3 (a)(1) of the charge in the information, indictment, or citation 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 statements the
10 defendant does make may be used against the defendant in a court of law.

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

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

22 (c)(2) If defense counsel is not present or not yet prepared, the court shall allow up to a seven
23 day continuance of the hearing to allow for preparation, or more if agreed to by the defendant.

24 (c)(3) 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) If defendant is prepared with counsel, or if defendant waives the right to be represented by
28 counsel, the court shall call upon a defendant to enter a plea.

29 (d)(1) If the plea is guilty, the defendant shall be sentenced by the court as provided by law.

30 (d)(2) If the plea is not guilty, the court shall set the matter for trial or a pretrial conference
31 within a reasonable time. Such time should be no longer than 30 days if defendant is in custody.
32 (d)(3) If the court has appointed counsel, defendant does not desire to enter a plea, or for other
33 good cause, the court may administratively enter a not guilty plea for the defendant. The court
34 shall then schedule a pretrial conference.

1 **RULE 7B. Preliminary Hearings**

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

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

11 (c) If the magistrate does not find probable cause to believe that the crime charged has been
12 committed or that the defendant committed it, the magistrate shall dismiss the information and
13 discharge the defendant. The magistrate may enter findings of fact, conclusions of law, and an
14 order of dismissal. The dismissal and discharge do not preclude the state from instituting a
15 subsequent prosecution for the same offense.

16 (d) At a preliminary examination, the magistrate, upon request of either party, may exclude
17 witnesses from the courtroom and may require witnesses not to converse with each other until
18 the preliminary examination is concluded. If the magistrate orders the defendant bound over for
19 trial, the magistrate shall execute a bind-over order and shall include any written findings in the
20 case record.

1 **RULE 7C. Material Witnesses- Procedure for Bond or Warrants**

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

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

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

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

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

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

6 (a)(2)(A) Upon arresting a person without a warrant, the arresting officer, custodial authority, or
7 prosecutor with authority over the most serious offense for which defendant was arrested shall,
8 as soon as reasonably feasible but in no event longer than 24 hours after the arrest present to a
9 magistrate a sworn statement that contains:

10 (a)(2)(A)(i) the facts known to support probable cause to believe the defendant has committed a
11 crime.

12 (a)(2)(A)(ii) The statement shall also contain any facts known to the affiant that are relevant to
13 determining the appropriateness of precharge release and the conditions thereof.

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

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

21 (a)(2)(B)(i) ensure the appearance of the accused at future court proceedings;

22 (a)(2)(B)(ii) ensure the integrity of the judicial process, including preventing direct or indirect

23 (a)(2)(B)(iii) contact with witnesses or victims by the accused, if appropriate; and

24 (a)(2)(B)(iv) ensuring the safety of the public and the community.

25 (a)(2)(C) 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)(B).

28 (a)(2)(D) If no probable cause is articulated for any charge, the magistrate shall return the
29 statement to the submitting authority indicating such.

30 (a)(3) A statement that is verbally communicated by telephone shall be reduced to a sworn
31 written statement prior to presentment to the magistrate. The statement shall be retained by the
32 submitting authority and a copy shall, as soon as practicable, be delivered to the magistrate who
33 made the determination.

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

35 (b) The information required in subsections (a)(2) may be presented to any magistrate, although
36 if the judicial district has adopted a magistrate rotation pursuant to rule 7D, the presentment
37 should be in accord with that schedule or rotation. If the arrestee is charged with a capital
38 offense, the magistrate may not be a justice court judge.

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

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

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

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

51 (g)(1) If after 24 hours, the suspect remains in custody, an information shall be filed without
52 delay charging the suspect with offenses from the incident leading to the arrest.

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

56 (g)(2)(A) The four day period in this subsection (g)(2) may be extended upon application of the
57 prosecutor for a period of three more days, for good cause shown.

58 (g)(2)(B) If the time periods in this subsection (g) expire on a weekend or legal holiday, the
59 period shall expire at 5:00pm on the next business day.

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

2 (a) for purposes of this rule, the following terms are defined:

3 (a)(1) Arrest warrant means a warrant issued by a judge pursuant to Rule 6(c), or after a
4 defendant's failure to appear at an initial appearance or arraignment after having been
5 summoned.

6 (a)(2) Bench warrant means a warrant issued by a judge in a criminal case for failing to appear
7 for court or for reasons other than those described in subsection (a)(1).

8 (b) When a peace officer or other person arrests a defendant pursuant to a warrant and the
9 arrested person cannot provide any condition or security required by the judge or magistrate
10 issuing the warrant, the person arrested shall be presented to a magistrate within 24 hours after
11 arrest. The information provided to the magistrate shall include the case number, and results of
12 any pre-trial screening tool.

13 (c) With the results of the pre-trial screening tool, and having considered the factors that caused
14 the court to issue a warrant in the first place, the magistrate may modify the release conditions.

15 (d) Any defendant who remains in custody after the review process described in subsection (b),
16 shall be seen by the court issuing the warrant no later than the third day after the arrest.

17 (e) If the arrested person meets the conditions, or provides the necessary security required by the
18 warrant, the person shall be released and instructed to appear as required in the issuing court.

19 (f) Any posted security shall be forwarded to the court issuing the warrant.

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 arrest⁵. 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.