Agenda
Pretrial Release & Supervision Committee Meeting
August 6, 2020
12:00 – 2:00 p.m.

Meeting held via WEBEX

12:00	Welcome New Member and Approval of Minutes • July 2, 2020	Action	Tab 1	Judge George Harmond
12:05	Ability-to-Pay Matrix	Action	Tab 2	Keisa Williams
1:00	Proposed Amendments to the Rules of Criminal Procedure • Unsecured Bond Forfeiture Procedures	Action	Tab 3	Keisa Williams
2:00	Adjourn	Action		Judge George Harmond

Committee Web Page: https://www.utcourts.gov/utc/pretrial-release/

2020 Meeting Schedule:

September 3, 2020	November 5, 2020
October 1, 2020	December 3, 2020

Tab 1

UTAH JUDICIAL COUNCIL
STANDING COMMITTEE ON PRETRIAL RELEASE AND SUPERVISION
MEETING MINUTES

WebEx Video Conferencing
July 2, 2020 – 12 p.m. (noon) to 1:30 p.m.

DRAFT

MEMBERS:	**PRESENT**	**EXCUSED**
Judge George Harmond *Chair*	**x**	
Wayne Carlos		**x**
Kimberly Crandall		**x**
Judge Keith Eddington	**x**	
Rep. Eric Hutchings	**x**	
Andrea Jacobsen	**x**	
Brent Johnson	**x**	
Comm. Lorene Kamalu	**x**	
Judge William Kendall	**x**	
Cpt. Corey Kiddle		**x**
Richard Mauro	**x**	
Judge Brendan McCullagh	**x**	
Judge Jeanne Robison	**x**	
Reed Stringham	**x**	
Cara Tangaro	**x**	
Joanna Landau		**x**

GUESTS:

Marla Kennedy
Tucker Samuelsen
Dyon Flannery
Shane Bahr
Yvette Rodier-Whitbe
Jojo Liu

STAFF:

Keisa Williams
Minhvan Brimhall (recording secretary)

***NOTE: The recording wasn't started until 12:11 p.m., missing the first few minutes of the meeting. The summary below for that time period is based on notes and recollections.*

Welcome and Approval of Minutes (Judge Harmond):
Judge Harmond welcomed committee members and guests to the meeting. The committee considered the minutes from the March 7, 2020 meeting.

With no objections or further discussion on the minutes, Judge Robison moved to approve the minutes as drafted. Cara Tangaro seconded the motion. The minutes were unanimously approved.

Updates:

Judge Harmond: Due to COVID-19, the Court has been tasked with providing the legislature with proposed budget cuts. Budget discussions are ongoing so it is unclear at this time what effect that may have, if any, on the NCIC manual review agreement with SLCo Pretrial.

PC Programming

Ms. Williams: HB 206 goes into effect on October 1, 2020. Judges will be required to consider an individual's ability-to-pay a monetary bail amount if monetary bail is considered to be a least restrictive, reasonably available condition of release. Right now, judges do not have access to an arrestee's financial information at the PC phase. I have been working with the Department of Public Safety, BCI, the sheriff's association, the chiefs of police association, and the two jails with unique PC system programming on a resolution. All parties have agreed to add two questions to law enforcement's (LE) side of the PC system: 1) gross household income, and 2) number of dependents. If the arrestee agrees to provide that information, and has the capacity to do so, it will be presented to judges along with the PC affidavit. None of the participating agencies require funding to complete their portion of the project and all anticipate that they can get the changes in place by October 1st. The Court's side is a little more complex. I'll talk more about why later, but the programming time will be more extensive and a cost will be associated. Mike Drechsel and I have been talking to CCJJ and our hope is to qualify for a JAG grant for those one-time costs.

Unsecured Bond Procedures

Ms. Williams: Even if programming is in place by October 1st, arrestee's may not want to, or may not be able to, provide the information. At the May meeting we discussed the use of unsecured bonds. Briefly, HB 206 provides an exception to the ability-to-pay analysis for unsecured bonds. Under the code, courts are allowed to issue unsecured bonds ("written agreement without sureties"). That authority wasn't a change in HB206, it has been an option for as long as I can remember, we just haven't taken advantage of it. An unsecured bond is essentially an IOU. The defendant doesn't have to pay any money upon release from jail, but if they fail to appear in court, the bond may be forfeited and a judgement entered.

The question now is what the unsecured bond forfeiture process should look like. The portion of the code outlining the forfeiture process for secured bonds is not applicable to unsecured bonds. I created a skeleton forfeiture process as a place to start. I will be seeking feedback from the boards of judges. I ran it past the Third District Bench because I happened to be on their agenda for something else so it was good timing.

The proposed procedures I developed are very similar to the ones in the statute for secured bonds. It's important that defendants are provided notice and due process before a bond is forfeited. I will bring the proposed procedures back to this committee next month after I get feedback from the boards. In talking to judges, most really like the idea of unsecured bonds.

One of the major issues that we discovered in putting this together is that clerks cannot upload and file unsecured bonds in CORIS in a way that would differentiate them from secured bonds.

We will want to be able to pull data and compare failure to appear and criminal activity rates between the two. Taylorsville Justice Court has been using unsecured bonds for years, but from what I understand they are simply scanning them into the case file with a docket entry or note identifying them as unsecured and are only uploading them into the bond tracking system if the bond is going to be forfeited. When they've done that, it looks like a secured bond unless you open it or read the clerk's notes.

I put a working group together of judicial assistants, clerks of court, and Paul Barron from the IT department to identify the minimum amount of changes needed to resolve the issue. CORIS programming changes are time intensive. I am drafting proposed changes and will get an estimate from IT on costs and programming time. There is a workaround that would allow us to use unsecured bonds by October 1st without those changes, it just isn't ideal and would make pulling data very difficult. There will also be a training component for clerks and judges. I am meeting with the clerks of court to iron out the details.

Mr. Mauro: When do you expect to roll it out? How do we educate practitioners to let them know this is an available avenue going forward and what the criteria might be for making those kinds of arguments? I think that is critically important.

Ms. Williams: I agree. Another issue is the practical, logistical aspects. By statute, defendants have a choice of methods when posting monetary bail – secured bond, cash, credit/debit card – but unsecured bonds are only an option if a judge authorizes it. Judges will have to put that in their PC release order, jail staff will have to be trained to look for it, to know what it means, to explain the bond to the defendant, and send a signed copy to the court. There won't be a case file yet so clerks will have to wait to upload them into CORIS if/when a prosecutor files charges. I hadn't even considered how we should notify and train practitioners.

Mr. Mauro: SLLDA has been participating in first appearance court for about 8 months now. First appearance is an appropriate time to discuss unsecured bonds if one isn't issued before the hearing. The idea that unsecured bonds are an option would be an important consideration for defense attorneys. We have learned a lot of important things through COVID-19. I had a discussion with Judge Kouris about how so many people have been released from jail but the crime rate doesn't seem to be increasing, so this a good time for us to be discussing these issues and ensuring people understand what they mean and how they can best utilize the tools and keep people out of jail pretrial, because that is our goal.

Judge Harmond: Do you think it would be helpful to engage the defense bar association, as well as SWAP, and see if practitioners can be trained through those organizations?

Mr. Mauro: Our office is well aware of these issues. Ms. Tangaro and I can get the word out to the criminal defense attorney association.

Ms. Tangaro: I agree. We can get the word out once we know exactly what to say, how to say it, and what people should be looking for. The juvenile court judges have been handling first

appearance court in the 3rd district and I have been really impressed with them. They haven't been shy about addressing release.

Mr. Mauro: Our lawyers have found juvenile judges' willingness to discuss release mixed. Some will, and some send it to the assigned judge to deal with. Things may change as we get closer to October 1st. We are already seeing some improvement with judges considering the least restrictive conditions.

HB 206 Procedures

Ms. Williams: In the May meeting packet I included the step-by-step pretrial release decision making process for judges pursuant to HB206. First, the presumption is own recognizance release. If that isn't sufficient, judges must consider the least restrictive, reasonably available conditions necessary to ensure safety and appearance, etc. A monetary bail can be set but an ability-to-pay analysis must be conducted. There is a presumption of detention for criminal homicide and any offense for which the term of imprisonment may include life. There is also a process whereby prosecutors can file a motion for detention which could delay the pretrial release decision. The detention hearing process is pretty specific.

What I included in the May packet is the broad strokes version of the pretrial decision process. Now I'm getting into the weeds – for example, will judges create pretrial status orders or will one of the parties be required to submit a proposed order? I will be seeking your feedback on those processes. Because things are moving quickly I may be soliciting feedback via email. I am working on a first draft of proposed changes to the rules of criminal procedure related to HB 206, and will be presenting those to the Rules of Criminal Procedure Committee for consideration. I'm not sure if those proposed drafts will go through the Boards and the Council for consideration before going to the Supreme Court.

Some judges have expressed concern about their ability to hold indigent individuals in jail who have been charged with really serious offenses. It is especially concerning to those judges who do not have access to pretrial supervision. The no-bail eligible offenses haven't changed. They are charge-based (must be charged with a felony) but the most serious offenses are felonies so that should alleviate some of the concern. The other scary offenses are DV-related. Judges can hold on misdemeanor DV offenses. HB206 now allows justice court judges to issue no-bail holds.

Judges who expressed concern felt that the "substantial evidence to support the charge" and "clear and convincing" standards for no-bail holds, in many circumstances, cannot be met with what little information they are provided at the PC phase. Under HB206, judges can still set a monetary bail amount outside an individual's ability to pay, they just have to find it to be the least restrictive condition necessary to ensure public safety.

The judges' concerns are legitimate and it illustrates the point that money is arbitrary. Money has nothing to do with public safety risk. To assess risk and make the best decision, individuals should be brought before a judge for an initial appearance within 24-48 hours of their arrest.

Attorneys should be present and prepared. If pretrial detention is ordered, or is the result of a monetary bail set, the individual should be afforded due process and the right to be heard. We have talked a lot about New Jersey's model. I would love to see us move toward a system with pretrial services and an initial appearance within 24-48 hours. Judge Kouris has been working with the DA's office and SLCo jail on a potential change to the time-to-file and initial appearance process that would do just that. That is really exciting and if Salt Lake can make it happen, it would be a great model for other counties to emulate.

One positive thing to come out of COVID is that everyone has the capacity and is becoming accustomed to conducting hearings remotely. At this point, there is no reason defendants can't be seen remotely much earlier than before.

Mr. Mauro: Regarding concerns about not having enough information at the PC phase to determine "substantial evidence to support the charge" and "clear and convincing evidence," if you look at the Salt Lake County jail dashboard in the last month, 70% of the detainees are there on un-adjudicated cases and are presumed innocent. Some of those are people who should remain in jail, but many should be released because the only thing holding them is their inability to afford monetary bail. I am in favor of the new procedures and my office will help in any way we can.

Ms. Williams: From what I understand, several of the prosecutors are on board with holding hearings within 48 hours of arrest. I think everyone knows that money is not a proxy for risk, but money has been used as a means to hold someone until a prosecutor can talk to a judge, primarily because cases aren't filed and initial appearances aren't held for weeks at a time. It is unconstitutional to hold an individual in jail on the basis of money alone. We need to be working towards a more fair process, and a process that allows attorneys to give judges risk information before a release decision is made. If a person is deemed a public safety risk, they should stay in, but if they aren't, they should be released. Money shouldn't be a consideration unless someone has been deemed a failure to appear risk.

In New Jersey, release is the presumption and they have statewide pretrial supervision. The only time they consider holding someone is if the prosecutor files a motion for detention. With the new detention hearing process outlined in HB 206, prosecutors have an avenue to delay a pretrial decision until they have time to investigate and present risk information. I think that's a good framework and we should start using it. However, unless we begin holding hearings within 24-48 hours of arrest, prosecutors likely won't file motions until after the initial release decision has been made by judges at the PC phase. By rule, judges have to make those decisions within 24 hours of booking. That timeframe could probably be extended to 48 hours if the decision was made at a hearing.

Ms. Tangaro: I have two clients in Davis County on a no-bail hold who have been there over four days and still have not seen a judge. We should be conducting education statewide.

Judge Harmond: Have you seen a PC release order with a ruling from the judge on setting bail? Ms. Tangaro: No, nothing is in the case file. Judge Harmond: Those orders are publicly available in Xchange. Judge McCullagh offered to show Ms. Tangaro how to access release orders in Xchange after the meeting.

DATA COLLECTION SUBCOMMITTEE:

Judge Harmond: Data collection is a critical issue. We need data to ensure our pretrial processes work, and we need to identify data gaps and data-sharing issues. Other questions include: What is the cost of combining or streamlining data? What would an integrated system look like? I am forming a data subcommittee with specific directives and deadlines. Please email myself or Ms. Williams by next Wednesday to let us know if you are interested. I am considering the following members: Joanna Landau, Andrea Jacobsen, Representative Hutchings, Rich Mauro, Cpt. Kiddle, Sheriff Nielson from the Sanpete Sheriff's office, Jojo Lu from the Salt Lake County Criminal Justice Advisory Council, and Brent Packard from the Legislative Auditor's office. I will send out a follow-up email to the named individuals with an official invitation.

ABILITY-TO-PAY MATRIX:

Judge Harmond: Was the draft matrix developed for the juvenile court?

Ms. Williams: Yes. The matrix goes hand-in-hand with the two pieces of financial information that law enforcement has agreed to provide to the court, gross household income and number of dependents. The matrix in the packet is based on poverty guidelines and is used by the juvenile court to determine non-judicial fees and restitution. The recommended amounts are scaled based on the family's poverty level.

The issue in adapting this for adult criminal use in the pretrial context is the disconnect between where a person falls on the poverty guidelines and the amount of money the person can afford to pay to walk out of jail on a particular day. Without more information or the ability to talk to the individual or defense counsel, we don't know whether the amount across the bottom is, in fact, affordable. However, the matrix is better in the sense that the court would be conducting some kind of individualized assessment that is not completely arbitrary or charge-based. I also believe use of the matrix would align with the holdings in emerging pretrial case law. The issue with monetary bail in those cases was the use of a charge-based bail schedule with no individualized assessment about the individual's ability-to-pay. Here, the initial decision – albeit based on limited information – is an individualized financial assessment that can be revisited at initial appearance.

The larger policy question is, do we even want to use something like this matrix? Are we simply creating a new bail schedule with made up monetary bail amounts? Or is this necessary in order to provide judges with some sort of guidance and to ensure consistency in the bail amounts set across the state? One of the main reasons behind the creation of the old uniform fine and bail schedule was to ensure uniformity and fair treatment across jurisdictions. As far as the amounts, I set the maximum amount at $25,000 (because the maximum amount on the old bail schedule was $25,000 for a 1st degree felony), and then graduated the amounts down

based on the poverty level percentage. We could put a specific dollar amount in each box or list a range of amounts.

Mr. Mauro: I like the idea of using a matrix. Right now judges are looking at a probable cause statement and when concerns are raised in the PC (they may or may not have a PSA), judges are erring on the side of caution and imposing a larger monetary bail amount that keeps the person in jail at least until the first appearance, and maybe even the second appearance. I like this better. My question for the group is, how much will we be using this as a release tool when judges are supposed to impose the least restrictive conditions and other services are available? How would this be helpful if the other tools are available for pretrial release?

Judge Harmond: The way I interpret HB 206, monetary bail is something you consider after you consider everything else. If monetary bail is appropriate, judges will need something to assist them in setting monetary bail in a non-arbitrary manner. I don't see this as the first thing I would look at, but maybe one of the things I would take into consideration if I determine monetary bail is appropriate.

Judge McCullagh: We want to be sure to associate monetary bail amounts with failure to appear risk. The theory is that a person will lose their money if they don't show up to court. Money makes some logical sense if we are looking at the failure to appear score. I think the tool should be more sophisticated. A person's gross income in 2019 probably isn't the same now. In 2020, 20% of individuals are unemployed. We should really be asking about their last 2-3 months of income, rather than their gross annual income. We should be more focused on what they make right now, not what they made last month. What matters is what they have in the bank and what they can bond out on right now. As a general idea this is a good one, but we need to change it to reflect actual current income.

Judge Eddington: I would agree with both of those comments.

Shane Bahr: Are there other states using a similar matrix?

Ms. Williams: I know of a few other states using a similar concept, but I have never seen a matrix that looks exactly like this. The Vera Institute created an ability-to-pay calculator for NY that asks income-based questions and spits out an affordable monetary bail amount. It looks kind of like Turbo Tax and it calculates not only how much money the person can afford, but by what method (cash, secured bond, unsecured bond, partially secured bond, etc.).

It sounds like there is general consensus that we should be using a matrix. If that's the case, I agree with Judge McCullagh that the matrix should be tied to failure to appear risk and that it would be better to ask more questions. The problem is that I have no way to provide judges with more income information at the PC phase. The more nuanced information regarding current income will have to be determined at initial appearance. Understanding that, is the committee ready to move forward with this matrix?

Judge Robison made a motion to move forward with the ability-to-pay matrix. Mr. Mauro seconded. The motion passed unanimously.

Ms. Williams: Now that the policy decision behind using the matrix has been made, I'd like to seek the committee's help in developing a draft to take to the Boards. Are there any thoughts on the $25,000 maximum and whether we should use determined amounts in each box based on a % reduction, or whether we should incorporate a range of dollar amounts?

Mr. Mauro: Is the maximum amount $25,000 or $2,500? Ms. Williams: I used $25,000 because that was the maximum amount on our old bail schedule. I think that's high, especially if someone is charged with a low level misdemeanor. This shouldn't be charge-based, but maybe we could incorporate guidance that the higher amounts should only be used in serious cases, or maybe we account for that by using a range of amounts?

Mr. Mauro: We see a lot of bail amounts that are higher than they should be. The amounts aren't based on the charge or the danger posed by the individual, and sometimes a higher bail amount is set after the person has already bailed out. We need to standardize this so those sorts of things aren't happening.

Judge McCullagh: Prosecutors are supposed to include a person's pretrial release status in the Information, but they almost never do it. As a court, we can do a better job at enforcing that requirement. As part of the executive branch, prosecutors can get pretrial release information from the jail. That requirement was intended to ensure the assigned judge knew that the person was already out on pretrial release and under what conditions, including any monetary bail amount. A person shouldn't be posting monetary bail set by a previous magistrate and then having a warrant issued for a different amount. We have a mechanism in the criminal rules to ensure that doesn't happen and we need to utilize it.

There is Utah caselaw discussing unreasonably high bail amounts for minor offenses. It's a good idea to set lower amounts for petty offenses and infractions, and have a separate scale for district court cases. That would acknowledge the fundamental difference between infractions, misdemeanors, and more serious offenses.

Judge Harmond: We need to get away from tying monetary bail to the seriousness of the offense. HB206 includes a mechanism to deal with that. What we should be focusing on is whether the person is likely to show up to court, and considering ability to pay when setting amounts. Most of the cases we see are class A misdemeanors. I don't think we need to go as high as $25,000.

Mr. Mauro: That is a cultural shift we need to implement. We got used to the idea of equating monetary bail with the seriousness of the offense. The statute does allow a person who presents a danger to the community to be held longer. That should be considered separate and apart from their likelihood to appear at the hearing.

Judge McCullagh: I agree with Judge Harmond. The maximum amount should be lower and we should focus on the likelihood of failure to appear. There will be exceptions based on individual circumstances, but as a general idea the max should be $5,000.

Judge Harmond: We should include instructions on the bottom explaining under what circumstances the matrix should be used and referencing HB206, telling judges what they should be looking at first.

Judge Robison: I agree with the $5,000 max because we are only talking about appearance and not the severity of the charge. You can always issue a no-bail hold on more serious offenses.

Judge McCullagh: The matrix should also include a breakdown of the $5,000 based on the failure to appear risk score.

Mr. Mauro: I agree. Public safety risk should be considered separately from failure to appear risk.

Judge Harmond asked Judge McCullagh to assist Ms. Williams in developing a risk-based structure for the monetary amounts, and providing a mechanism for calculating the last four weeks of income.

Ms. Tangaro: I agree with the $5,000 max.

Ms. Rodier-Whitbe: I am a member of the Utah Council on Victims of Crime. I am concerned with the $5,000 amount. I understand that this is only related to appearance in court and that a no-bail order can be issued, but $5,000 sounds like such a low amount for victims who have been traumatized and are fearful of seeing the perpetrator in court. $5,000 may seem high for other individuals, but for victims it's really, really low.

Ms. Williams: Your point is well taken and I'm guessing you won't be the only one concerned with the amount. I think this will be a cultural shift for everyone. The reason that this makes people nervous is because money is arbitrary, money is not a proxy for risk. That's the case now for victims of domestic violence whose spouse can easily afford to bond out of jail. When HB 206 goes into effect, we will have to consider someone's ability to pay, but we should also be looking at an individual's public safety risk.

Ms. Rodier-Whitbe: I agree with you, but the crime victim's view is narrower and $5,000 is so small in comparison to the trauma they faced. I think the amount should be higher and closer to $15,000, but I'm only looking at this from the victim's point of view.

Representative Hutchings: When considering the dangerous or violent nature of the individual, how difficult is it to do a no-bail hold? It is my understanding that release is required except under the most egregious circumstances. There is a Constitutional right to be released from incarceration. How do we communicate information about whether or not someone is

dangerous? We ran into this when we first started screening individuals under JRI. Law enforcement was extremely upset and felt that people were getting out of jail that shouldn't be. How do we manage that concern and do we have the constitutional authority to broadly issue no-bail holds?

Judge Harmond: The court has to determine the least restrictive conditions necessary to ensure the safety of the public and the safety of victims. HB206 now includes a long list of factors that the court can consider when making those determinations. Ms. Rodier-Whitbe is right that this is something people will react to viscerally at first until they understand how the system is set up.

Representative Hutchings: I am not concerned about the visceral part, I am concerned about when a murder occurs after someone is released on a low bail amount causing a policy shift based on anecdotal stories - the scary factor. We received a lot of angry feedback from LE after JRI. Some included real life stories. We will be dealing with reality and perception.

Judge Harmond: The court is not bound by the matrix. Judges will have discretion and the matrix won't prevent a no-bail hold.

Ms. Williams: I agree. The fundamental issue is that money is arbitrary in relation to public safety risk. The matrix is putting a Band-Aid on a broken system. We need start transitioning to a better system. If Salt Lake is able to implement the 24-48 time-to-file and initial appearance changes, we will have a good template to model.

A majority of the committee has agreed to a maximum of $5,000, so I'll go with that and graduate it down. I will also incorporate the failure to appear risk information Judge McCullagh puts together.

Judge Harmond: Ms. Williams will meet with Board of District and Justice Court Judges to discuss the issue further. The final product may look somewhat different but this is a good place to start.

Adjourn:

There being no further business, the meeting was adjourned with no motion. The meeting adjourned at 1:30 pm. The next meeting is scheduled for August 6 at 12:00 p.m. via WebEx Video Conferencing.

Tab 2

Administrative Office of the Courts

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

August 5, 2020

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

M E M O R A N D U M

TO: **Standing Committee on Pretrial Release and Supervision**

FROM: **Keisa Williams**

RE: **Ability-to-Pay Matrix**

Brief Overview

HB 206 takes effect on October 1, 2020, at which point the pretrial release decision-making process will change in a number of ways, including a requirement that judges impose the "least restrictive reasonably available conditions" that will "reasonably ensure" court appearance, public safety, and the integrity of the judicial process. If a financial condition is deemed necessary under that standard, judges must consider an individual's ability-to-pay the amount set.[1]

In addition, emerging pretrial caselaw is consistently holding that 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. In nearly every case, when the use of monetary bail resulted in pretrial detention, courts were required to hold detention hearings with full due process protections (including a 6th Amendment right to counsel) within 24-48 hours of a defendant's arrest.

At the last meeting, the Committee approved the development of an ability-to-pay matrix to assist judges in determining "affordable" monetary bail amounts. The purpose of this memo is to seek final approval and a Committee recommendation to the Judicial Council that the matrix be implemented statewide.

Ability-to-Pay Matrix

As you know, I have been working with the Department of Public Safety, BCI, the Sheriffs' Association, the Chiefs of Police Association, and county jails on a mechanism to provide judges with at least some financial information at the PC phase. A solution has been identified and our goal is to complete it by October 1st. Law enforcement officers will ask arrestees two questions: 1) gross household income, and 2) number of dependents. If the individual agrees to provide the information (and has the capacity to do so), it will be available in Judicial Workspace in the PC screen. Internal AOC programming will be

[1] Utah Code §77-20-1(3)(b) (effective October 1, 2020)

required. I am working on a JAG grant to pay for associated one-time costs and the work will need to be prioritized by the IT Department.

Much like the old bail schedule, the ability-to-pay matrix is meant to provide guidance and encourage uniformity. Unlike the old bail schedule, the matrix is not charge-based and would be used in conjunction with an individualized assessment of the defendant and the circumstances of each case. Incorporating the two financial data points from law enforcement, the matrix recommends a range of affordable monetary bail amounts depending upon where an individual falls on the poverty guidelines and the individual's corresponding failure to appear (FTA) risk score on the PSA (if applicable).

The purpose behind all forms of financial release (secured bond, unsecured bond, cash, etc.) is to incentivize an individual to appear in court. There is no rational relationship between money and public safety, so the criminal activity scores on the PSA are not factored into the recommended dollar amounts. No financial condition is recommended when the FTA score is below 4 because the likelihood of appearance for scores 1-3 is very high (1 = 90%, 2 = 85%, 3 = 80%), compared to a significant drop starting at FTA 4 (4 = 69%, 5 = 65%, 6 = 60%).[2]

PSA Sample

New Criminal Activity Scale

1	2	3	4	5	6

Failure to Appear Scale

1	2	3	4	5	6

Charge(s):

58-37-8(2)(B)(II)	POSSESSION OF A CONTROLLED SUBSTANCE SCHEDULE I/II/ANALOG
58-37A-5(1)	USE OR POSSESSION OF DRUG PARAPHERNALIA

Risk Factors:

1.	Age at Current Arrest	36
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	Yes
5.	Prior Felony Conviction	Yes
	a. Prior Conviction	Yes
6.	Prior Violent Offense	0
7.	Prior Failure to Appear in Past 2 Years	5
8.	Prior Failure to Appear Older Than 2 Years	Yes
9.	Prior Sentence to Incarceration	Yes

The Committee set $5,000 as the maximum recommended amount. That amount is appropriate because:

1. There is a presumption of own recognizance release[3],
2. The court is directed to determine the "least restrictive" condition necessary to "reasonably ensure" appearance in court,[4]
3. Even for those with the highest FTA risk (FTA 6), the likelihood of appearance is still relatively high at 60%,
4. Collateral consequences of an over-reliance on money can include loss of housing, loss of jobs, loss of custody, car repossession, interruption in medication and medical care, etc.,
5. Holding low-risk defendants for even 2-3 days increases their risk of recidivism by almost 40% compared those held no more than 24 hours,[5] and
6. Public safety risk will be considered separately and, in addition to, failure to appear risk.

[2] LJAF, Developing a National Model for Pretrial Risk Assessment, November 2013.
[3] Utah Code §77-20-1(4)(a) (effective October 1, 2020)
[4] Utah Code §77-20-1(3)(b) (effective October 1, 2020)
[5] Lowenkamp, C.T., VanNostrand, M., & Holsinger, A. (2013a). The Hidden Costs of Pretrial Detention. Houston: Laura And John Arnold Foundation.

If approved, the ability-to-pay matrix could be used to detemine monetary bail amounts for every financial condition type including cash, credit/debit card, secured bond, and unsecured bonds.

I have met with the Board of District Court Judges and am scheduled to meet with the Board of Justice Court Judges this month. The District Board's feedback was positive and they are supportive of the matrix. I requested feedback from the Uniform Fine Committee and will be meeting with local benches as things progress. So far, what little feedback I've received from the Uniform Fine Committee is positive and in support of the matrix.

ABILITY-TO-PAY MATRIX - PRETRIAL RELEASE

Calendar Year 2020

ANNUAL INCOME	Poverty Level									
Family Size	**100%**	**125%**	**130%**	**133%**	**135%**	**138%**	***150%**	**175%**	**185%**	**200%**
1	$12,760	$ 15,950	$ 16,588	$ 16,971	$ 17,226	$ 17,609	$ 19,140	$ 22,330	$ 23,606	$ 25,520
2	$17,240	$ 21,550	$ 22,412	$ 22,929	$ 23,274	$ 23,791	$ 25,860	$ 30,170	$ 31,894	$ 34,480
3	$21,720	$ 27,150	$ 28,236	$ 28,888	$ 29,322	$ 29,974	$ 32,580	$ 38,010	$ 40,182	$ 43,440
4	$26,200	$ 32,750	$ 34,060	$ 34,846	$ 35,370	$ 36,156	$ 39,300	$ 45,850	$ 48,470	$ 52,400
5	$30,680	$ 38,350	$ 39,884	$ 40,804	$ 41,418	$ 42,338	$ 46,020	$ 53,690	$ 56,758	$ 61,360
6	$35,160	$ 43,950	$ 45,708	$ 46,763	$ 47,466	$ 48,521	$ 52,740	$ 61,530	$ 65,046	$ 70,320
7	$39,640	$ 49,550	$ 51,532	$ 52,721	$ 53,514	$ 54,703	$ 59,460	$ 69,370	$ 73,334	$ 79,280
8	$44,120	$ 55,150	$ 57,356	$ 58,680	$ 59,562	$ 60,886	$ 66,180	$ 77,210	$ 81,622	$ 88,240
9	$48,600	$ 60,750	$ 63,180	$ 64,638	$ 65,610	$ 67,068	$ 72,900	$ 85,050	$ 89,910	$ 97,200
10	$53,080	$ 66,350	$ 69,004	$ 70,596	$ 71,658	$ 73,250	$ 79,620	$ 92,890	$ 98,198	$ 106,160
For each add'l person add $4,480										

If monetary bail is deemed a least restrictive, reasonably available condition necessary to ensure appearance, below is the recommended amount:

	Poverty Level:	**100%**	**125%**	**130%**	**133%**	**135%**	**138%**	***150%**	**175%**	**185%**	**200%**
PSA FTA Risk Score (Appearance Rate**):	**FTA 1** (90%)	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
	FTA 2 (85%)	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
	FTA 3 (80%)	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
	FTA 4 (69%)	$100	$200	$300	$400	$500	$600	$700	$800	$900	$1,000
	FTA 5 (65%)	$250	$500	$750	$1,000	$1,250	$1,500	$1,750	$2,000	$2,250	$2,500
	FTA 6 (60%)	$500	$1,000	$1,500	$2,000	$2,500	$3,000	$3,500	$4,000	$4,500	$5,000

**78B-22-202*

***Avg appearance rate for individuals with that risk score in the PSA national validation study.*

Notes:

Utah Code §77-20-1(4)(c): "If the court determines a financial condition, other than an unsecured bond, is necessary to impose on an individual as part of the individual's pretrial release, the court shall consider the individual's ability to pay when determining the amount of the financial condition."

The purpose behind all forms of financial release (secured bond, unsecured bond, cash, etc.) is to incentivize an individual to appear in court. Financial conditions are not related to and do not ensure public safety. For example, surety bail agents are only liable for bringing a defendant to court. They are not liable if the defendant commits a new offense. In fact, if the defendant commits a new crime while out on a secured bond, the agent may be released from its obligations. If the individual and/or the circumstances surrounding the case indicate a public safety risk, non-financial conditions should be considered in lieu of or in addition to financial conditions of release.

If the individual poses a significant public safety risk, determine whether they are eligible for a no-bail hold under Utah Code §77-20-1(2). Under subsection (8), there is a presumption of detention if the individual is charged with criminal homicide or any offense for which the term of imprisonment may include life. Judges may delay issuing a pretrial status order if a prosecutor files a motion for detention under Utah Code §77-20-1(6).

Tab 3

UTAH RULES OF CRIMINAL PROCEDURE
Proposed Amendments – HB206/Pretrial Caselaw/Unsecured Bonds
DRAFT

Rule 4. Prosecution by information.

(a) Commencing a prosecution. A prosecution may be commenced by filing an information. The information shall be filed in a format required by rules of the Judicial Council.

(b) **Contents of information.** An information must contain:

(b)(1) If known, the defendant's name, date of birth, and ~~last known~~current address.

(b)(1)(A) If the name of the defendant is not known, the prosecution must identify the defendant as John or Jane Doe, and must provide any known identifying information.

(b)(1)(B) The prosecution must make reasonable efforts to obtain the defendant's current address.

(b)(1)(B) Other identifying information may be provided in accordance with rules of the Judicial Council, provided the information does not include non-public records.

(b)(2) Numbered counts using the name given to the offense by statute or ordinance, or stating in concise terms the definition of the offense sufficient to give the defendant notice of the charge.

(b)(2)(A) The prosecution may allege alternate theories of the same offense in a single count or in multiple counts.

(b)(3) Unless otherwise contained in filings accompanying the Information, a booking number and a State Identification Number (SID) if the defendant was arrested and detained on charges related to the information. Any pretrial release conditions must be included, such as:

(b)(3)(A) monetary bail or other pretrial release conditions set by the magistrate when determining probable cause at arrest;

(b)(3)(B) whether the defendant was denied pretrial release;

(b)(3)(C) whether the defendant was released to a pretrial supervision agency; and

(b)(3)(D) whether the defendant is in custody.

(c) **Felonies and class A misdemeanors.** If a felony or class A violation is alleged, and in all cases requesting a warrant, an information must:

(c)(1) contain or be accompanied by a statement of facts sufficient to support probable cause for the charged offense or offenses. The information need not include facts such as time, place, means, intent, manner, value, and ownership unless necessary to charge the offense. Supporting physical materials such as money, securities, written instruments, pictures, statutes, and

Comment [KW1]: Prosecutor representative drafting amended language out of a concern that the language, as written, imposes a duty on prosecutors to conduct an investigation to determine whether the address provided by the defendant is their current address at the time of filing.

judgments may be identified using names or by describing the documents. Neither presumptions of law nor matters of judicial notice need be stated,

(d) **Amending the information.** The court may permit an information to be amended at any time before trial has commenced so long as the substantial rights of the defendant are not prejudiced. If an additional or different offense is charged, the defendant has the right to a preliminary hearing on that offense as provided under these rules and any continuance as necessary to meet the amendment. The court may permit an information to be amended after the trial has commenced but before verdict if no additional or different offense is charged and the substantial rights of the defendant are not prejudiced. After verdict, an information may be amended so as to state the offense with such particularity as to bar a subsequent prosecution for the same offense upon the same set of facts.

(e) **Bill of particulars**. When facts not set out in an information are required to inform a defendant of the nature and cause of the offense charged, so as to enable the defendant to prepare a defense, the defendant may file a written motion for a bill of particulars. The motion must be filed at arraignment or within 14 days thereafter, or at such later time as the court may permit. The court may, on its own motion, direct the filing of a bill of particulars. A bill of particulars may be amended or supplemented at any time subject to such conditions as justice may require. The request for and contents of a bill of particulars must be limited to a statement of factual information needed to set forth the essential elements of the particular offense charged.

Effective May 1, 2020

Rule 6. Warrant of arrest or summons.

(a) Upon the filing of an indictment, or upon the acceptance of an information by a judge, the court must set the case for an initial appearance or arraignment, as appropriate. The court must then issue a summons directing the defendant to appear for that hearing, except as described in subsection (c).

(b) The summons must inform the defendant of the date, time and courthouse location for the initial appearance or arraignment. The summons may be mailed to the defendant's last known address, or served by anyone authorized to serve a summons in a civil action.

(c) If the defendant is not a corporation, a judge may issue a warrant of arrest instead of a summons if the court finds from the information and any supporting statements or affidavits that:

(c)(1) The prosecution made reasonable efforts to obtain the defendant's current address ~~defendant's~~ but the address is unknown;

(c)(2) ~~or~~ the defendant will not otherwise appear on a summons; or

(c)(~~2~~3) there is substantial danger of a breach of the peace, injury to persons or property~~, or~~ danger to the community.

(d) A judge may issue a warrant of arrest in cases where the defendant has failed to appear in response to a summons.

(e) Prior to issuing a warrant the judge must review the information for sufficiency. If the judge determines from the information, or from any supporting statements or affidavits, that there is probable

Comment [KW2]: Prosecutor representative drafting amended language out of a concern that the language, as written, imposes a duty on prosecutors to conduct an investigation to determine whether the address provided by the defendant is their current address at the time of filing.

cause to believe the offenses have been committed and that the accused committed them, the judge may issue the warrant. If the judge determines there is not probable cause the judge must notify the prosecutor. If the prosecutor does not file a sufficient information within 28 days, the judge must dismiss the case.

(e)(1) When a warrant of arrest is issued, the judge must state on the warrant:

(e)(1~~2~~)(A) Whether the defendant is denied pretrial release under the authority of Utah Code § 77-20-1, and the alleged facts supporting.

(e)(1~~3~~)(B) The conditions of pretrial release the court requires of the defendant~~, including monetary bail~~ in accordance with Utah Code section 77-20-1.

(e)(1~~3~~)(~~A~~C) ~~In determining~~ As required by Utah Code section 77-20-1, if the court determines~~the amount of~~ monetary bail is necessary, the judge must consider the individual's ability to pay and set the lowest amount reasonably calculated to ensure the defendant's appearance at court.

Comment [KW3]: 77-20-1(4)(c)

(e)(1~~3~~)(D~~B~~) The court must state whether the defendant's personal appearance is required or whether the defendant may remit ~~the~~ monetary bail to satisfy any obligation to the court pursuant to Utah Code § 77-7-21.

(e)(1~~4~~)(E) The geographic area from which the issuing court will guarantee transport pursuant to Utah Code § 77-7-5.

(f) The clerk of the court must enter the warrant into the court information management system.

(g) **Service, Execution and return of the warrant.**

(g)(1) The warrant must be served by a peace officer. The officer may execute the warrant at any place within the state.

(g)(2) The warrant must be executed by the arrest of the defendant. The officer need not possess the warrant at the time of the arrest. Upon request, the officer must show the warrant to the defendant as soon as practicable. If the officer does not have the warrant in possession at the time of the arrest, the officer must inform the defendant of the offense charged and of the fact that the warrant has been issued.

(g)(3) The person executing a warrant or serving a summons must make return thereof to the magistrate as soon as practicable.

(h) The court may periodically review unexecuted warrants to determine whether they should be recalled.

Effective May 1, 2020

Rule 7. Initial proceedings for class A misdemeanors and felonies.

(a) **First appearance.** At the defendant's first appearance, the court must inform the defendant:

(a)(1) of the charge in the information or indictment and furnish a copy;

(a)(2) of any affidavit or recorded testimony given in support of the information and how to obtain them;

(a)(3) of the right to retain counsel or have counsel appointed by the court without expense if unable to obtain counsel;

(a)(4) of rights concerning pretrial release~~, including bail~~; and

(a)(5) that the defendant is not required to make any statement, and that any statement the defendant makes may be used against the defendant in a court of law.

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

(c) **Release conditions.**

~~(c)(1) If counsel are present and prepared~~Except as provided in paragraph (d), upon application by defense counsel or the defendant, the court must ~~address whether the defendant is entitled to pretrial release~~issue a pretrial status order pursuant to Utah Code ~~§~~ section 77-20-1. The ~~, and if so, what if any conditions the~~ court will impose the least restrictive reasonably available conditions necessary to reasonably ensure the continued appearance of the defendant, integrity of the judicial process, safety of any witnesses or victims, and safety of the community. ~~The court must utilize the least restrictive conditions needed to meet those goals.~~

Comment [KW4]: 77-20-1(3)(c)(i): The court shall issue the pretrial status order without unnecessary delay.

Comment [KW5]: 77-20-1(3)(b)

~~(c)(2) The determination of pretrial release eligibility and conditions may be reviewed and modified upon application by either party based on a material change in circumstances, or other good cause.~~

(c)(1) A motion to modify the initial pretrial status order may be made by either party at any time upon notice to the opposing party sufficient to permit the opposing party to prepare for the hearing and to permit each alleged victim to be notified and be present.

(c)(2) Subsequent motions to modify a pretrial status order may be made only upon a showing that there has been a material change in circumstances.

(c)(3) A hearing on a motion to modify a pretrial status order may be held in conjunction with a preliminary hearing or any other pretrial hearing.

(d) **Continuances.** ~~If counsel are not prepared~~Upon application of either party and a showing of good cause, the court ~~shall~~ may allow up to a seven day continuance of the hearing to allow for preparation,

including notification to any victims. The court may allow more than seven days with the consent of the defendant.

(e) **Right to preliminary examination.**

(e)(1) The court must inform the defendant of the right to a preliminary examination and the times for holding the hearing. If the defendant waives the right to a preliminary examination, and the prosecuting attorney consents, the court must order the defendant bound over for trial.

(e)(2) If the defendant does not waive a preliminary examination, the court must schedule the preliminary examination upon request. The examination must be held within a reasonable time, but not later than 14 days if the defendant is in custody for the offense charged and not later than 28 days if the defendant is not in custody. These time periods may be extended by the magistrate for good cause shown. Upon consent of the parties, the court may schedule the case for other proceedings before scheduling a preliminary hearing.

(e)(3) A preliminary examination may not be held if the defendant is indicted.

Effective May 1, 2018

Rule 7A. Procedures for arraignment on class B or C misdemeanors, or infractions.

(a) **Initial appearance.** At the defendant's initial appearance, the court must inform the defendant:

(a)(1) of the charge in the information, indictment, or citation and furnish a copy;

(a)(2) of any affidavit or recorded testimony given in support of the information and how to obtain them;

(a)(3) of the right to retain counsel or have counsel appointed by the court without expense if unable to obtain counsel;

(a)(4) of rights concerning pretrial release~~, including bail~~; and

(a)(5) that the defendant is not required to make any statement, and that any statement the defendant makes may be used against the defendant in a court of law.

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

(c) **Release conditions.**

~~(c)(1)~~ Except as provided in paragraph (c)(2), upon application by defense counsel or the defendant~~If counsel are present and prepared~~, the court must ~~address whether the defendant is entitled to pretrial release~~issue a pretrial status order pursuant to Utah Code section~~s~~ 77-20-1. T~~, and if so, what if any~~

Comment [KW6]: 77-20-1(3)(c)(i): The court shall issue the pretrial status order without unnecessary delay.

~~conditions t~~he court will impose ~~to~~ the least restrictive reasonably available conditions of release reasonably necessary to ensure the continued appearance of the defendant, integrity of the judicial process, safety of any witnesses or victims, and safety of the community. ~~The court must use the least restrictive conditions needed to meet those goals.~~

(c)(1) A motion to modify the initial pretrial status order may be made by either party at any time upon notice to the opposing party sufficient to permit the opposing party to prepare for the hearing and to permit each alleged victim to be notified and be present.

(c)(2) Subsequent motions to modify a pretrial status order may be made only upon a showing that there has been a material change in circumstances.

(c)(3) A hearing on a motion to modify a pretrial status order may be held in conjunction with a preliminary hearing or any other pretrial hearing.

(d) **Continuances.** Upon application of either party and a showing of good cause, the court may allow up to a seven day continuance of the hearing to allow for preparation, including notification to any victims. The court may allow more than seven days with the consent of the defendant.

~~(c)(2) The determination of pretrial release eligibility and conditions, may be reviewed and modified upon application by either party based on a material change in circumstances, or other good cause.~~

~~(d) **Continuances.** If defense counsel is not present or not yet prepared, the court must allow up to a seven day continuance of the hearing to allow for preparation. The court may allow more than seven days with the consent of the defendant.~~

(e) **Entering a plea.**

(e)(1) If defendant is prepared with counsel, or if defendant waives the right to be represented by counsel, the court must call upon the defendant to enter a plea.

(e)(2) If the plea is guilty, the court must sentence the defendant as provided by law.

(e)(3) If the plea is not guilty, the court must set the matter for trial or a pretrial conference within a reasonable time. Such time should be no longer than 30 days if defendant is in custody.

(e)(4) The court may administratively enter a not guilty plea for the defendant. If the court has appointed counsel, the defendant does not desire to enter a plea, or for other good cause, the court must then schedule a pretrial conference.

Effective May 1, 2018

Rule 9. Proceedings for persons arrested without a warrant on suspicion of a crime.

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

(a)(2)(A) The arresting officer, custodial authority, or prosecutor with authority over the most serious offense for which defendant was arrested must, as soon as reasonably feasible but in no event longer than 24 hours after the arrest, present to a magistrate a sworn statement that contains the facts known to support probable cause to believe the defendant has committed a crime. The statement must contain any facts known to the affiant that are relevant to determining the appropriateness of precharge release and the conditions thereof.

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

(a)(2)(C) The magistrate must review the information provided and determine if probable cause exists to believe the defendant committed the offense or offenses described. If the magistrate finds there is probable cause, the magistrate must determine if the person is eligible for pretrial release pursuant to Utah Code ~~§~~ section 77-20-1. The court will impose the least restrictive reasonably available conditions of release reasonably necessary to:
~~, and what if any conditions on that release are reasonably necessary to~~:

(a)(2)(C)(i) ensure the individual's appearance ~~of the accused~~ at future court proceedings;

(a)(2)(C)(ii) ensure ~~the integrity of the judicial process~~that the individual will not obstruct or attempt to obstruct the criminal justice process;

(a)(2)(C)(iii) ~~prevent direct or indirect contact with witnesses or victims by the accused, if appropriate~~ensure the safety of any witnesses or victims of the offense allegedly committee by the individual; and

(a)(2)(C)(iv) ensure the safety and welfare of the public and the community.

Comment [KW7]: 77-20-1(b)

(a)(2)(D) If the magistrate finds the statement does not support probable cause to support the charges filed, the magistrate may determine what if any charges are supported, and proceed under subsection (a)(2)(C).

(a)(2)(E) If probable cause is not articulated for any charge, the magistrate must return the statement to the submitting authority indicating such.

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

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

(b) **Magistrate availability.**

(b)(1) The information required in subsection (a)(2) may be presented to any magistrate, although if the judicial district has adopted a magistrate rotation, the presentment should be in accord with that schedule or rotation. If the arrestee is charged with a capital offense, the magistrate may not be a justice court judge.

(b)(2) If a person is arrested in a county other than where the offense was alleged to have been committed, the arresting authority may present the person to a magistrate in the location arrested, or in the county where the crime was committed.

(c) **Time for review.**

(c)(1) Unless the time is extended at 24 hours after booking, if no probable cause determination and order setting bail have been received by the custodial authority, the defendant must be released on the arrested charges on recognizance.

(c)(2) During the 24 hours after arrest, for good cause shown an arresting officer, custodial authority, or prosecutor with authority over the most serious offense for which defendant was arrested may request an additional 24 hours to hold a defendant and prepare the probable cause statement or request for release conditions.

(c)(3) If after 24 hours, the suspect remains in custody, an information must be filed without delay charging the suspect with offenses from the incident leading to the arrest.

(c)(4)(A) If no information has been filed by 3:00pm on the ~~fourth~~ second calendar day after the defendant was booked, the release conditions set under subsection (a)(2)(B) shall revert to recognizance release.

(c)(4)(B) The ~~four~~ two day period in this subsection may be extended upon application of the prosecutor for a period of three more days, for good cause shown.

(c)(4)(C) If the time periods in this subsection (c)(4) expire on a weekend or legal holiday, the period expires at 3:00pm on the next business day.

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

Effective November 18, 2019

Rule 9A Procedures for persons arrested pursuant to an arrest warrant.

(a)(1) For purposes of this rule an "arrest warrant" means a warrant issued by a judge pursuant to Rule 6(c), or after a defendant's failure to appear at an initial appearance or arraignment after having been summoned.

(a)(2) An "arrest warrant" does not include a warrant issued for failing to appear for a subsequent court proceeding or for reasons other than those described in subsection (a)(1).

(b)(1) When a peace officer or other person arrests a defendant pursuant to an arrest warrant and the arrested person cannot ~~provide any condition or security required~~meet the release conditions required by the judge or magistrate issuing the arrest warrant, the person arrested must be presented to a magistrate within 48 hours after arrest. The information provided to the magistrate must include the case number, and the results of any validated pretrial risk assessment.

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

(c) With the results of a pretrial risk assessment, and having considered the factors that caused the court to issue an arrest warrant in the first place, the magistrate may modify the release conditions.

(d) Any defendant who remains in custody after the review process must be seen by the court issuing the arrest warrant no later than the third day after the arrest.

(e) If the arrested person meets the release conditions~~, or provides the security~~ required by the arrest warrant, the person must be released and instructed to appear as required in the issuing court.

(f) Any posted security must be forwarded to the court issuing the arrest warrant.

Effective November 18, 2019

Rule 10. Arraignment.

(a) Upon the return of an indictment or upon receipt of the records from the magistrate following a bind-over, the defendant shall forthwith be arraigned in the district court. Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating the substance of the charge and calling on the defendant to plead thereto. The defendant shall be given a copy of the indictment or information before the defendant is called upon to plead.

(b) If upon arraignment the defendant requests additional time in which to plead or otherwise respond, a reasonable time may be granted.

(c) Any defect or irregularity in or want or absence of any proceeding provided for by statute or these rules prior to arraignment shall be specifically and expressly objected to before a plea of guilty is entered or the same is waived.

(d) If a defendant has been released ~~on bail~~pretrial~~, or on the defendant's own recognizance~~, prior to arraignment and thereafter fails to appear for arraignment or trial when required to do so, a warrant of arrest may issue and any monetary bail may be forfeited.

Effective January 1, 1989

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

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

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

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

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

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

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

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

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

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

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

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

Comment [KW8]: 77-20-10(1)(c)

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

(b)(2)(A) That motion shall be accompanied by a copy of the filed motion for a new trial or notice of appeal; a written application for a certificate of probable cause; and a memorandum of law. The memorandum shall identify the issues to be presented in the motion for a new trial proceedings or on appeal and support the defendant's position that those issues raise a substantial question of law or fact reasonably likely to result in reversal, an order for a new trial or a sentence that does not include a term of incarceration in jail or prison. The memorandum shall also address why clear and convincing evidence exists that the defendant is not a flight risk and that the defendant does not pose a- danger ~~to any other person or the community~~as outlined in paragraph (b)(1)(B)(ii).

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

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

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

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

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

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

Comment [KW9]: 77-20-10-(2)

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

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

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

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

Comment [KW10]: Some of these conditions are listed in 77-20-4(b), but there are many more outlined in the statute. I don't think the entire list needs to be included here, especially since it's non-exhaustive. It might be worth reviewing in relation to the "shall" in Rule 27B(b)(1) referring back to this list.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Effective November 1, 2019

Rule 27A. Stays pending appeal from a court not of record - Appeals for a trial de novo.

(a) Except as outlined in subsection (d) below, the procedures in this rule shall govern stays of terms of sentences when a defendant files an appeal in a court not of record for a trial de novo pursuant to Utah Code § 78A-7-118(1).

(b) Upon the timely filing of a notice of appeal for a trial de novo, the court shall:

(b)(1) order stayed any fine or fee payments until the appeal is resolved; and

(b)(2) order stayed any period of incarceration, unless:

(b)(2)(A) at the time of sentencing, the judge found by a preponderance of the evidence that the defendant posed a danger to another person or the community; or

(b)(2)(B) the appeal does not appear to have a legal basis.

(c) If a stay is ordered, the judge may leave in effect any other terms of probation the judge deems necessary including:

(c)(1) continuation of any pre-trial restrictions or orders;

(c)(2) sentencing protective orders under Utah Code § 77-36-5.1;

(c)(3) orders that limit or monitor a defendant's drug and alcohol use, including use of an ignition interlock device; and

(c)(4) requiring defendant's monetary bail to continue until defendant's appearance in the district court. The judge shall only order monetary bail to continue if the court finds by clear and convincing evidence that, without such security, the defendant will likely fail to appear at district court.

(d) The provisions of this rule do not apply to appeals for trial de novo from convictions for 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). The procedure outlined in Rule 27B shall be used in those cases.

(e) A party dissatisfied with the findings made by the justice court judge in staying a sentence under this rule shall utilize the procedure outlined in rule 27B(g) to obtain relief in the district court.

(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) For purposes of this rule, "term of sentence" or "sentence" shall include findings of contempt pursuant to Utah Code § 78B-6-301 et seq.

Effective May 1, 2012

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 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 reasonably available condition or combination of conditions in Rule 27(c) that the court determines will reasonably ~~assure~~ ensure the appearance of the ~~person~~ defendant as required and the safety of ~~persons and~~any other individual, property, and ~~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 individual, property, or the community and that the period of incarceration, and no less restrictive reasonably available 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 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 more than 28 days. 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, property, 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 7 days after receipt of the application, or shorter time as the court deems necessary. A hearing on the application shall be held within 7 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 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 evidence that:

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

(c)(3)(B) the defendant would pose a danger to any other person, property, 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 reasonably available condition or combination of conditions set forth in Rule 27(c) that the court determines will reasonably ~~assure~~ ensure the appearance of the ~~person~~ defendant as required and the safety of ~~persons~~ any other individual, ~~and~~ property, and ~~in~~ the community.

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

Comment [KW11]: Are we limiting justice court judges to only those conditions actually listed in Rule 27(c)? The list in 27(c) is non-exhaustive. Maybe this entire sentence should be amended to say "The Court shall then order the defendant released pursuant to Rule 27(c)."

(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 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.

(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.

Effective March 6, 2018

Rule 28. Disposition after appeal.

(a) If a judgment of conviction is reversed, a new trial shall be held unless otherwise specified by the appellate court. Pending a new trial or other proceeding, the defendant shall be detained, or released ~~upon bail~~, or otherwise restricted as the trial court on remand determines proper. If no further trial or proceeding is to be had a defendant in custody shall be discharged, and a defendant restricted by monetary bail or otherwise shall be released from restriction and monetary bail exonerated and any deposit of funds or property refunded to the proper person.

(b) Upon affirmance by the appellate court, the judgment or order affirmed or modified shall be executed.

(c) Unless otherwise ordered by the trial court, within 28 days after receipt of the remittitur, the trial court shall notify the parties and place the matter on the calendar for review.

Effective November 1, 2015

Rule 38. Appeals from justice court to district court.

(a) Appeal of a judgment or order of the justice court is as provided in Utah Code § 78A-7-118. A case appealed from a justice court must be heard in a district courthouse located in the same county as the justice court from which the case is appealed. In counties with multiple district courthouse locations, the presiding judge of the district court will determine the appropriate location for the hearing of appeals.

(b) **The notice of appeal.**

(b)(1) A notice of appeal from an order or judgment must be filed within 28 days of the entry of that order or judgment.

(b)(2) **Contents of the notice.** The notice required by this rule must be in the form of, or substantially similar to, that provided in the appendix of this rule. At a minimum the notice must contain:

(b)(2)(A) a statement of the order or judgment being appealed and the date of entry of that order or judgment;

(b)(2)(B) the current address at which the appealing party may receive notices concerning the appeal;

(b)(2)(C) a statement as to whether the defendant is in custody because of the order or judgment appealed; and

(b)(2)(D) a statement that the notice has been served on the opposing party and the method of that service.

(b)(3) Deficiencies in the form of the filing will not cause the court to reject the filing. They may, however, impact the efficient processing of the appeal.

(c) **Motion to reinstate period for filing appeal.**

(c)(1) Upon a showing that a defendant was deprived of the right to appeal, the justice court must reinstate the 28-day period for filing an appeal. A defendant seeking such reinstatement must file a written motion in the justice court and serve the prosecuting entity. The court must appoint counsel if the defendant qualifies for court-appointed counsel. The prosecutor must have 21 days after service of the motion to file a written response. If the prosecutor opposes the motion, the justice court must set a hearing at which the parties may present evidence. If the justice court finds by a preponderance of the evidence that the defendant has demonstrated that the defendant was deprived of the right to appeal, it must enter an order reinstating the time for appeal. The defendant's notice of appeal must be filed with the clerk of the justice court within 28 days after the date of entry of the order.

(c)(2) Absent a showing of excusable neglect, a motion to reinstate may be filed no later than six months after the original time for appeal has expired.

(d)(1) **Duties of the justice court.** Within 7 days of receiving the notice of appeal, the justice court must transmit to the appropriate district court an appeal packet containing:

(d)(1)(A) the notice of appeal;

(d)(1)(B) the docket;

(d)(1)(C) the information or citation; and

(d)(1)(D) the judgment and sentence, if any.

(d)(2) Upon request from the district court the justice court must transmit to the district court any other orders and papers filed in the case.

(e) **Duties of the district court.**

(e)(1) Upon receipt of the appeal packet from the justice court, the district court must hold a scheduling conference to determine what issues must be resolved by the appeal. The district court must send notices to the appellant at the address provided on the notice of appeal. Notices to the other party must be served to the address provided in the justice court docket for that party.

(e)(2) If the defendant is in custody because of the matter appealed, the district court must hold the conference within 7 days of the receipt of the appeals packet. If the defendant is not in custody because of the matter appealed, the court must hold the conference within 28 days of receipt of the appeals packet.

(f) **District court procedures for trials de novo.** An appeal by a defendant pursuant to Utah Code § 78A-7-118(1) must be accomplished by the following procedures:

(f)(1) If the defendant elects to go to trial, the district court will determine what number and level of offenses the defendant is facing.

(f)(2) Discovery, the trial, and any pre-trial evidentiary matters the court deems necessary, will be held in accordance with these rules.

(f)(3) After the trial, the district court must, if appropriate, sentence the defendant and enter judgment in the case as provided in these rules and otherwise by law.

(f)(4) When entered, the judgment of conviction or order of dismissal serves to vacate the judgment or orders of the justice court and becomes the judgment of the case.

(f)(5) A defendant may resolve an appeal by waiving trial and compromising the case by any process authorized by law to resolve a criminal case.

(f)(5)(A) Any plea must be taken in accordance with these rules.

(f)(5)(B) The court must proceed to sentence the defendant or enter such other orders required by the particular plea or disposition.

(f)(5)(C) When entered, the district court's judgment or other orders vacate the orders or judgment of the justice court and become the order or judgment of the case.

(f)(5)(D) A defendant who moves to withdraw a plea entered pursuant to this section may only seek to withdraw it pursuant to the provisions of Utah Code § 77-13-6.

(f)(6) **Other dispositions.** A defendant, at a point prior to entering a plea admitting guilt or a no contest plea, or prior to commencement of trial, may choose to withdraw the appeal and have the case remanded to the justice court. Within 14 days of the defendant notifying the court of such an election, the district court shall remand the case to the justice court.

(g) **District court procedures for hearings de novo.** If the appeal seeks a de novo hearing pursuant to Utah Code § 78A-7-118(3) or (4);

(g)(1) the court must conduct such hearing and make the appropriate findings or orders, and

(g)(2) within 14 days of entering its findings or orders, the district court must remand the case to the justice court, unless the case is disposed of by the findings or orders, or the district court retains jurisdiction pursuant to § 78A-7-118(6).

(h) **Retained jurisdiction.** In cases where the district court retains jurisdiction after disposing of the matters on appeal, the court must order the justice court to forward all ~~cash~~ monetary bail, other security, or revenues received by the justice court to the district court for disposition. The justice court must transmit such monies or securities within 21 days of receiving the order.

(i) **Other bases for remand.** The district court may also dismiss the appeal and remand the case to the justice court if it finds that the defendant has abandoned the appeal.

(j) **Justice court procedures on remand.** Upon receiving a remanded case, the justice court must set a review conference to determine what, if any proceedings need be taken. If the defendant is in custody because of the case being considered, such hearing must be had within five days of receipt of the order of remand. Otherwise, the review conference should be had within 28 days. The court must send notice of the review conference to the parties at the addresses contained in the notice of appeal, unless those have been updated by the district court.

(k) During the pendency of the appeal, and until a judgment, order of dismissal, or other final order is entered in the district court, the justice court will retain jurisdiction to monitor terms of probation or other consequences of the plea or judgment, unless those orders or terms are stayed pursuant to Rule 27A.

(l) **Reinstatement of dismissed appeal.**

(l)(1) An appeal dismissed pursuant to subsection (i) may be reinstated by the district court upon motion of the defendant for:

(l)(1)(A) mistake, inadvertence, surprise, excusable neglect; or

(l)(1)(B) fraud, misrepresentation, or misconduct of an adverse party.

(l)(2) The motion must be made within a reasonable time after entry of the order of dismissal or remand.

Effective May 1, 2020

Rule 41 (NEW) Unsecured Bond Forfeitures

(a) Notice of Non-Appearance

(a)(1) If a defendant released on an unsecured bond fails to appear before the appropriate court as required, the court shall within [7 days] of the failure to appear provide the defendant and the prosecutor with notice of the nonappearance. The clerk of the court shall:

(a)(1)(A) email notice of nonappearance to the defendant at the email address provided on the bond, or mail notice to the defendant if an email address is unavailble; and

(a)(1)(B) email a copy of the notice sent under Subsection (1)(a) to the prosecutor's office.

(b) **Forfeiture Hearing.** A forfeiture hearing will be scheduled within [90 days] of the issuance of the notice in paragraph (a).

(b)(1) The forfeiture hearing date shall be included in the notice of nonappearance.

(b)(2) If a defendant appears in court within [90 days] of the issuance of the notice in paragraph (a), the court shall reinstate or discharge the bond.

Comment [KW12]: Judge Bates Question: the forfeiture hearing is held before the end of the 90 days, the defendant doesn't show up to the hearing and the court forfeits the bond. What happens if the defendant shows up within 90 days – but after the hearing? Is the forfeited bond automatically reinstated?

(b)(3) Except as set forth in paragraphs (b)(4), (b)(6), and (d)(1)(E), if a defendant fails to appear within [90 days] of the issuance of the notice in Subsection (a) or fails to appear at the forfeiture hearing in Subsection (b), the court may forfeit the bond without further notice.

(b)(4) If the defendant failed to appear because the defendant was, or is, in the custody of authorities, the defendant shall be provided an opportunity to address the court before the unsecured bond may be forefeited. The prosecutor shall be notified of the proceedings.

Comment [KW13]: Judge Bates: the bond should be exonerated or remain in place to ensure appearance when the defendant is released. There is no reliable statewide incarceration database. The defendant shouldn't be penalized for that.

(b)(5) A defendant may request an extension of the [90-day] time period in paragraph (b) if the defendant, within that time, files a motion for extension with the court and provides notice to the prosecutor.

(b)(6) The court may reinstate or discharge the unsecured bond if the defendant shows that the failure to appear was not due to the defendant's own neglect.

(c) **Forfeiture Judgment.**

(c)(1) A court may enter an unsecured bond forfeiture judgment without further notice if the court finds by a preponderance of evidence that:

(c)(1)(A) the defendant failed to appear as required;

(c)(1)(B) the defendant and prosecutor were provided with notice of nonappearance in accordance with paragraph (a);

(c)(1)(C) a forfeiture hearing was held in accordance with paragraph (b); and

(c)(1)(D) all other forfeiture requirements have been met.

(c)(2) The amount of the judgment may not be higher than the face amount of the bond.

(c)(3) An unsecured bond forfeiture judgment shall:

Comment [KW14]: Judge Bates: A case number should also be included.

(c)(3)(A) identify the defendant against whom judgment is granted;

(c)(3)(B) specify the amount of the bond forfeited; and

(c)(3)(C) grant the forfeiture of the bond.

(c)(4) The court shall send a notice of judgment and the signed judgment to the defendant and prosecutor.

Comment [KW15]: Judge Bates: by what method?

(c)(5) If payment has not been received from the defendant within [90 days] of the judgment date, in accordance with local criminal collections procedures, the overdue account may be referred to the judge and final collection efforts initiated before transferring the debt to the Office of State Debt Collection (OSDC). Upon transfer to OSDC, the bond may be exonerated.

(c)(6) If payment is received from the defendant prior to transfer of the debt, a receipt and satisfication of judgment will be sent to the defendant and the bond will be exonerated. The court shall pay over the money forfeited pursuant to Utah Code section 77-20-9.

(d) **Exoneration**

(d)(1) An unsecured bond may be exonerated without motion:

(d)(1)(A) at the conclusion of the case, when the defendant is sentenced. If the sentence includes a commitment to jail or prison, the bond can be held until the defendant appears at the jail or prison, or [7 days] has passed, whichever is first;

(d)(1)(B) if there has not been any activity on the case for [12 months] from the date the bond was issued;

(d)(1)(C) if the defendant paid the face amount of the bond prior to entry of a forfeiture judgment;

(d)(1)(D) if the defendant has passed away; or

Comment [KW16]: Judge Bates: why wouldn't we collect from his estate?

(d)(1)(E) if the defendant is in custody out of state and the prosecutor elects, in writing, not to extradite the defendant.

(d)(2) If an Information, indictment, or request to extend time has not been filed within 120 days of the receipt of a signed unsecured bond, the court shall:

(d)(2)(A) relieve a person from conditions of release; and

(d)(2)(B) exonerate the unsecured without further order of the court.

(e) **Amending or Discharging Forfeiture Judgment.** A court may, on its own motion or by motion of a party, amend or discharge an unsecured bond forfeiture judgment at any time if the defendant shows that the failure to appear was not due to the defendant's own neglect.

Comment [KW17]: Judge Bates: There should be a time limit associated with this subsection. What if the defendant shows lack of neglect 3 years later (in state hospital), but the money has already been collected by OSDC? Does the state have to pay it back? What about including a catchall in place of this subsection – nothing precludes the defendant from filing a Rule 60(b) motion to set aside the judgment of forfeiture?