

# UPAA Resource Manual



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**UPAA Board Members**

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## **AREAS FOR CUPA EXAM**

(a general knowledge of the following areas)

### **Criminal Procedures**

1. Court Jurisdiction and Venue
  - a. District Courts
  - b. Justice Courts
  - c. Juvenile Courts
  - d. Bail Issues
  - e. Expungements
2. How a case goes through the criminal system from Arrest to Sentencing
3. Sentencing Alternatives and Enhancements (probation, parole, prison)
4. Authority of Court in Sentencing/Board of Pardons & Parole
5. Discovery Procedures
6. Motion Practice
7. Jury vs. Bench Trials
8. Mentally Ill Defendants
9. Pleas

### **Civil Procedures**

1. GRAMA
2. Open Meetings Act
3. Small Claims Act

### **Legal Documents**

1. Affidavit
2. Warrant
3. Information
4. Motions
5. Subpoena
6. Subpoena Duces Tecum
7. Orders to Produce
8. Summons
9. Citation
10. Protective Order
11. Ex-Parte Protective Orders

### **Prosecutor Relations with Associated Agencies**

1. Adult Probation & Parole
2. Crime Lab
3. Public Defenders/Defense Bar
4. Law Enforcement
5. Entities in the Abbreviations Section

### **Understanding Laws and Terminology**

1. Levels of Offenses with Penalties

### **Ethics of a Prosecutor**

1. Confidentiality
2. Exculpatory Evidence

### **Public Relations**

1. Contact with public, telephone, walk-ins
2. Victim's Rights

### **General Office Knowledge**

1. Formatting legal documents/letter writing
2. Grammar/spelling/punctuation
3. Filing
4. Communications/telephone etiquette

## **Definitions**<sup>1</sup>

Acknowledgement	a recognition of something as being factual, an acceptance of responsibility, a formal declaration made in the presence of an authorized officer, such as a notary public, by someone who signs a document and confirms that the signature is authentic
Act of God	an event outside of human control, such as sudden flood or other natural disasters, for which no one can be held responsible
Action	a civil or criminal judicial proceeding
Actionable	furnishing the legal ground for a lawsuit or other legal action
Ad Litem	for the suit; for the purposes of the suit, pending the suit
Adjudication	the legal process of resolving a dispute; the process of judicially deciding a case
Administrative Law	the law governing the organization and operation of the executive branch of government (including independent agencies) and the relations of the executive with the legislature, the judiciary, and the public
Affidavit	a voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths
Aggrieved	wronged or injured; deprived of legal rights or claims
Agreement	the act of agreeing or of coming to a mutual arrangement; an arrangement that is accepted by all parties to a transaction; a contract or other document delineating such an arrangement
Alibi	the fact or state of having been elsewhere when an offense was committed
Amnesty	an act by which a government grants a general pardon for an offense

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<sup>1</sup> Definitions are taken from Black's Law Dictionary, Seventh Edition.

Annotation	a brief summary of the facts and decisions in a case
Answer	to respond to a pleading or a discovery request
Appellant	a party who appeals a lower court's decision
Appellate Court	a court with jurisdiction to review decisions of lower courts or administrative agencies, also termed appeals court, court of appeals, court of review
Appellate Rules	a body of rules governing appeals from lower courts
Appellee	a party against who an appeal is taken
Arbitration	the hearing and determination of a dispute or the settling differences between parties by a person or persons chosen or agreed to by them
Arraignment	the initial step in a criminal prosecution whereby the defendant is brought before the court to hear the charges and to enter a plea
Arrest	a seizure or forcible restraint; taking or keeping of a person in custody by legal authority in response to a criminal charge
Assault	the threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful or offensive contact; the act of putting another person in reasonable fear or apprehension of an immediate battery by means of an act amounting to an attempt or threat to commit a battery
Attachment	the seizing of a person's property to secure a judgment or to be sold in satisfaction of a judgment
Attestation	the act of attesting, an attesting declaration; testimony; evidence
Bail	to obtain the release of oneself or another by providing security for future appearance, to release a person after receiving such security, to place in someone else's charge or trust
Battery	the application of force to another, resulting in harmful or offensive contact

Bill of Particulars	a formal, detailed statement of the claims or charges brought by a plaintiff or a prosecutor, filed in response to the defendant's request for a more specific complaint
Board of Pardons and Parole	a governmental body that decides whether prisoners may be released from prison before completing their sentences
Bona Fide	in or with good faith; honestly, openly and sincerely; without deceit or fraud
Breach of Contract	violation of a contractual obligation, either by failing to perform one's own promise or by interfering with another party's performance
Burden of Proof	a party's duty to prove a disputed assertion or charge.
Case Law	the collection of reported cases that form the body of law within a given jurisdiction
Cause of Action	a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person
Certiorari	an extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review
Circumstantial	evidence that tends to prove a fact in issue
Citation	a court issued writ that commands a person to appear at a certain time and place to do something demanded in the writ, or to show cause for not doing so, or a reference to a legal precedent or authority, such as a case, statute, or treatise, that either substantiates or contradicts a given position
Civil	of or relating to the state or its citizenry, or of relating to private rights and remedies that are sought by action of suit, as distinct from criminal proceedings
Civil Law	the body of law imposed by the state, as opposed to moral law, or the law of civil or private rights, as opposed to criminal or administrative law



Civil Procedure	the body of law – rules enacted by the legislature or courts – governing the methods and practices used in civil litigation
Claim	the aggregate of operative facts given rise to a right enforceable by a court, the assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional, a demand for money or property to which one asserts a right
Code	a complete system of positive law, carefully arranged and officially promulgated; a systematic collection or revision of laws, rules or regulations
Code of Conduct	a written set of rules governing the behavior of specified groups, such as lawyers, government employees, or corporate employees
Common Law	the body of law derived from judicial decisions, rather than from statutes or constitutions
Compensatory Damages	damages sufficient in amount to indemnify the injured person for the loss suffered
Competent	legally qualified, able, fit
Complaint	the initial pleading that starts a civil action and states the basis for the court's jurisdiction, the basis for the plaintiff's claim, and the demand for relief
Concurrent	operating at the same time; covering the same matters
Consecutive	following one another in uninterrupted order; successive.
Consent	agreement, approval, or permission as to some act or purpose given voluntarily by a competent person
Constitution	the fundamental and organic law of a nation or a state, establishing the conception, character, and organization of its government, as well as prescribing the extent of its sovereign power and the manner of its exercise
Contempt	conduct that defies the authority or dignity of a court or legislature

Contract	an agreement between two or more parties creating obligations that is enforceable or otherwise recognizable at law
Conveyance	the voluntary transfer of a right or a property
Corpus Delicti	the fact of a transgression “body of the crime”
Counterclaim	an opposing claim by the defendant to offset the claim made by the plaintiff
Court	a governmental body consisting of one or more judges who sit to adjudicate disputes and administer justice
Criminal	one who has committed a criminal offense, one who has been convicted of a crime or having the character of a crime; in the nature of a crime
Cross Examination	the questioning of a witness at a trial or hearing by the party opposed to the party who called the witness to testify
Damages	money claim by, or ordered to be paid to, a person as compensation for loss or injury
Decree	traditionally, a judicial decision in a court of equity, admiralty, divorce, or probate
Deed	a written instrument by which land is conveyed, at common law, any written instrument that is signed, sealed, and delivered and that conveys some interest in property
Defamation	the act of harming the reputation of another by making a false statement to a third person
Default	the omission or failure to perform a legal or contractual duty
Demurrer	“to wait or stay,” a pleading stating that although the facts alleged in a complaint may be true, they are insufficient for the plaintiff to state a claim for relief and for the defendant to frame an answer
De Novo	anew; from the beginning
Deposition	the witness’s out-of-court testimony that is reduced to writing for later use in court or for discovery purposes

Direct Examination	the first questioning of a witness in a trial or other proceeding, conducted by the party who called the witness to testify
Directed Verdict	a judgment entered on the order of a trial judge who takes over the fact-finding role of the jury because the evidence is so compelling that only one decision can reasonably follow or because it fails to establish a prima facie case
Discharge	the dismissal of a case, the canceling or vacating of a court order, the release of a prisoner from confinement or relieving of a witness, juror, or jury from further responsibilities in a case
Discovery	the act or process of finding or learning something that was previously unknown, compulsory disclosure, at a party's request, of information that relates to the litigation, the facts or documents disclosed
Dismissal <b>with</b> Prejudice	a dismissal after an adjudication on the merits, barring the plaintiff from prosecuting any later lawsuit on the same claim
Dismissal <b>without</b> Prejudice	a dismissal that does not bar the plaintiff from refiling the lawsuit within the applicable limitations period
Documentary Evidence	evidence supplied by a writing or other document, which must be authenticated before the evidence is admissible
Domicile	a fixed place established as the home of a specific person
Double Jeopardy	the fact of being prosecuted twice for substantially the same offense
Due Process	the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case
Duress	strictly, the physical confinement of a person or the detention of a contracting party's property
Easement	an interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose

Eminent Domain	the inherent power of a governmental entity to take privately owned property, and convert it to public use, subject to reasonable compensation for the taking
Enjoin	to legally prohibit or restrain by injunction, to prescribe, mandate, or strongly encourage
Equal Protection	the constitutional guarantee under the 14 <sup>th</sup> Amendment that the government must treat a person or class of persons the same as it treats other persons or classes in like circumstances
Et al.	other persons and elsewhere
Et seq.	and those (pages or sections) that follow
Evidence	something (including testimony, documents and tangible objects) that tends to prove or disprove the existence of an alleged fact, the body of law regulating the burden of proof, admissibility, relevance, and the weight and sufficiency of what should be admitted into the record of a legal proceeding
Execution	the act of carrying out or putting into effect, validation of a written instrument, such as a contract or will, by fulfilling the necessary legal requirements, judicial enforcement of a money judgment, a court order directing a sheriff or other officer to enforce a judgment
Exhibit	a document, record, or other tangible object formally introduced as evidence in court, a document attached to and made part of a pleading, motion, contract, or other instrument
Ex Parte	one side only, in the interest of one party only
Ex Parte Communication	a prohibited communication between counsel and the court when opposing counsel is not present
Ex Post Facto	done or made after the fact; having retroactive force or effect
Expungement of Record	the removal of a conviction from a person's criminal record

Extradition	the official surrender of an alleged criminal by one state or nation to another having jurisdiction over the crime charged; the return of a fugitive from justice, regardless of consent, by the authorities where the fugitive resides
False Arrest	an arrest made without proper legal authority
Felony	a serious crime punishable by imprisonment for more than one year or by death
Fraud	a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment, a misrepresentation made recklessly without belief in its truth to induce another person to act
Garnishment	a judicial proceeding in which a creditor asks the court to order a third party who is indebted to the debtor to turn over to the creditor any of the debtor's property held by that third party
Grand Jury	a body of (often 23) people who are chosen to sit permanently for at least a month – and sometimes a year – and who, in ex parte proceedings, decide whether to issue indictments
Gratis	without reward or consideration
Guardian	one who has the legal authority and duty to care for another's person or property because of another's infancy, incapacity, or disability
Guardian Ad Litem	a guardian appointed by the court to appear in a lawsuit on behalf of an incompetent or minor party
Habeas Corpus	a writ employed to bring a person before a court, most frequently to ensure that the party's imprisonment or detention is not illegal
Hearing	a judicial session open to the public, held for the purpose of deciding issues of fact or of law, sometimes with witnesses testifying
Hearsay Evidence	testimony in court based on what a witness has heard from another person rather than on personal knowledge

Ibid, Id or Idem	in the same place; used in a legal citation to refer to the authority cited immediately before
Immunity	any exemption from a duty, liability, or service of process
Impeachment	the act (by a legislature) of calling for the removal from office of a public official, accomplished by presenting a written charge of the official's alleged misconduct
Indictment	the formal written accusation of a crime, made by a grand jury against the accused person, the act or process of preparing or bringing forward such a formal written accusation
Information	a formal criminal charge made on the defendant, by a prosecutor without a grand jury indictment
Injunction	a court order commanding or preventing an action
In Re	"in the matter" not formally including adverse parties but rather involving something (such as an estate)
Interlocutory	interim or temporary, not constituting a final resolution of the whole controversy
Interrogatory	a written question submitted to an opposing party in a lawsuit as part of discovery
In Toto	"in whole" completely; as a whole
Invitee	a person who has an express or implied invitation to enter or use another premises, such as a business visitor or a member of the public to whom the premises are held open
Ipsa Facto	"by the fact itself," by the very nature of the situation
Irrevocable	unalterable; committed beyond recall
Jeopardy	the risk of conviction and punishment that a criminal defendant faces at trial
Joinder	the uniting of parties or claims in a single lawsuit

Joint & Several	of liability, responsibility, apportionable either among two or more parties or to only one of a few select members of the group, at the adversary's discretion; together and in separation
Jointly	in combination or partnership
Jurat	"to swear," a certification added to an affidavit or deposition stating when and before what authority the affidavit or deposition was made
Jurisdiction	a government's general power to exercise authority over all persons and things within its territory, a court's power to decide a case or issue a decree
Jurisprudence	originally (in the 18 <sup>th</sup> century), the study of the first principles of the law of nature, the civil law, and the law of nations
Jury	a group of persons selected according to law and given the power to decide questions of fact and return a verdict in the case submitted to them
Libel	to defame (someone) in a permanent medium, in writing
License	a revocable permission to commit some act that would otherwise be unlawful
Lien	a legal right or interest that a creditor has in another's property, lasting until a debt or duty that it secures is satisfied
Limitation	the act of limiting; the state of being limited, a restriction, a statutory period after which a lawsuit or prosecution cannot be brought in court
Lis Pendens	a pending lawsuit, the jurisdiction, power, or control acquired by a court over property while a legal action is pending
Litigation	the process of carrying on a lawsuit
Magistrate	a judicial officer with strictly limited jurisdiction and authority, often on the local level and often restricted to criminal cases

Malicious Prosecution	the institution of a criminal or civil proceeding for an improper purpose and without probable cause
Malfeasance	a wrongful or unlawful act
Mandamus	a writ issued by a superior court to compel a lower court or a government officer to perform mandatory or purely ministerial duties correctly
Manslaughter	the unlawful killing of a human being without malice
Matricide	the act of killing one's own mother
Minor	a person who has not reached full legal age; a child or juvenile
Misdemeanor	a crime that is less serious than a felony and is usually punishable by fine, penalty, forfeiture, or confinement in a place other than prison (such as a county jail)
Misfeasance	an unlawful act performed in a wrongful manner, a transgression or trespassing
Mistrial	a trial that the judge brings to an end, without a determination on the merits, because of a procedural error or serious misconduct occurring during the procedure or a trial that ends inconclusively because the jury cannot agree on a verdict
Moot	open to argument; debatable, having no practical significance; hypothetical or academic
Moral Law	a collection of principles defining right and wrong conduct; a standard to which an action must conform to be right or virtuous
Motion	a written or oral application requesting a court to make a specified ruling or order, a request made to the court
Motion in Limine	limine means at the very beginning. A motion in limine is a motion made by counsel to keep certain information or facts which are immaterial or irrelevant to the case and which might be prejudicial from being brought into the case



Negligence	the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregarding of other's rights
Nolo Contendere	"I do not wish to contend;" no contest
Notary Public	a person authorized by a state to administer oaths, certify documents, attest to the authenticity of signatures, and perform official acts in commercial matters, such as protesting negotiable instruments
Note	a written promise by one party to pay money to another party or to the bearer
Notice	legal notification required by law or agreement, or imparted by operation of law as a result of some fact; definite legal cognizance, actual or constructive, of an existing right of title
Nuisance	a condition or situation that interferes with the use or enjoyment of property
Nullify	to make void; to render invalid
Nunc Pro Tunc	having a retroactive legal effect through a court's inherent power
Offer	the act or an instance of presenting something for acceptance or a promise to do or refrain from doing some specified thing in the future
Opinion	a court's written statement explaining its decision in a given case, including the statement of facts, points of law, rational and dicta
Order	a command, direction, or instruction delivered by a court or judge
Ordinance	an authoritative law or decree; a municipal regulation (municipal governments can pass ordinances on matters that the state government allows to be regulated at the local level)

Pardon	the act or an instance of officially nullifying punishment or other legal consequences of a crime
Parole	the release of a prisoner from imprisonment before the full sentence has been served
Patricide	the act of killing one's own father
Pecuniary Damages	damages that can be estimated and monetarily compensated
Penal	of, relating to, or being a penalty or punishment, esp. for a crime
Pending	remaining undecided; awaiting decision
Peremptory Challenge	one of a party's limited number of challenges that need not be supported by any reason, although a party may not use such a challenge in a way that discriminates against a protected minority
Perjury	the act or an instance of a person's deliberately making material false or misleading statements while under oath
Per Se	in, or by itself; standing alone, without reference to additional facts.
Petition	a formal written request presented to a court or other official body
Petitioner	a party who presents a petition to a court or other official body, when seeking relief on appeal
Plaintiff	the party who brings a civil suit in a court of law
Plea	an accused person's formal response of "guilty," "not guilty" or "no contest" to a criminal charge
Plea Bargain	a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offense or to one of multiple charges in exchange for some concession by the prosecutor, a more lenient sentence or a dismissal of the other charges

Pleading	a formal document in which a party to a legal proceeding sets forth or responds to allegations, claims, denials, or defenses
Police Power	the inherent and plenary power of a sovereign to make all laws necessary and proper to preserve the public security, order, health, morality, and justice
Power of Attorney	an instrument granting someone in authority to act as agent or attorney-in-fact for the grantor
Prejudice	damage or detriment to one's legal rights or claims
Preliminary Hearing	a criminal hearing to determine whether there is sufficient evidence to prosecute an accused person
Preponderance of Evidence	the greater weight of the evidence; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other
Presentence Investigation Report (PSI)	a probation officer's detailed account of a convicted defendant's educational, criminal, family and social background, conducted at the Court's request as an aid in passing sentence
Presumption	a legal inference or assumption that a fact exists, based on the known or proven existence of some other fact or group of facts
Pre-trial Conference	an informal meeting at which opposing attorneys confer with the judge, to work toward the disposition of the case by discussing matters of evidence and narrowing the issues that will be tried
Prima Facie	sufficient to establish a fact or raise a presumption unless disproved or rebutted
Probable Cause	a reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime
Pro Bono	being or involving uncompensated legal services for the public good

Pro Se	for oneself; on one's own behalf; without a lawyer
Prosecute	to commence and carry out a legal action; to institute and pursue a criminal action against a person
Prosecuting Attorney	a public official appointed or elected to represent the state in criminal cases in a particular judicial district
Punitive	involving or inflicting punishment
Quash	to annul or make void; to terminate, to suppress or subdue
Quitclaim Deed	a deed that conveys a grantor's complete interest or claim in certain real property but that neither warrants nor professes that the title is valid
Rebut	to refute, oppose, or counteract something by evidence, argument or contrary proof
Rebuttal	in-court contradiction of an adverse party's evidence, or the time given to a party to present contradictory evidence or arguments
Recognizance	a bond or obligation, made in court, by which a person promises to perform some act or observe some condition, such as to appear when called, to pay a debt, or to keep the peace
Record	a documentary account of past events designed to memorialize those events; information that is inscribed on a tangible medium or that, having been stored in an electronic or other medium, is retrievable in perceivable form
Remanded	the act or an instance of sending something (such as a case, claim, or person) back for further action
Remedy	the means of enforcing a right or preventing or redressing a wrong; legal or equitable relief
Resolution	a formal expression of an opinion, intention, or decision by an official body or assembly
Respondent	the party against whom an appeal is taken; Appellee

Restitution	return or restoration of some specific thing to its rightful owner or status or compensation for benefits derived from a wrong done to another
Revocation	an annulment, cancellation, or reversal of an act or power
Seize	to forcibly take possession (of a person or property), to place (someone) in possession, to be in possession (of property)
Slander	a defamatory statement expressed in a transitory form
Solvent	able to pay all just debts, having the power of dissolving; causing solution
Statute	a law passed by a legislative body
Statute of Limitations	a statute establishing a time limit for suing in a civil case based on the date when the claim accrued
Statutory	of or relating to legislation, or legislatively created
Stay	the postponement or halting of a proceeding, judgment, or the like, or an order to suspend all or part of a judicial proceeding or a judgment resulting from the proceeding – also termed <i>stay of execution</i>
Stipulation	a voluntary agreement between opposing parties concerning some relevant point
Subpoena	a writ commanding a person to appear before a court or other tribunal, subject to a penalty for failing to comply
Subpoena Duces Tecum	a subpoena ordering the witness to appear and to bring specified documents or records
Subrogation	the substitution of one party for another whose debt the party pays, entitling the paying party to rights, remedies, or securities that would otherwise belong to the debtor
Summary Judgment	a judgment granted on a claim about which there is no genuine issue of material fact and upon which the movant is entitled to prevail as a matter of law

Summons	a writ directing a sheriff to summon a defendant to appear in court, a writ or process commencing the plaintiff's action and requiring the defendant to appear and answer
Suppress	to put a stop to, put down, or prohibit; to prevent (something) from being seen, heard, known, or discussed
Supra	earlier in this text; used as a citational signal to refer to a previously cited authority
Transcript	a handwritten, printed, or typed copy of testimony given orally; the official record of proceedings in a trial or hearing, as taken down by a court reporter
Trespass	an unlawful act committed against the person or property of another
Trial De Novo	a new trial on the entire case – that is, on both questions of fact and issues of law – conducted as if there had been no trial in the first instance, an appeal from justice court is called Trial De Novo
Trier of Fact	(fact finder) one or more person such as jurors in a trial or administrative law judges in a hearing, who hear testimony and review evidence to rule on a factual issue
Unlawful Detainer	the unjustifiable retention of the possession of real property by one whose original entry was lawful
Valid	legally sufficient; binding
Venue	the county or other territory over which a trial court has Jurisdiction
Verdict	a jury's finding or decision on the factual issues of a case, in a non-jury trial, a judge's resolution of the issues of a case
Void	of no legal effect; null
Voir Dire	a preliminary examination of a prospective juror by a judge or a lawyer to decide whether the prospect is qualified and suitable to serve on a jury, a preliminary examination to test the competence of a witness or evidence or an oath administered to a witness requiring that witness to answer truthfully in response to questions. "to speak the truth".

Waiver	the voluntary relinquishment or abandonment – express or implied – of a legal right or advantage
Wanton Misconduct	an act, or a failure to act when there is a duty to do so, in reckless disregard of another's rights, coupled with the knowledge that injury will probably result
Warrant	a writ, signed under oath, directing or authorizing someone to do an act, one directing a law enforcer to make an arrest, a search or a seizure
Warranty Deed	a deed containing one or more covenants of title, esp., a deed that expressly guarantees the grantor's good, clear title and that contains covenants concerning the quality of title, including warranties of seisin, quiet enjoyment, right to convey, freedom from encumbrances, and defense of title against all claims
Writ	a court's written order, in the name of a state or other competent legal authority, commanding the addressee to do or refrain from doing some specified act
Writ of Attachment	a writ ordering legal seizure of property (esp. to satisfy a creditor's claim) or of a person

## **ABBREVIATIONS<sup>2</sup>**

AFIS	Automated Fingerprint Identification System
AIS	Automated Information System
AKA	Also Known As (maiden names, false names, etc)
AOC	Administrative Office of the Court
AP&P	Adult Probation & Parole
APB	Advisory Policy Board
BCI	Utah Bureau of Criminal Identification
CCJJ	Commission on Criminal and Juvenile Justice
CFP	Concealed Firearm Permit
CHRI	Criminal History Record Information
CJA	Criminal Justice Agency
CJIS	Criminal Justice Information Services
CORIS	Court Record Information System
CSA	Computer Security Act
	CJIS System Agency
	Control Service Agency
CSO	CJIS System Officer
CTA	Control Terminal Agency
CTO	Control Terminal Officer
CWP	Concealed Weapon Permit
DLD	Drivers License Division
DOB	Date of Birth
DOE	Date of Emancipation (when a juvenile turns 18 or is declared emancipated by a court)
DOJ	Department of Justice
FBI	Federal Bureau of Investigation
FEL	Felony
FTP	File Transfer Protocol
GRAMA	Government Records Access and Management Act
IAFIS	Integrated Automated Fingerprint Identification System
IBR	Incident-Based Reporting
III	Interstate Identification Index (FBI Records - also known as the Triple I)
IRIS	Identity Theft Reporting Information System
ISO	Information Security Officer
ISO	International Organization for Standardization
ISP	Internet Service Provider
IT	Information Technology
LAN	Local Area Network
LDA	Legal Defenders Association
LEO	Law Enforcement Online
MDT	Mobile Digital Data Terminal

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<sup>2</sup> <https://ucjis.utah.gov>



MISD	Misdemeanor
MVD	Motor Vehicle Division
NCIC	National Crime Information Center
NCMEC	National Center for Missing and Exploited Children
NIBRS	National Incident-Based Reporting System
NICS	National Instant Criminal Background Check System
NIST	National Institute of Standards and Technology
NLETS	The International Justice and Law Enforcement Sharing Network also known as National Law Enforcement Telecommunications System
OLN	Operator License Number (Driver License Number)
ORI	Originating Agency Identifier
OTN	Offense Tracking Number
PC	Personal Computer
PDA	Personal Digital Assistant
PIN	Personal Identification Number
POB	Place of Birth
PSFTP	Another FTP (File Transfer Protocol) program BCI recommends
QA	Quality Assurance
RAP	Record of Arrested Person
ROA	Right of Access
SecEx	Security Express (an FTP program BCI recommends)
SID	State Identification Number
SMT	Scars, Marks and Tattoos
SSN	Social Security Number
SWAP	Statewide Association of Prosecutors
SWW	Utah Statewide Wants & Warrants
TAC	Terminal Agency Coordinator
TCP/IP	Transmission Control Protocol/Internet Protocol
TWX	Teletypewriter Exchange Service
UBI	Utah Bureau of Investigations
U.C.A.	Utah Code Annotated
UCCH	Utah Computerized Criminal History
UCJIS	Utah Criminal Justice Information Center
UCR	Uniform Crime Reports
VOCA	Victims of Crime Act
VPN	Virtual Private Network
WAN	Wide Area Network
WIN	Western Identification Network
WWW	World Wide Web
BRADY	This is not an Acronym. This is the section at BCI that handles firearm purchases and release of firearms in accordance to the Brady Bill.

## Commonly Misspelled Words

(Misspelled, Misspelt)

<u>Correct</u>	<u>Incorrect</u>			
accessory	acessory	accessory	acksessory	
acquittal	aquittal	acquital		
adjourn	ajourn	adjern	adjoirn	
adjudication	ajudication	ajudication	addjudication	
affidavit	affidavy	afidavit	afidavit	
arraignment	arrangement	arraginment	arrainment	
attendance	attendence	attendanse	atendance	
attorney	attourney	attorny		
bailiff	ballif	bailliff	baliff	
beneficiary	beneficary	benificarry	benneficiary	
codicil	codisil	codicil	coddicil	
commercial	comercial	commertial	comertial	commerisial
condemn	condem	condemm	condenm	
corroborate	corroberate	coorborate		
counsel	council	counsil	councel	
counterfeit	counterfiet	counterfit	counterfeat	
dismissal	dissmisal	dismisal	dismissil	
easement	easment	easemont	esement	
eliminate	elemanate	aliminate	elliminate	
escrow	esscrow	escro	escrough	
estoppel	estopell			
fiduciary	fijuciary	fidjuicary	fijuicary	
guardian	guardian	guardan	guardion	
immunity	imunity	immunity	immunety	
indictment	inditement	indictmeant	inditment	
initiative	iniative	enitiative	initative	
injunction	injuncsion	injuncshion	injuncton	
intelligence	inteligence	intellegence	intelegence	
interrogation	interogation	interrigation	interrogaton	
judgment	judgement	judgemant	judgemont	
license	licence	lisence	leicence	
lien	leen	lein	lean	
litigation	littigation	littigasion	litigashion	
ordinance	ordinence	ordinnance	ordinanse	
possession	posession	possession	possesson	
prejudice	prejudise	pregudice	prejedice	
privilege	prevelege	priviledge	preveledge	
receipts	receits	reciepts	receips	
reference	referance	referrence	refferense	
subpoena	subpena	subpeena	supbeona	
tenant	tennat	tennant	tenent	
transient	transeint	trancient	transent	

## **Introduction to the Court System and its Jurisdiction**

Every form of government, whether a democracy, monarchy or dictatorship, provides a system for resolving disputes which inevitably arise among people. In the United States, there is a dual legal system: one composed of federal courts and the other of state courts. Federal courts are those created by Federal Law. State courts are created by laws of the individual states. Every state in the United States has its own court system. The federal court and the state court systems are strikingly similar. Both derive their heritage from the legal system of England but have developed separately over the last two hundred years. No two states have exactly the same laws or the same procedures in their courts. Furthermore, the federal system is not exactly like that of any of the states. Although the terminology describing the various courts within a given system may vary, the basic functions of these courts are the same.

Each of the systems has a variety of courts. All have courts where a dispute is heard initially. These courts are known as trial courts. Trial courts are the workhorse of the court system. It is where most lawsuits are filed. Trial courts are places where witnesses testify, a Judge presides, and a Judge or Jury will render a verdict.

No two states have exactly the same laws or the same procedures in their courts. The federal system is not exactly like that of any of the states.

Every court system is divided into at least two classes of court:

1. Trial Courts.
2. Appellate Courts.

A trial court or court of first instances is the court in which most civil or criminal cases begin. Not all cases are heard in trial courts; some cases may begin in inferior limited jurisdiction bodies such as the case of the jurisdiction of an administrative body that has been created by statute to make some kind of binding determination under the law and where simplified procedural practices may apply similar to arbitration.<sup>3</sup>

In the trial court, evidence is taken and determinations are made, called findings of fact. Under the rules of evidence and applicable procedural law, the court also makes findings of law based upon the applicable law. Findings of fact are determined by the trier of fact (judge or jury) and the findings of law are always determined by the judge or judges. In most common law jurisdictions, the trial court often sits with a jury and one judge; though some cases may be designated “bench trials,” either by statute, custom, or by agreement of the parties, in which the judge makes both fact and law determinations.<sup>4</sup>

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<sup>3</sup> [http://en.wikipedia.org/wiki/Trial\\_court](http://en.wikipedia.org/wiki/Trial_court)

<sup>4</sup> [http://en.wikipedia.org/wiki/Trial\\_court](http://en.wikipedia.org/wiki/Trial_court)

A trial court is distinguished from an appellate court, which reviews cases that have already been heard in the trial court. In appellate review, the record of the trial court must be certified by the clerk of the trial court and transmitted to the appellate body. Most appellate courts do not have the authority to hear testimony or take evidence, but must rely upon the record below. Most trial courts are courts of record. The trial court is the court where the record of the presentation of evidence is created and must be maintained or transmitted to the appellate court.<sup>5</sup>

In appellate courts, the losing party seeks to have the decision of the trial court reviewed and overturned. Appellate courts decide their cases on the basis of stenographic record of the testimony at trial, documents presented at trial, pleadings filed, briefs submitted by the parties pointing out the legal authority for the positions they assert, and oral arguments where the attorneys attempt to clarify and amplify their respective positions. New evidence is not presented to the appellate courts. Appellate courts review the trial proceedings upon request of one of the parties to ensure both parties received a fair trial with respect to the applicable issues and that the decision was supported by evidence (testimony and documents) presented at trial.

Trial courts are "inferior" to appellate courts. Inferior refers to the concept that decisions of the appellate court of a state are deemed binding on the trial court within its jurisdiction. A trial court judge is required to follow the decision of the appellate court even if they disagree. The decision of the highest appellate court is binding on both the intermediate appellate court and the trial court of the same state.

In the United States, the United States district court is the sole trial court of general jurisdiction in the federal judicial system. State court systems refer to their trial courts by a variety of names, including "district court," "circuit court," "superior court," and (in New York) "Supreme Court."<sup>6</sup>

## **JURISDICTION**

**Jurisdiction** is the power or authority of a court to hear and decide the questions of law and/or facts presented by a lawsuit.

Most courts have **geographical jurisdiction**, meaning that they hear cases that arise within specific geographical boundaries.

Courts also have **personal jurisdiction**, or power over the particular person named in the lawsuit.

Each court has some form of **subject matter jurisdiction**. This jurisdiction is defined by the nature or subject of the lawsuits handled by that court. Examples are juvenile or appellate cases.

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<sup>5</sup> [http://en.wikipedia.org/wiki/Trial\\_court](http://en.wikipedia.org/wiki/Trial_court)

<sup>6</sup> [http://en.wikipedia.org/wiki/Trial\\_court](http://en.wikipedia.org/wiki/Trial_court)

When a court has **general jurisdiction**, it can hear all types of cases. Most states have trial courts of general jurisdiction where subject matter jurisdiction is assumed unless one party can demonstrate that the court does not have the necessary subject matter jurisdiction.

A court has limited jurisdiction when its authority to hear and decide cases is limited to specific types of cases. A court specifically labeled traffic court can hear only traffic cases.

**Limited jurisdiction** becomes **exclusive jurisdiction** when a court is the only court permitted to handle a specific type of case.

Frequently the jurisdiction of a court is limited by the amount of money claimed in the lawsuit. This monetary value is referred to as the **jurisdictional amount**.

### **Venue**

A concept related to jurisdiction, yet distinct from it is venue. Venue does not address the question of which court has subject matter or personal jurisdiction: it determines which court should hear a case based on convenience for the parties, location of witnesses and evidence, place where the event in question happened, and fairness. Venue is based on a traditional concept of "neighborhood," and the location of the event that triggered the lawsuit.

## **Administrative Structure of the Courts**

### **<sup>7</sup>Judicial Council**

The Utah Judicial Council is the policy making body for the judiciary. It has the constitutional authority to adopt uniform rules for the administration of all the courts in the state. The Council also sets standards for judicial performance, court facilities, support services, and judicial and non judicial staff levels.

The Council consists of fourteen members. The Chief Justice of the Supreme Court chairs the Council. The other members include: a Supreme Court Justice; a judge of the Court of Appeals; five District Court judges; two Juvenile Court judges; three Justice Court judges; a state bar representative; and the State Court Administrator, who serves as secretariat to the Council. The judges and the State Bar representative serve three year terms.

By rule, the Judicial Council established a Board of Judges for each level of court. Boards of Judges adopt administrative rules in accordance with the guidelines of the Council, advise the council, supervise the implementation of Council policies and serve as liaisons between judges and the Council.

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<sup>7</sup> [www.utcourts.gov](http://www.utcourts.gov)

The Judicial Council holds monthly meetings throughout the state. All the meetings are open and may be attended by interested parties. They provide an opportunity for other branches of government, federal agencies, and citizens to present issues and concerns directly to the judiciary.

### **State Court Administration**

The Court Administrator Act, passed in 1973 and revised in 1986, provides for the appointment of a State Court Administrator, an individual with professional ability and experience in the field of public administration and an understanding of court procedures and services.<sup>8</sup>

The State Court Administrator is assisted by a deputy administrator, district, juvenile and justice court administrators, trial court executives and management personnel in the following areas: human resources, public information, planning and research, finance, information technology, information services, audit and general counsel. The Administrative Office of the Courts serves as staff to the Judicial Council, rules committees, boards of judges, standing and ad hoc committees, and nominating commissions and provides support to clerks of court and trial court executives.<sup>9</sup>

The Administrative Office of the Courts has the responsibility to implement the standards, policies, and rules established by the Judicial Council; to organize and administer all of the non judicial activities of the court; to prepare the state judicial budget, conduct studies and develop procedures to further the administration of the courts.

### **Board of Judges**

By rule the Judicial Council established a Board of Judges for each level of court. The purpose of the Board is to adopt administrative rules in accordance with the standards and guidelines of the Judicial Council; to advise the Council; to supervise the implantation of council policies; to serve as liaison between local judges and the Council; and to develop statewide budget and legislative priorities. The Judicial Council holds monthly meetings throughout the state. All the meetings are open and may be attended by interested parties. They provide an opportunity for other branches of government, federal agencies, and citizens to present issues and concerns directly to the judiciary.

### **Local Court Administration**

Presiding judges are elected in the district, juvenile and circuit courts in each judicial district. The presiding judge, in addition to judicial responsibilities, oversees the activities and operation of the court. The presiding judge is assisted by a court executive, who supervises the work of all non judicial court staff and serves as the administrative officer.

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<sup>8</sup> [www.utcourts.gov](http://www.utcourts.gov)

<sup>9</sup> [www.utcourts.gov](http://www.utcourts.gov)

## **Selection, Retention & Performance Evaluations of Utah Judges<sup>10</sup>**

### **Merit Selection of Judges**

The office of judge is unique in our society. A judge is a public servant holding an office of high public trust and so should answer to the public. However, the obligation of a judge is to resolve disputes impartially and to base decisions solely upon the facts of the case and the law. A judge, therefore, should be insulated from public pressure.

Merit selection of judges was developed as an alternative to requiring judges to run in contested elections. The Judicial Article of the Utah Constitution, revised effective July 1, 1985, establishes merit selection as the exclusive method of choosing a state court judge. As stated in the Utah Constitution: "*Selection of judges shall be based solely upon consideration of fitness for office without regard to any partisan political consideration.*"

There are four steps in the Utah merit selection plan: nomination, appointment, confirmation and retention election. The Judicial Selection Act governs the process for selecting judges in Utah. The Governor appoints a committee of lawyers and non-lawyers for each judicial district, including the appellate courts. These committees are called Judicial Nominating Commissions. Commission members review the applications for vacant judicial positions and select candidates to interview. After interviews have been conducted, the Commission refers five names (for district and juvenile court judges) or seven names (for appellate court judges) to the Governor. The Governor appoints one of the nominees who must then be confirmed by a majority of the Utah State Senate.

### **Judicial Retention Elections**

Under Article VIII, Section 9 of the Utah Constitution, judges must stand for retention election at the end of each term of office. These terms are defined by Utah Code Section 20A-12-201. The public has the opportunity to vote whether to retain the judge for another term. Before a judge stands for retention election, he or she is evaluated by the Judicial Performance Evaluation Commission, described below.

### **Judicial Performance Evaluation**

The Utah Judicial Performance Evaluation Commission (JPEC) consists of thirteen members: four members appointed by each of the three branches of government and the executive director of the Utah Commission on Criminal and Juvenile Justice. JPEC's role is to evaluate the performance of judges standing for retention election and to recommend to voters whether a judge should be retained.

Beginning with the 2012 retention election, JPEC will administer surveys of attorneys, court staff, jurors, litigants and witnesses, as well as a courtroom observation program to assess judges' performance, demeanor, legal knowledge and temperament. This information is reported in the Voter's Pamphlet to help the public make informed

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<sup>10</sup> [www.utcourts.gov](http://www.utcourts.gov) (Court Organization, Judges, Court Governance)

decisions in judicial retention elections. JPEC has enacted Administrative Rule R597 describing its evaluation procedures.

## **About the Court System**

**Trial Courts** are the workhorse of the court system. It is where most lawsuits are filed. Trial courts decide questions of law and questions of fact. Questions of fact focus on what happened and may be decided by either the judge or a jury. Questions of law focus on the law or proper procedure to be applied to a particular case (such as was the evidence admissible), and are always decided by the judge. Most cases are resolved in the trial court.

**Intermediate Appellate Court** is the court that stands between the trial court and the court of final review. Most appeals from the trial courts must go to the intermediate appellate court and are resolved there. Cases of considerable significance are appealed from the intermediate appellate court and are accepted by the Supreme Court or the court of final appeal for review.

**The Appellate Court** When the losing party feels that questions of law were erroneously decided by the trial court judge, it has the right to appeal the case to an appellate court. The appellate court considers questions of law only and does not retry the facts of the case. Both federal and state court systems have a final court of appeal. In most systems, it is called the Supreme Court. Published opinions of an appellate court become the "rule of law" (precedent) in the particular geographical jurisdiction of that court.



## **THE FEDERAL COURT SYSTEM<sup>11</sup>**

The United States Federal Courts are the system of courts organized under the constitution and laws of the federal government of the United States. The federal courts are a branch of the federal government, and include:

1. General jurisdiction courts:
  - a. United States District Courts.
  - b. United States Court of Appeals.
  - c. Supreme Court of the United States.
2. Courts of specific subject matter jurisdiction:
  - a. United States Bankruptcy Courts.
  - b. United States Tax Court.
  - c. United States Court of International Trade.
  - d. United States Courts of Federal Claims.
  - e. United States Court of Appeals for the Armed Forces.
  - f. United States Court of Appeals for the Federal Circuit.

While federal courts are generally created by the U.S. Congress under the constitutional power described in Article III, many of the specialized courts are created under the authority granted in Article I.

Greater power is vested in Article III courts because the greater control that congress is able to exercise over Article I courts would threaten the balance of power between the branches of government.

Article III requires the establishment of a Supreme Court and permits the U.S. Congress to create other federal courts, and place limitations on their jurisdiction. In theory, congress could eliminate the entire federal judiciary except for a single Supreme Court Justice (who would be the Chief Justice by default). However, the first congress immediately established a system of lower federal courts through the Judiciary Act of 1789.

### **Levels of U.S. Federal Courts<sup>12</sup>**

The Federal District Courts are the general federal trial courts, although in many cases congress has passed statutes which divert original jurisdiction to the above-mentioned specialized courts or to administrative law judges (ALJs). In such cases, the district courts have jurisdiction to hear appeals from such lower bodies.

The Federal Court of Appeals is the intermediation appellate courts. They operate under a system of mandatory review, which means they must hear all appeals from the lower courts.

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<sup>11</sup> [http://en.wikipedia.org/wiki/United\\_States\\_Federal\\_Courts](http://en.wikipedia.org/wiki/United_States_Federal_Courts)

<sup>12</sup> [http://en.wikipedia.org/wiki/United\\_States\\_Federal\\_Courts](http://en.wikipedia.org/wiki/United_States_Federal_Courts)

Finally, the United States Supreme Court is the court of last resort. It generally operates under discretionary review, meaning that it can pick and choose cases (through grants of writ of certiorari) and hear only non frivolous appeals that present truly novel issues. In a few unusual situations (like lawsuits between state governments or some cases between the federal government and a state), it sits as a court of original jurisdiction. Such matters are generally referred to a designated individual (usually a sitting or retired judge or well-respected attorney) to sit as “Special Master,” who reports to the court with recommendations.

### **Other Federal Trial Courts**<sup>13</sup>

There are other federal trial courts that have nationwide jurisdiction over certain types of cases, but the district court also has concurrent jurisdiction over many of those cases, and the district court is the only one with jurisdiction over criminal cases. The Court of International Trade addresses cases involving international trade and customs issues. The United States Court of Federal Claims has exclusive jurisdiction over most claims for money damages against the United States, including disputes over federal contracts, unlawful takings of private property by the federal government, and suits for injury on federal property or by a federal employee. The United States Tax Court has jurisdiction over contested pre-assessment determinations of taxes.

### **United States District Courts**

The 94 United States District Courts are the general trial courts of the United States federal court system. Both civil and criminal cases are filed in the district court, which is a court of both law equity and admiralty.<sup>14</sup> It is the court of original jurisdiction, which refers to the fact that this court has the authority to decide a case when it is first instituted by one of the parties. The district court is also a court of limited jurisdiction, which means that this court has the authority to adjudicate only cases that fall within a particular class of cases. Unless a case falls within the limits set up by congress, the federal courts do not have the authority to decide it.

To invoke the authority of the federal district courts, a plaintiff or party instituting an action must affirmatively demonstrate that the case falls within one of the following, also called **subject matter jurisdiction**:

1. Cases arising under the federal constitution or laws and treaties of the United States (28 U.S.C. § 331).
2. Cases between citizens of different states involving a claim worth \$50,000.00 or more. (28 U.S.C. § 1332).
3. Civil cases of admiralty and maritime jurisdiction (28 U.S.C. § 1333).
4. Civil cases brought by and against the United States (28 U.S.C. § 1345 and 1346).
5. Cases proceeding under the copyright and patent laws (23 U.S.C. § 1338).
6. Federal Tort Claims Act cases (28 U.S.C. § 1346(b)).
7. Patents, copyrights and trademark cases (28 U.S.C. § 1338).

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<sup>13</sup> [http://en.wikipedia.org/wiki/United\\_States\\_district\\_court](http://en.wikipedia.org/wiki/United_States_district_court)

<sup>14</sup> [http://en.wikipedia.org/wiki/United\\_States\\_district\\_court](http://en.wikipedia.org/wiki/United_States_district_court)

8. Civil rights cases (28 U.S.C. § 1343).

### **United States Court of Appeals**<sup>15</sup>

The United States Court of Appeals (or circuit courts) are the mid-level appellate courts of the United States federal court system. A court of appeals decides appeals from the district courts within its federal judicial circuit, and in some instances from other designated federal courts and administrative agencies.

There currently are thirteen United States Courts of Appeals, although there are other tribunals (such as the Court of Appeals for the Armed Forces, which hears appeals in court-martial cases) that have “Court of Appeals” in their titles. The eleven “numbered” circuits and the D.C. Circuit are geographically defined. The Thirteenth Court of Appeal is the United States Court of Appeals for the federal circuit, which has nationwide jurisdiction over certain appeals based on subject matter. All of the courts of appeals also hear appeals from some administrative agency decisions and rulemaking, with by far the largest share of these cases heard by the D.C. Circuit. The Federal Circuit hears appeals from specialized trial courts, primarily the United States Court of International Trade and the United States Court of Federal Claims, as well as appeals from the district courts in patent cases and certain other specialized matters.

Decisions of the U.S. Courts of appeals have been published by the private company West Publishing in the *Federal Reporter* series since the courts were established. Not every court decision is available, however. Only decisions that the courts designate for publication are included; “unpublished” opinions (of all but the Fifth and Eleventh Circuits) are nevertheless included in West's *Federal Appendix*, and are also available in online databases like Lexis or Westlaw. More recently, case decisions are also available electronically on the official websites of the courts themselves.

The circuit with the smallest number of appellate judges is the First Circuit, and the one with the most is the Ninth Circuit. The number of judges Congress has authorized for each circuit is set forth in the U.S. Code (U.S.C.) at Title 28, Section 44.

Although the courts of appeals are frequently referred to as “circuit courts,” they should not be confused with the historical United States Circuit Courts, which existed from 1789 to 1911, and were primarily trial courts.

### **Procedure**<sup>16</sup>

Trials at which witnesses and other evidence are presented to a jury or judge in order to determine the truth or facts regarding a particular case are held only in courts with original jurisdiction, i.e., courts in which a lawsuit is originally (and properly) filed and which have the power to accept evidence from witnesses and make factual and legal determinations regarding the evidence presented. Such trial courts also determine what, if any, punishment (in criminal cases) or what damages (in civil cases) should be awarded. Because the courts of appeals possess only appellate jurisdiction, they do not hold trials. Instead, appeals courts decide only the question of whether the trial court followed proper

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<sup>15</sup> [http://en.wikipedia.org/wiki/United\\_States\\_court\\_of\\_appeals](http://en.wikipedia.org/wiki/United_States_court_of_appeals)

<sup>16</sup> [http://en.wikipedia.org/wiki/United\\_States\\_court\\_of\\_appeals](http://en.wikipedia.org/wiki/United_States_court_of_appeals)

procedures in reaching its conclusion in a particular case. Accordingly, an appeals court considers only the record (that is, the papers the parties filed and the transcripts and any exhibits from any trial) from the trial court, and the legal arguments of the parties. These arguments, which are presented in written form and can range in length from dozens to hundreds of pages, are paradoxically known as “briefs.” Sometimes lawyers are permitted to add to their written briefs with oral arguments before the appeals judges. At such hearings, only the parties' lawyers speak to the court.

An appellate court cannot find anyone “guilty” or “not guilty.” Because the appeals court is judging the trial itself, not the defendant, no one is ever convicted or sentenced by an appeals court. When a convicted criminal “wins” an appeal, it does not mean that he is now found to be innocent. It means that his trial was judged by the appeals court to have been improperly conducted in one way or another. He or she is still subject to being tried again on the same charges, a retrial which does not count as “double jeopardy,” prohibited by the Bill of Rights. Sometimes the prosecutor will opt not to try the person again, and the charges are therefore dropped entirely.

The rules that govern the procedure in the courts of appeals are the *Federal Rules of Appellate Procedure*. In a court of appeals, an appeal is almost always heard by a “panel” of three judges who are randomly selected from the available judges (including senior judges and judges temporarily assigned to the circuit). Some cases, however, receive an *en banc* hearing; except in the Ninth Circuit, the *en banc* court consists of all circuit judges on active status, but does not include senior or assigned judges (except that under some circumstances, a senior judge may participate in an *en banc* hearing when he or she participated at an earlier stage of the same case).

Historically, certain classes of cases held a right of automatic appeal to the Supreme Court of the United States; that is, one of the parties to the case could appeal a decision of a court of appeals and the Supreme Court had to accept the case. There is no longer any right of automatic appeal for a decision of a court of appeals, but a party may apply to that court to review a ruling of the circuit court—called petitioning for a writ of certiorari—and the Supreme Court may, in its discretion, review any such ruling. In extremely rare cases, the Supreme Court may grant certiorari before judgment, thereby removing a case from the court of appeals and reviewing the lower court's ruling directly. This procedure was used in the Watergate-related case, *United States v. Nixon*, 418 U.S. 683 (1974).

A court of appeals may also certify questions to the Supreme Court. This procedure was formerly used on occasion, but is now rare. The last instance of the Supreme Court accepting a certificate and answering the questions presented was in 1982. Appeals court decisions, unlike trial court decisions, are binding precedent. Other courts in that circuit must, from that point forward, follow the appellate court's guidance in similar cases, regardless of whether the trial judge believes that the case should be decided differently.

Laws may change over time; therefore, the law that exists at the time of the appeal may differ from the law that existed at the time of the events being disputed by the litigants. A court of appeals applies the law as it exists at the time of the appeal; otherwise it would be handing down decisions that were instantly obsolete, and this would be a waste of resources since such decisions could not be cited as precedent. “[A] court is to apply the law in effect at the time it renders its decision, unless doing so would result in manifest injustice or there is statutory direction or legislative history to the contrary.” *Bradley v. Richmond Sch. Bd.*, 416 U.S. 696, 711-12 (1974). This rule does not, however, apply in criminal cases if the effect would be to create an *ex post facto* law.

### **Attorneys**<sup>17</sup>

In order to serve as counsel in a case appealed to a court of appeals for a specific circuit, the attorney must be admitted to the bar of that circuit. The United States does not have a separate bar examination for federal practice (except with respect to patent law).

Admission to the bar of a circuit court is granted as a matter of course to any attorney who is admitted to practice law in any state of the United States, whether within the circuit or before another federal court of appeals. The attorney submits an application, pays a fee, and takes the oath of admission. Local practice varies as to whether the oath is given in writing or in open court before a judge of the circuit, and most courts of appeals allow the applicant attorney to choose which method he or she prefers.

### **The United States Supreme Court**

The Supreme Court of United States is the highest judicial body in the United States and is the only part of the judicial branch of the United States federal government explicitly specified in the United States Constitution. It is assigned the highest appellate authority among the courts that congress is authorized to create.<sup>18</sup> It hears appeals from the U. S. Courts of Appeals and from the supreme or highest court for any state in cases involving rights under the U.S. Constitution, treaties, or statutes.

The court consists of nine justices: The Chief Justice of the United States and eight Associate Justices. The Justices are nominated by the President and confirmed with the “advice and consent” of the senate. They are appointed to serve “during a term of good behavior,” which almost always means for life, and leave office only upon death, retirement, resignation, or impeachment and subsequent conviction.<sup>19</sup>

Most appeals reach the Supreme Court on a writ of certiorari. This is a discretionary procedure that allows the court to take only the cases that, in its opinion, have sufficient national significance to warrant its attention. The U.S. Supreme Court will also hear cases where there is a serious conflict in the decisions of the various circuits of the court of appeals. Besides discretionary review, the Supreme Court must hear appeals regarding specific types of constitutional issues.

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<sup>17</sup> [http://en.wikipedia.org/wiki/United\\_States\\_court\\_of\\_appeals](http://en.wikipedia.org/wiki/United_States_court_of_appeals)

<sup>18</sup> [http://en.wikipedia.org/wiki/United\\_States\\_Supreme\\_Court](http://en.wikipedia.org/wiki/United_States_Supreme_Court)

<sup>19</sup> [http://en.wikipedia.org/wiki/United\\_States\\_Supreme\\_Court](http://en.wikipedia.org/wiki/United_States_Supreme_Court)

There are several specialized courts in the federal system that been created to handle certain unique types of cases. The United States Claims Court has trial jurisdiction over claims against the United States arising from federal law or involving contracts with the United States arising from federal law or involving contracts with the United States. The Court of International Trade has exclusive jurisdiction over actions concerning foreign imports and trade. The United States Court of Appeals for the Federal Circuit hears appeals from the Court of International Trade, the U.S. Claims Court, and the Office of Commissioner of Patents. The United States Tax Court has original (trial) jurisdiction over cases involving federal income, death, or gift taxes. The Court of Military Appeals consists of three civilian judges who sit on the court of review over court martial convictions in all the services.

The Supreme Court meets in Washington, D.C., in the United States Supreme Court building. The Court is sometimes unofficially referred to by the abbreviations **SCOTUS** (Supreme Court of the United States) and **USSC** (United States Supreme Court). The Court's yearly terms usually start on the first Monday in October and technically continue for a full year, although in practice the Court usually does not convene between late June and late September. Each term consists of alternating two-week intervals. During the first interval, the Court is in session ('sitting') and hears cases, and during the second interval, Court hearings are recessed to consider and write opinions on cases they have heard.<sup>20</sup>

### **Jurisdiction**

The Supreme Court has both original and appellate jurisdiction, with appellate jurisdiction accounting for most of the court's caseload. The court's original jurisdiction (in which it is the first and only court to rule) is narrowly focused, as defined in Article III, Section 2 of the Constitution: "In all cases affecting other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction." The court's appellate jurisdiction encompasses "all cases" within the scope of Article III, but is subject to limitation imposed by acts of congress under the Exceptions Clause in Article III, and by the discretion of the court.<sup>21</sup>

Judicial Power shall extend to all cases, in law and equity, arising under the U.S. Constitution, the laws of the U.S. and Treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls to all cases of admiralty and maritime jurisdiction to controversies between two or more states between a state and citizens of another state between citizens of different states between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In cases affecting ambassadors, etc., and those in which a state shall be a party, the court has original jurisdiction. In all other cases, the court shall have appellate jurisdiction.

Congress has from time to time conferred upon the court power to prescribe rules of procedure to be followed by the lower courts of the U.S. Such rules include civil and

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<sup>20</sup> [http://en.wikipedia.org/wiki/United\\_States\\_Supreme\\_Court](http://en.wikipedia.org/wiki/United_States_Supreme_Court)

<sup>21</sup> [http://en.wikipedia.org/wiki/United\\_States\\_Supreme\\_Court](http://en.wikipedia.org/wiki/United_States_Supreme_Court)

criminal cases in the district courts, bankruptcy proceedings, admiralty cases, copyright cases, appellate proceedings, and criminal minor offense proceedings before U.S. magistrate.

Federal Court Jurisdiction: Constitutional and Statutory Provisions, United States Constitution. Article III. Section 2:

The judicial power shall extend (1) to all cases . . . arising under this Constitution, The laws of the United States, and all treaties made . . . under their authority; (2) to all cases affecting Ambassadors, other public ministers and all cases affecting Ambassadors, other public ministers and Consuls; (3) to all cases of admiralty and maritime jurisdiction; (4) to controversies to which the United States shall be a party; (5) to controversies between two or more states; (6) between a state and citizens of another state; (7) between citizens of different states; (8) between citizens of the same state claiming lands under grants of different states; (9) between a state, or the citizens thereof, and foreign states, citizens or subjects.

Title 28, U.S. Code, § 1331 (a) (Federal Question Jurisdiction):

The district courts [of the United States] shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$50,000 ... and arises under the Constitution, Laws, or Treaties of the United States

Title 28, U.S. Code, § 1332(a) (Diversity of Citizenship Jurisdiction):

The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$50,000 ... and is between –

1. Citizens of different states;
2. Citizens of a state, and foreign states or citizens or subjects thereof; and
3. Citizens of different states and in which foreign states or citizens or subjects thereof are additional parties.

## **Parties in Court Proceedings**

### **1. Judge**

The Judge is responsible for the conduct of the proceedings. Although the judge's rulings are subject to exception and appeal to a higher tribunal, they may not be actively questioned while the trial proceeds. As the evidence is presented, the judge rules on objections and makes certain limited instructions to the jury. After the evidence is completed, the judge instructs the jury about the law. If a trial is without a jury (a bench trial), the judge is also the finder of facts as well as the determiner of the law.

### **2. Jury**

The jury's function is to listen to the evidence, to make determinations of fact when testimony conflicts, and to apply the law to those determinations as instructed by the judge.

### **3. Court Reporter**

The Court Reporter records verbatim every word spoken in the courtroom. Even conferences at the bench between the judge and attorneys are often recorded by the court reporter at the judge's request or at the request of the attorneys.

### **4. Clerk of Court**

The Clerk of the Court is responsible for scheduling the trials and seeing that all matters in the court run smoothly. He or she is the administrative officer of the court. The clerk reads the indictment at the beginning of the trial but may have no other spoken function during the trial.

### **5. Bailiff**

The bailiff is responsible for preserving order in the court, under the direction of the court.

### **6. Attorneys**

All attorneys are officers of the court. An attorney is responsible for presenting the evidence in the most favorable light for his or her client. The attorney must abide by the rules of the court and defer to the ruling of the judge whether or not he or she agrees with it at the time

### **County Prosecutor**

The county attorney or deputy county attorney shall appear and prosecute for the state in the district court of the county in all criminal prosecutions, may appear and prosecute in all civil cases in which the state may be interested, and shall render assistance and cooperation as required by the attorney general, §17-18-1.

### **City Prosecutor**

In cities with a city attorney, the city attorney may prosecute violations of city ordinances, may prosecute, under state law, infractions and misdemeanors



occurring within the boundaries of the municipality, and has the same powers in respect to violations as are exercised by a county attorney or district attorney, § 10-3-928.

### **Defense Attorney**

A lawyer who represents a defendant in a civil or criminal case.

### **Civil Attorney**

A civil attorney in a county or city attorney's office gives legal advice to the county commission or city council and to public officials. The civil attorney shall defend all actions brought against the county, prosecute all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the county, give, when required, an opinion in writing to county, district, and precinct officers on matters relating to the duties of their respective offices.

## **7. Probation Officer**

Probation officers investigate and supervise defendants during court ordered probation and, often, make recommendations in sentencing hearings in courts of law.

## **8. Victim's Advocate**

A victim advocate reduces the trauma experienced by victims in prosecuted cases. Provide direct advocacy support to victims with a clear explanation of the criminal justice system. They assist with referrals to resources, safety planning, obtaining CVR (Crime Victim Reparations) claims, victim impact statements, protective orders, restitution issues, acts as a liaison with prosecution, and assists victims with Board of Pardons and Parole hearings.

## **Table of Jurisdiction**

<b>Court</b>	<b>Original Jurisdiction</b>	<b>Appellate Jurisdiction</b>
Supreme Court	<ol style="list-style-type: none"> <li>1. Questions from Federal Court</li> <li>2. Extraordinary Writs</li> </ol>	<ol style="list-style-type: none"> <li>1. Certiorari to Court of Appeals</li> <li>2. Lawyer Discipline</li> <li>3. Judicial Conduct</li> <li>4. First Degree or Capital Felony</li> <li>5. PSC, Tax Commission, State Engr., Board of State Lands and Board of Oil, Gas and Mining.</li> <li>6. Statutes held to be unconstitutional</li> </ol>
Court of Appeals	<ol style="list-style-type: none"> <li>1. Extraordinary Writs</li> </ol>	<ol style="list-style-type: none"> <li>1. Administrative Agencies</li> <li>2. Circuit Court</li> <li>3. Juvenile Court</li> <li>4. Criminal except: First Degree or Capital Felony</li> <li>5. Domestic Relations</li> <li>6. Transfers from Supreme Court</li> </ol>
District Court	<ol style="list-style-type: none"> <li>1. Class "A" Misdemeanors*</li> <li>2. All Criminal Felonies</li> <li>3. All Civil Actions</li> <li>4. Extraordinary Writs</li> </ol>	<ol style="list-style-type: none"> <li>1. Administrative Agencies</li> </ol>
Justice Court	<ol style="list-style-type: none"> <li>1. Class "B &amp; C" Misdemeanors</li> <li>2. Infractions</li> </ol>	
<i>Juvenile Court</i>	Most juvenile offenses for those under 18 years of age.	

**\*For municipalities not having a Justice Court, misdemeanors are heard in District Court.**

## List of Counties with Districts<sup>22</sup>

### 1<sup>st</sup> Judicial District

- Box Elder County
- Cache County
- Rich County

### 2<sup>nd</sup> Judicial District

- Davis County
- Morgan County
- Weber County

### 3<sup>rd</sup> Judicial District

- Salt Lake County
- Summit County
- Tooele County

### 4<sup>th</sup> Judicial District

- Juab County
- Millard County
- Utah County
- Wasatch County

### 5<sup>th</sup> Judicial District

- Beaver County
- Iron County
- Washington County

### 6<sup>th</sup> Judicial District

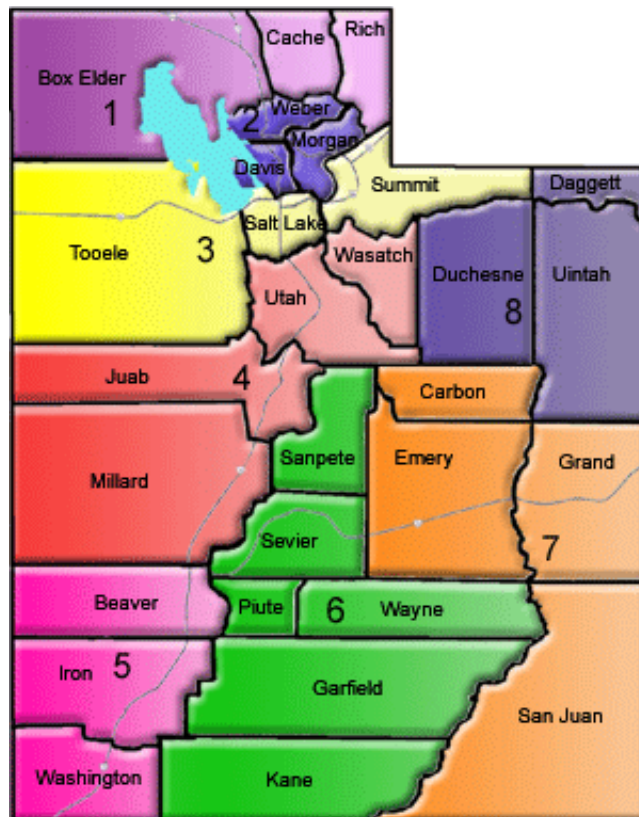
- Garfield County
- Kane County
- Piute County
- Sanpete County
- Sevier County
- Wayne County

### 7<sup>th</sup> Judicial District

- Carbon County
- Emery County
- Grand County
- San Juan County

### 8<sup>th</sup> Judicial District

- Daggett County
- Duchesne County
- Uintah County



<sup>22</sup> [www.utcourts.gov](http://www.utcourts.gov) (Court Organization, Judges, Court Governance)

## **State of Utah Court Organization**<sup>23</sup>

The Utah State Court System is comprised of two appellate courts: the Supreme Court and the Court of Appeals; trial courts including the District, Juvenile, and Justice Courts; and two administrative bodies the Judicial Council and the Administrative Office of the Court. District, Juvenile, and Justice Courts are located in each of the state's eight judicial districts.

### **Supreme Court**

The Supreme Court is the "court of last resort" in Utah. The court consists of five justices who serve ten-year renewable terms. The justices elect a chief justice by majority vote to serve for four years, and an associate chief justice to serve for two years.

The Supreme Court has original jurisdiction to answer questions of state law certified from Federal Courts and to issue extraordinary writs. The Court has appellate jurisdiction to hear first degree and capital felony convictions from the District Court and civil judgments other than domestic cases. It also reviews formal administrative proceedings of the Public Service Commission, Tax Commission, School and Institutional Trust Lands Board of Trustees, Board of Oil, Gas, and Mining, and the State Engineer. The Supreme Court also has jurisdiction over judgments of the Court of Appeals by writ of certiorari, proceedings of the Judicial Conduct Commission, and both constitutional and election questions.

The Supreme Court conducts sessions regularly at the Matheson Courthouse in Salt Lake City, but the Court may sit in other locations occasionally. The Court generally sits the first and third Mondays of each month to decide procedural and substantive matters presented on a law and motion calendar. Following presentation of oral arguments by attorneys, the justices hold a conference and vote to either grant or deny the motions. Three of the five justices sit on the law and motion panel, allowing two justices to devote more time to writing opinions.

In the first week of every month, the Court schedules oral arguments. After attorneys argue their cases before the Court, the justices hold a conference, and one justice is assigned to write an opinion. Writing assignments are rotated to distribute the caseload as equally as possible. The justices may also elect to write separate concurring or dissenting opinions.

The justices are assisted by law clerks, staff attorneys, a Clerk of the Court, and a staff of legal secretaries and front office clerks. Law clerks are recent law school graduates who do legal research on issues before the court. The staff attorneys screen the cases to be heard by the court and the Clerk of Court is responsible for processing legal matters filed with the court.

The Supreme Court also adopts rules of civil and criminal procedure and rules of evidence for use in the state courts and manages the appellate process. The Court also

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<sup>23</sup> [www.utcourts.gov](http://www.utcourts.gov)

governs the practice of law, including admission to practice law and the conduct and discipline of lawyers.

### **Court of Appeals**

The Utah Court of Appeals, created in 1987, consists of seven judges who serve six-year renewable terms. A presiding judge is elected by majority vote to serve for two years. The jurisdiction of the Court of Appeals is complementary to that of the Supreme Court. The Court of Appeals hears all appeals from the Juvenile and District Courts, except those from the small claims department of a District Court. It also determines appeals from District Court involving domestic relations cases, including divorce, annulment, property division, child custody, support, visitation, adoption and paternity, and criminal matters of less than a first degree or capital felony. The Court also reviews appeals of administrative proceedings by state agencies including the Utah Industrial Commission and the Department of Employment Security Career Service Review Board. It also has jurisdiction to hear cases transferred to it by the Supreme Court.

Court of Appeals sessions usually are conducted in Salt Lake City, but the Court travels several times per year, holding court in different geographical regions of the state. The Court sits and renders judgment in rotating panels of three judges. It is prohibited by statute from sitting en banc (all seven members at once). The panels hear oral arguments in cases during the third and fourth week of the month. After hearing arguments, the judge's conference to discuss the issues raised in the case. One of the judges on the panel is assigned to write the opinion of the court. In addition to its oral argument panels, the court designates three judges to sit on the law and motion panel. This panel determines procedural and substantive motions and hears cases on one day per month. The judges are assisted by the Clerk of the Court, central staff attorneys, law clerks, legal secretaries, and deputy clerks.

### **District Court**

The District Court is the state trial court of general jurisdiction. There are 71 full time district judges serving in the state's eight judicial districts.

The District Court has original jurisdiction to try all civil cases and all criminal felonies, such as homicides, assaults, sex and drug offenses, forgery, arson, robbery, and misdemeanors in certain circumstances. An important part of the District Court caseload is domestic relations cases, such as divorce, child custody and support, adoption, and probate. District judges also have the power to issue extraordinary writs. In addition, the Court serves as an appellate court to review informal adjudicative proceedings from administrative agencies.

Each district judge is assigned a court clerk and a bailiff. Either a court reporter or an electronic recording device is provided to maintain a verbatim record of all court proceedings. In the more populous districts, commissioners have been appointed to assist the district judges by conducting pretrial hearings, pursuing settlements, making recommendations to the judges and handling domestic relations. Commissioners can also accept pleas in misdemeanor cases and, with the consent of the parties, conduct

misdemeanor trials. If a party disagrees with the court commissioner's recommendations, a rehearing may be requested before a judge.

Criminal appeals from the district court are heard in the court of appeals, except those involving a criminal conviction of a first degree or capital felony.

### **Justice Court**

Justice courts are established by counties and municipalities and have the authority to deal with class B and C misdemeanors, violations of ordinances, small claims, and infractions committed within their territorial jurisdiction. They may issue search warrants and other processes. Justice court jurisdictions are determined by the boundaries of local government entities such as cities or counties, which hire the judge. Justice courts are limited jurisdiction courts, not of record, which means no verbatim record of the proceedings is kept. One hundred eight justice court judges serve in 134 county and municipal courts.

There are two types of justice court judges: county judges who are initially appointed by a county commission and then stand for retention election every four years, and municipal judges who are appointed by city officials for a 4-year term. Some are both county and municipal judges. Some judges hear cases daily, and others have limited court hours each week. Justice court judges need not be attorneys, although they receive extensive and continuing legal training. All justice court judges must attend 30 hours of continuing judicial education each year to remain certified.

The justice courts also share jurisdiction with the juvenile court over minors 16 or 17 years old, who are charged with traffic offenses, except for automobile homicide, alcohol or drug related traffic offenses, reckless driving, fleeing from an officer, and driving on a suspended driver's license.

City attorneys prosecute cases involving municipal ordinance violations and state law in municipal courts. County attorneys prosecute cases involving violations of county ordinances and state law in the county courts, except Salt Lake County where the District Attorney's office prosecutes the cases. Litigants and defendants often act without an attorney (*pro se*) in justice courts.

Any person not satisfied with a judgment rendered in justice court is entitled to a ***trial de novo*** (new trial). District courts hear all trial de novo arising from justice court judgments, conducted in the district court. Any justice court judge may be appointed by the presiding district judge to conduct preliminary examinations for felony cases under some circumstances. Justice courts also may, if certified by the Judicial Council, create a Small Claims Department, which has jurisdiction over claims under \$5,000.

### **Juvenile Court**

The Juvenile Court is a court of **special jurisdiction**. It includes 28 full-time judges and one commissioner. The Juvenile Court is of equal status with the district court.

The Juvenile Court has **exclusive original jurisdiction** over youths, less than 18 years of age, who violate any federal, state or municipal law, and any child who is abused, neglected, or dependent. The court has the power to determine child custody, support and visitation in some circumstances; to permanently terminate parental rights; and to authorize or require treatment for mentally ill or retarded children. The court may also place children under the supervision of the court's probation department; or place children in the custody or care of foster homes, group homes, special treatment centers, or secure institutions. The court works closely with the Office of Guardian ad Litem on cases involving abuse, neglect or dependency. The court may also require children to pay fines or make restitution for damage or loss resulting from their delinquent acts. It also has jurisdiction over habitual truants, runaways and ungovernable youth if efforts by other social service agencies are not successful.

In addition, the court has **exclusive jurisdiction** in traffic offenses involving minors related to automobile homicide, driving under the influence of alcohol or drugs, reckless driving joy riding and fleeing a police officer. It has concurrent jurisdiction with the district and justice courts over adults contributing to the delinquency and neglect of a minor.

Utah is served by 28 judges and 1 commissioner in its 8 judicial districts. The 8 judges in the 3<sup>rd</sup> District which includes Salt Lake, Summit and Tooele Counties are assisted by a commissioner who is trained as an attorney. The commissioner generally hears a variety of cases, ranging from traffic citations, truancy and protective custody to more serious crimes. The commissioner submits findings and recommendations to a judge in writing. If a party disagrees with the commissioner's ruling, a rehearing before a judge may be requested.

The Juvenile Court, unlike other state courts of record, administers a probation department. Probation officers prepare dispositional reports, supervise youth who have been placed on probation by the court, conduct evaluations and submit reports on the progress of each juvenile. A clerical division prepares the legal documents and maintains the official court record.

As a member of the Interstate Compact on Juveniles, the court accepts supervision of juveniles who move to Utah from another state (who were under court supervision before moving). In turn, the court often requests another state to supervise juveniles who move while still under court supervision in Utah.

All appeals from the Juvenile Court are heard in the Court of Appeals.

### **Why a Juvenile Court?**<sup>24</sup>

Unlike adult criminal courts which are criminal in nature, the juvenile courts are civil courts. The reason for this difference is because juvenile court, rather than simply

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<sup>24</sup> [www.utcourts.gov](http://www.utcourts.gov) (Juvenile Court: An Introduction for Kids & Families)

punishing kids, also exists to protect the community while rehabilitating young people charged with breaking the law.

The following shows how different the juvenile court is from adult court:

- a. Many hearings are closed to the public in order to protect the youth's privacy. For example special care is taken to shield the child from publicity.
- b. Juveniles do not have the right to request jury trials .
- c. Juveniles cannot post bail to leave detention.
- d. Intake and probation officers who handle juveniles are court employees under the judicial branch.

### **The Rights of a Juvenile in Juvenile Court<sup>25</sup>**

1. The right to appear in person to defend him/her own self.
2. The right to have an attorney represent the juvenile. If the juvenile cannot afford an attorney, the court will appoint a lawyer for them.
3. The right to know the state's accusation against the juvenile.
4. The right against self-incrimination.
5. The right to a speedy trial and for time to prepare a defense. The court has to tell the juvenile of any court hearings.
6. The right for the Juvenile and any witness to tell their side of the story.
7. The right to ask questions of the people accusing you.
8. The right to an appeal – to ask a higher court to decide whether or not the judge was right if he or she found the juvenile guilty.

### **What Happens in Juvenile Court?<sup>26</sup>**

<b>Delinquency Cases: When Kids Get in Trouble</b>	<b>Dependency Cases: When Parents Get in Trouble</b>
Class A Misdemeanors and Felonies	Dependency cases involve children who have been neglected, abused, and who are dependent.
Class B or Class C Misdemeanors and Infractions	For further information a juvenile court administrator or a defense attorney will need to be contacted.
Violations of Tobacco and Alcohol Laws	
Other infractions or Misdemeanors Identified by the General Order of the Board of Juvenile Court Judges.	
Violations of Curfew Laws	
Class B Misdemeanor or Lesser Traffic Violation (for children under the age of 16)	
Violation of Boating Laws	
Violations of Fish & Game Laws	

<sup>25</sup> [www.utcourts.gov](http://www.utcourts.gov) (Juvenile Court: An Introduction for Kids & Families)

<sup>26</sup> [www.utcourts.gov](http://www.utcourts.gov) (Juvenile Court: An Introduction for Kids & Families)



## **Juvenile Justice System Process Description**<sup>27</sup>

1. A juvenile enters the system when he or she commits an offense and is arrested by police.
2. The police may take the youth to a Receiving Center, make a referral, or take the youth's name and give them a warning. If the youth is taken to a Receiving Center, the youth may be released home, referred to Youth Services for counseling or a time out, or referred to other services for additional help (intervention). Youth may be required by the Court to meet with an intake probation officer about their offense. The probation officer decides if the youth must see a judge, a commissioner, or whether the meeting addresses the offense (non-judicial closure).
3. If the youth is arrested for a "bookable offense," the youth may enter either Locked or Home Detention (if a judge orders Home Detention at a hearing). The youth receives a Detention Hearing within 48 hours. The Detention Hearing decides whether the youth will remain in Locked Detention, Home Detention, return home, or to a less restrictive placement until the youth has a Juvenile Court Hearing.
4. The Juvenile Court Hearing decides guilt or innocence, and the sanctions (punishment) for the offense. The judge may order the youth to JJS Custody or order other sanctions (e.g., levy a fine, order payment of restitution to victims, place the offender on probation, order the youth to more detention or a work camp). Serious juvenile offenders may be transferred to adult court.
5. Youth who are ordered to JJS custody receive a Case Manager.
6. The Juvenile Court Judge may order the youth to Juvenile Justice Services for community placement, Observation and Assessment, or Secure Care.
7. A youth ordered to Observation and Assessment spends 45 days in the program, and then returns to Juvenile Court for final sanctions. The judge reviews the assessments and decides where the youth will be placed. Youth are then reviewed every 90 days until they are released.
8. Youth in community programs are reviewed by a Juvenile Court judge who determines whether the youth is prepared to leave JJS custody or requires further program participation.
9. All youth sent to Secure Care are under the jurisdiction of the Youth Parole Authority. They participate in a Parole Authority Review to receive a guideline for how long their stay may be. Youth may participate in a Transition Program in the community to learn skills to live in the community and have additional Parole Authority Reviews as needed. The Parole Authority decides whether the youth is prepared to leave JJS custody.

## **Non-Judicial Agreement**

A Non-Judicial Agreement is a written agreement between the juvenile, the intake officer and the parent(s). Once the juvenile completes the requirements of the agreement, no petition will be filed with the court. Some of the conditions a juvenile could face if he/she signs a non-judicial agreement are:

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<sup>27</sup> [www.utcourts.gov](http://www.utcourts.gov)

1. Paying a fine.
2. Paying the victim back for any damage caused to him or her (restitution).
3. Community service hours.
4. Counseling.
5. Drug or Alcohol Assessment.
6. House arrest or probation.
7. Other reasonable actions in the interest of the minor/community.

### **Children in Adult Courts**

When a minor has committed a serious offense, they may be tried as an adult. There are three ways a minor can be certified and tried as an adult offender:

1. Direct File
2. Serious Youth Offender Procedure
3. A Certification Hearing

#### **Direct File §78A-6-701**

The District Court has exclusive original jurisdiction over all persons 16 years of age or older charged with:

- a. an offense which would be murder or aggravated murder if committed by an adult; or
- b. an offense which would be a felony if committed by an adult if the minor has been previously committed to a security facility.

When the district court has jurisdiction over a minor under this section, it also has jurisdiction over the minor regarding all offenses joined with the qualifying offense, and any other offenses, including misdemeanors, arising from the same criminal episode.

The district court is not divested of jurisdiction by virtue of the fact that the minor is allowed to enter a plea to, or is found guilty of, a lesser or joined offense.

When the district court has been given jurisdiction by direct file, any subsequent offenses, felony, misdemeanor or infraction, committed by the minor will be tried in the district court or justice court.

If the qualifying charge results in an acquittal, a finding of not guilty, or a dismissal of the charge in the district court, the juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain any jurisdiction and authority previously exercised over the minor.

#### **Serious Youth Offender – Procedure §78A-6-702**

If a minor 16 years of age or older commits a qualifying offense, an information rather than a petition is filed in juvenile court. If the court finds probable cause that the minor committed the qualifying offense, and the court does not find any of the retention factors, the minor is bound over for trial in district court. Some of the qualifying offenses are:

- a. aggravated arson;
- b. aggravated assault, involving intentionally causing serious bodily injury to another;
- c. aggravated kidnapping;
- d. aggravated burglary;

- e. aggravated robbery;
- f. aggravated sexual assault;
- g. attempted aggravated murder; or
- h. attempted murder; or
- i. an offense other than those listed involving the use of a dangerous weapon which would be a felony if committed by an adult, and the minor has been previously adjudicated or convicted by an offense involving the use of a dangerous weapon which also would have been a felony if committed by an adult.

If the information alleges the violation of a felony listed above, the state shall have the burden of going forward with its case and the burden of proof to establish probable cause to believe that one of the crimes listed has been committed and that the defendant committed it. The state shall have the additional burden of proving by a preponderance of evidence that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon.

If the juvenile court judge finds the state has met its burden, the court shall order that the defendant be bound over and held to answer in the district court in the same manner as an adult unless the juvenile court judge finds that all of the following conditions exist:

- a. the minor has been previously adjudicated delinquent for an offense involving the use of a dangerous weapon which would be a felony if committed by an adult;
- b. that if the offense was committed with one or more persons, the minor appears to have a lesser degree of culpability than the co-defendants; and
- c. that the minor's role in the offense was not committed in a violent, aggressive, or premeditated manner.

Once the state has met its burden as to a showing of probable cause, the defendant shall have the burden of going forward and presenting evidence as to the existence of the above conditions. If the juvenile court judge finds by clear and convincing evidence that all the above conditions are satisfied, the court shall so state in its findings and order the minor be held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

At the time of a bind over to district court a criminal warrant of arrest shall issue. The defendant shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge and the juvenile court shall set bail. If an indictment is returned by a grand jury charging a violation under this section, the preliminary examination held by the juvenile court judge need not include a finding of probable cause that the crime alleged in the indictment was committed and that the defendant committed it, but the juvenile court shall proceed in accordance with this section regarding the additional considerations listed.

When a defendant is charged with multiple criminal offenses in the same information or indictment and is bound over to answer in the district court for one or more charges under this section, other offenses arising from the same criminal episode and any subsequent misdemeanors or felonies charged against him shall be considered together with those charges, and where the court finds probable cause to believe that those crimes have been

committed and that the defendant committed them, the defendant shall also be bound over to the district court to answer for those charges.

When a minor has been bound over to the district court under this section, the jurisdiction of the Division of Juvenile Justice Services and the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against the minor. A minor who is bound over to answer as an adult in the district court under this section or on whom an indictment has been returned by a grand jury is not entitled to a preliminary examination in the district court.

Allegations contained in the indictment or information that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon, or is 16 years of age or older, are not elements of the criminal offense and do not need to be proven at trial in the district court. If a minor enters a plea to, or is found guilty of, any of the charges filed or any other offense arising from the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing. The juvenile court and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

### **Certification Hearing to Stand Trial as an Adult – UCA §78A-6-703**

The Juvenile Court will conduct a preliminary hearing to determine whether to waive jurisdiction and certify a minor to stand trial as an adult if the act would constitute a felony if committed by an adult. At the preliminary hearing the state shall have the burden of going forward with its case and the burden of establishing:

1. Probable cause to believe that a crime was committed and that the defendant committed it; and
2. By a preponderance of the evidence, that it would be contrary to the best interests of them minor or of the public for the juvenile court to retain jurisdiction.

In considering whether or not it would be contrary to the best interest of the minor or of the public for the juvenile court to retain jurisdiction, the juvenile court shall consider, and may base its decision on, the finding of one or more of the following factors:

- a. The seriousness of the offense and whether protection of the community requires isolation of the minor beyond that afforded by juvenile facilities.
- b. Whether the alleged offense was committed by the minor under circumstances which would subject the minor to enhanced penalties if the minor was an adult and the offense was committed:
  - a. in concert with two or more persons;
  - b. for the benefit of, at the direction of, or in association with any criminal street gang; or
  - c. to gain recognition, acceptance, membership, or increased status with a criminal street gang;

- c. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
- d. Whether the alleged offense was against persons or property, greater weight being given to offenses against persons;
- e. The maturity of the juvenile as determined by considerations of his home, environment, emotional attitude, and pattern of living;
- f. The record and previous history of the minor;
- g. The likelihood of rehabilitating the minor using facilities available to the juvenile court;
- h. The desirability or trial and disposition of the entire offense in one court when the minor's associates in the alleged offense are adults and will be charged with a crime in the district court;
- i. Whether the minor used a firearm in the commission of an offense; and
- j. Whether the minor possessed a dangerous weapon on or about school premises.

The amount of weight to be given to each of the factors listed above is discretionary with the court. Written reports and other materials relating to the minor's mental, physical, education, and social history may be considered by the court. If requested by the minor, the minor's parent, guardian, or other interested party, the court shall require the person or agency preparing the report and other material to appear and be subject to both direct and cross-examination.

At the conclusion of the state's case, the minor may testify under oath, call witnesses, cross-examine adverse witnesses, and present evidence on the factors required by Subsection (3). If the court finds the state has met its burden, the court may enter an order:

- a. certifying that finding; and
- b. directing that the minor be held for criminal proceedings in the district court.

A minor who has been directed to be held for criminal proceedings in the district court is not entitled to a preliminary examination in the district court. A minor who has been certified for trial in the district court shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge.

When a minor has been certified to the district court under this section, the jurisdiction of the Division of Juvenile Justice Services and the jurisdiction of the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against the minor. If a minor enters a plea to, or is found guilty of any of the charges filed or on any other offenses arising out of the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing. The juvenile court and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

### **Access to Juvenile Court Proceedings §78A-6-114**

Hearings in minor's cases shall be held before the court without a jury and may be conducted in an informal manner. In abuse, neglect, and dependency cases the court shall admit any person to a hearing, including a hearing under Section **78A-6-322**, unless the court makes a finding upon the record that the person's presence at the hearing would:

- a. be detrimental to the best interest of a child who is a party to the proceeding;
- b. impair the fact-finding process; or
- c. be otherwise contrary to the interests of justice.

The court may exclude a person from a hearing on its own motion or by motion of a party to the proceeding. In delinquency cases the court shall admit all persons who have a direct interest in the case and may admit persons requested by the parent or legal guardian to be present. The court shall exclude all other persons except as provided in Subsection (1)(c).

In delinquency cases in which the minor charged is 14 years of age or older, the court shall admit any person unless the hearing is closed by the court upon findings on the record for good cause if:

- a. the minor has been charged with an offense which would be a felony if committed by an adult; or
- b. the minor is charged with an offense that would be a class A or B misdemeanor if committed by an adult, and the minor has been previously charged with an offense which would be a misdemeanor or felony if committed by an adult.

The victim of any act charged in a petition or information involving an offense committed by a minor which if committed by an adult would be a felony or a class A or class B misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter 36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, and Title 77, Chapter 38, Rights of Crime Victims Act. The notice provisions in Section **77-38-3** do not apply to important juvenile justice hearings as defined in Section **77-38-2**.

A victim, upon request to appropriate juvenile court personnel, shall have the right to inspect and duplicate juvenile court legal records that have not been expunged concerning:

- a. the scheduling of any court hearings on the petition;
- b. any findings made by the court; and
- c. any sentence or decree imposed by the court.

Minor's cases shall be heard separately from adult cases. The minor or the parents or custodian of a minor may be heard separately when considered necessary by the court. The hearing may be continued from time to time to a date specified by court order. When more than one child is involved in a home situation which may be found to constitute neglect or dependency, or when more than one minor is alleged to be involved in the same law violation, the proceedings may be consolidated, except that separate hearings may be held with respect to disposition.

## **BAIL ISSUES** <sup>28</sup>

### **Bail Must Always Be Granted To An Arrested Person**

Bail is a right guaranteed by the Utah Constitution. Except for limited circumstances, all arrested persons are entitled to a reasonable bail except in the following four circumstances.

1. Capitol Felony charge if,
  - a. Court finds substantial evidence to support charge.
2. Felony charge if,
  - a. Court finds substantial evidence to support charge; and
  - b. Person is free on parole, probation, or felony bail.
3. Felony charge if,
  - a. Court finds substantial evidence to support charge; and
  - b. Court finds clear and convincing evidence that person is a substantial danger to a person or the community or likely to flee.
4. Felony charge if,
  - a. Court finds substantial evidence to support charge; and
  - b. Court finds clear and convincing evidence that person violated a material condition of release while previously on bail.

Accordingly, pursuant to the Utah Constitution and the Utah Code, bail may only be denied in a limited number of situations involving felony cases. All other persons charged with a crime have a right to bail.

### **Bail Must Be Set**

It is constitutionally mandated that bail must not be excessive. Article I, Section 9 of the Utah Constitution states that “excessive bail shall not be required.”<sup>29</sup> The purpose of bail is outlined in UCA § 77-20-1(2), it states that bail is meant to ensure:

1. The defendant’s appearance in court.
2. The integrity of the court process.
3. That witnesses or victims are not harassed.
4. The safety of the public.

In virtually all state and federal cases, bail amounts that are higher than what is reasonably calculated to ensure the accused’s presence at further proceedings are considered excessive. Bail that is calculated or intended to punish the accused or deny pretrial release is a violation of due process. A reasonable bail amount will ensure the defendant’s appearance in court and protect the public, but does not constitute intent to punish the defendant or prevent his release.

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<sup>28</sup> Bail Memorandum by Scott H Sweat, Deputy Wasatch County Attorney, 05/13/2003

<sup>29</sup> The full text of Article I, Section 9 is, “Excessive bail shall not be required; excessive fines shall not be imposed; nor shall cruel and unusual punishment be inflicted. Persons arrested or imprisoned shall not be treated with unnecessary rigor.”

Bail must be set immediately. Bail must be set at the time the arrest warrant is issued or, on a warrantless arrest, as soon as feasible but no later than 48 hours after the arrest. Any person arrested must have a probable cause determination and bail must be set within 48 hours after being arrested. Persons arrested by warrant should already have a bail amount or a no-bail determination in the warrant. If not, 48 hour rule should apply. Justice Court Judges and Bail Commissioners must be available on a daily basis to set bail and make probable cause determination.

### **When the Sheriff's Personnel Can Set Bail**

Utah law allows for some members of a county sheriff's department to act as bail commissioners when properly appointed. These bail commissioners may set bail in cases which are **misdemeanors or violations of county ordinances**. These commissioners must be bonded, are not given any additional compensation for this duty, and must follow correct procedure.

When the jail has set bail, if the detained person has not promptly bailed out, the process of having a probable cause determination by a proper magistrate should be started sooner rather than later.

The 48 hour rule is not a recommended procedure, but rather a boundary which if crossed is presumed to be a violation of the person's constitutional rights. A probable cause determination must occur as soon as is reasonably feasible, which may usually be much sooner than 48 hours. However, if a person does not promptly bail out, a judge must still make a prompt probable cause determination on a warrantless arrest. Under the current court setup, the bulk of these determinations and bail settings will be the responsibility of the Justice Court Judges.

### **When Justice Court Judges Can Set Bail**

U.C.A. 78-7-17.5 grants to a justice court judge the same authority as a magistrate to make probable cause determinations and set bail with two distinctions. First, a justice court judge may not act in a capital felony case. Second, a justice court judge may not deny bail in any case. It logically follows that a justice court judge cannot issue a no-bail warrant.

Therefore, any time an officer believes that a person should be held without bail, a district court judge must be contacted to sign a no-bail warrant or to make the probable cause determination and bail determination.



## **BAIL CHART**

### **Who May Set Bail**

	MISDEMEANOR OR COUNTY ORDINANCE	FIRST, SECOND OR THIRD DEGREE FELONY	CAPITAL FELONY	DENY BAIL
BAIL COMMISSIONER	YES	NO	NO	NO
JUSTICE COURT JUDGE	YES	YES	NO	NO
DISTRICT COURT JUDGE	YES	YES	YES	YES

### **When Must Bail Be Set**

Persons arrested without a warrant must be given a probable cause determination and bail setting within 48 hours of the arrest.

Persons arrested by warrant should already have a bail amount or a non-bail determination in the warrant. If not, 48 hour rule should apply.

## **OTHER COURT PROGRAMS**

### **Felony Drug Court**<sup>30</sup>

Drug court is a program designed to help those charged with felony controlled substance offenses that have a prior drug related convictions on their record and no history of violent offenses. Drug court participation is a minimum of one year up to three years. It requires frequent visits to court, and treatment with the substance abuse counselors through the county. Violations to drug court agreement may include dirty urinalysis, association with parolees or other drug users, not attending classes, etc. A drug court team determines sanctions to be given to each participant in the event that they violate their drug court agreement. Defendants that successfully complete the drug court program may have their charges dismissed or reduced.

### **Drug Diversion/Plea in Abeyance**

Drug Diversion is a program designed for those defendants charged with controlled substance offenses that have no prior conviction for drug related offenses and no felony convictions. It is generally preferred that treatment be provided by the local substance abuse agency of the county in which the defendant resides, but may be through a private provider. Treatment lasts for a minimum of six months for a misdemeanor charge and minimum of one year for a felony charge. Upon successful completion of this program, defendants will have their charges dismissed or reduced.

### **Felony DUI Court**<sup>31</sup>

Felony DUI Court is a court that has been specifically designed and staffed to supervise non-violent alcohol dependant defendants who have been referred to a comprehensive and judicially-monitored program of alcohol treatment and rehabilitation services.

It is an effective treatment program that mirrors the Drug Court offenders program, but addresses those who are addicted to alcohol.

Those admitted to felony DUI Court must meet the eligibility standards which are:

1. The defendant has been arrested and charged with a felony DUI (minimum third DUI within a 10 year period).
2. No distribution or possession with intent convictions in the last 10 years.
3. No aggravated felony convictions.
4. No child sex abuse felony convictions.
5. No prior drug court participation.

The defendant is required to enter a guilty plea to the third degree felony charge. That plea **IS NOT** held in abeyance. The defendant is sentenced according to the statute which includes mandatory jail, fine, DNA testing and interlock device conditions. If the

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<sup>30</sup> The information on Drug Court and Drug Diversion/Plea In Abeyance was provided by the Weber County Attorney's Office.

<sup>31</sup> Depending on jurisdiction eligibility requirements may vary. The information on Felony DUI Court was provided by the Davis County Attorney's Office.

defendant successfully completes the program, the felony conviction will be reduced under a 402 to a class A misdemeanor.

### **Mental Health Court**<sup>32</sup>

The Mental Health Court is a jail diversion program assisting mentally ill individuals who act out criminally to engage in an appropriate treatment regimen by establishing a strong accountability to the judicial system while partnering with treatment intervention programs.

Specifically, the goals of the Mental Health Court (MHC) are to:

1. Divert participants from the Criminal Justice System.
2. Keep the community safe.
3. Avoid revolving door at inpatient and jail facilities.
4. Enhance the MHC participants' quality of life.
5. Use limited available funds in the most effective way.
6. Increase treatment compliance with difficult to treat clients who act out criminally.

In order to participate, MHC participants must be:

1. Legally competent.
2. Volunteer to participate in MHC rather than in traditional criminal justice system.
3. Criminal secondary to mental illness.
4. Diagnosed with a suitable diagnosis (bipolar, psychotic disorder etc). Not overridden by Axis II Disorder.

Prospective MHC participants are referred from any of the allied agencies (courts, prosecutors, defenders, AP&P etc). Individuals are screened by a mental health professional to determine appropriateness for participation. Once accepted, participants enter a voluntary 1-year plea in abeyance. Participants are expected to appear in MHC on a weekly basis and to participate in all treatment interventions recommended by the treatment team. Participants' progress and compliance is reviewed weekly by the court and mental health team.

The progression through the MHC is divided into four overlapping, yet distinct, phases:

1. Screening: competence, suitability, diagnosis and orientation.
2. Entry into court: meet team and arrange for mental health services.
3. Stabilization: weekly progress report in court and with court accountability.
4. Maintenance: compliance monitored, decreased court appearances.

After participation in the MHC, participants continue in mental health related services as needed on a voluntary basis.

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<sup>32</sup> The information on Mental Health Court was provided by Juergen Korbanka, Ph.D., Wasatch Mental Health, Adult Services, Provo, UT.

## Mental Health Court Treatment Phases

	Screening Phase	Entry Phase	Stabilization Phase	Maintenance Phase
<b>Goals</b>	<ol style="list-style-type: none"> <li>1. Determine legal appropriateness</li> <li>2. Determine defendant's willingness</li> <li>3. Determine clinical appropriateness for mental health court</li> </ol>	<ol style="list-style-type: none"> <li>1. Develop treatment regimen</li> <li>2. Address symptoms of mental illness</li> <li>3. Establish medication regimen</li> <li>4. Establish accountability to court</li> </ol>	<ol style="list-style-type: none"> <li>1. Stabilize symptoms of mental illness</li> <li>2. Demonstrates accountability to court</li> <li>3. Makes progress reports to court</li> <li>4. Is actively involved in treatment</li> </ol>	<ol style="list-style-type: none"> <li>1. Develops insight into need for treatment</li> <li>2. Is actively involved in treatment</li> <li>3. Is self motivated to continue in treatment</li> <li>4. Self regulates symptoms of mental illness</li> </ol>
<b>Timeframes</b>	2 weeks	2 – 4 weeks (typically)	8 – 12 weeks (typically)	6 - 9 months (as determined by the court)
<b>Activities</b>	<ol style="list-style-type: none"> <li>1. Referral for MH evaluation completed</li> <li>2. Mental Health Evaluation</li> <li>3. Transfer case to MHC, if appropriate)</li> </ol>	<ol style="list-style-type: none"> <li>1. Psychiatric evaluation</li> <li>2. Attend all appointments as scheduled</li> <li>3. Take all medications as prescribed</li> <li>4. Attend weekly court hearings</li> <li>5. Comply with drug screens as ordered</li> </ol>	<ol style="list-style-type: none"> <li>1. Attend all appointments as scheduled</li> <li>2. Take all medications as prescribed</li> <li>3. Actively participate in all treatment activities</li> <li>4. Attend weekly court hearings</li> <li>5. Comply with drug screens as ordered</li> </ol>	<ol style="list-style-type: none"> <li>1. Attend all appointments as scheduled</li> <li>2. Take all medications as prescribed</li> <li>3. Actively participate in all treatment activities</li> <li>4. Attend bi-weekly (or as scheduled) court hearings</li> <li>5. Comply with drug screens as ordered</li> </ol>
<b>Completion Requirements</b>	<ol style="list-style-type: none"> <li>1. Meets all entry criteria</li> <li>2. Signed MHC agreement</li> <li>3. Signed plea in abeyance agreement</li> </ol>	<ol style="list-style-type: none"> <li>1. Completes all recommended and scheduled treatment activities</li> </ol>	<ol style="list-style-type: none"> <li>1. Positive review for 8 consecutive court reviews</li> <li>2. Completes and actively participates in all recommended and scheduled treatment activities</li> <li>3. No new offenses or non-compliance with treatment</li> </ol>	<ol style="list-style-type: none"> <li>1. Completes and actively participates in all recommended and scheduled treatment activities</li> <li>2. No new offenses or non-compliance with treatment</li> </ol>

## **EXPUNGEMENTS**

Expunge means to seal or otherwise restrict access to the petitioner's record of arrest, investigation, detention, or conviction held by an agency, §77-40-102.

<sup>33</sup>Any Utah adult criminal offense that meets the criteria established in Utah Criminal and Traffic Code Annotated 77-40-104 & 105) can be expunged. BCI only expunges Utah Criminal Records. BCI may not expunge:

1. Federal offense (even if the offense occurred in Utah)
2. Juvenile Offense
3. Civil Records

<sup>34</sup>A court may not expunge a conviction of an offense for which a certificate of eligibility may not be or should not have been issued under §77-40-104 and 77-40-105.

### **Eligibility – §77-40-104**

A person who has been arrested with or without a warrant may apply to the bureau for a certificate of eligibility to expunge all records of arrest, investigation, and detention which may have been made in the case, subject to the following conditions:

1. at least 30 days have passed since the arrest for which a certificate of eligibility is sought;
2. there have been no intervening arrests; and
3. one of the following occurred:
  - i. charges were screened by the investigating law enforcement agency and the prosecutor has made a final determination that no charges will be filed;
  - ii. the action against the person was dismissed with prejudice;
  - iii. the person was acquitted at trial; or
  - iv. the statute of limitations has expired on the offense.

<sup>35</sup>Expungement eligibility will be based the petitioner's total criminal history, not just what has been reported to the Bureau of Criminal Identification (BCI). This includes incidents in all states and previous expungements. BCI will conduct a thorough background check and will notify the petitioner by mail of their approval or denial.

<sup>36</sup>Some of the files researched to determine eligibility are:

1. Utah Criminal History
2. Statewide Warrants
3. National Crime Information Center (NCIC)
4. Police Records
5. Out of State Records (Nlets/III)
6. Court Records
7. Previously Expunged Records

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<sup>33</sup> BCI Expungement Presentation at 2010 TAC Conference

<sup>34</sup> BCI Expungement Presentation at 2010 TAC Conference

<sup>35</sup> <http://publicsafety.utah.gov/bci/expunge.html>

<sup>36</sup> BCI Expungement Presentation at 2010 TAC Conference

### <sup>37</sup>**Reasons for Denial:**

A petitioner is not eligible to receive a certificate of eligibility from the bureau if the conviction for which expungement is sought is:

1. Capital Felony, UCA §77-40-105(2)(a)(i)
2. First degree felony U.C.A. 77-40-105(2)(a)(ii)
3. Violent felony U.C.A. 76-3-203.5(1)(c)(i)
4. Automobile homicide U.C.A. 77-40-105(2)(a)(iv)
5. Felony DUI Alcohol/Drugs U.C.A. 41-69-501(2)
6. Registerable sex offenses U.C.A. 77-27-21.5(1)(n)
7. A proceeding is pending or being investigated 77-40-105(2)(b)
8. Dismissal with an intervening arrest U.C.A. 77-40-104(1)(b)
9. Statute of limitations has not been met U.C.A. 77-40-104(1)(c)(iv)
10. Fines, interest, and restitution not paid U.C.A. 77-40-105(3)(a)
11. Time required by law not met 77-40-105(3)
12. Two or more felony criminal episodes U.C.A. 77-40-105(4)(a)
13. Any combination of three or more convictions that contain two class A misdemeanors U.C.A. 77-40-105(4)(b)
14. Any combination of four or more convictions that contain three or more class B misdemeanors  
U.C.A. 77-40-105(4)(c)
15. Five or more misdemeanors or felony episodes U.C.A. 77-40-105(4)(d)

Decisions are made according to Utah State Statute. Time period does not begin until all confinement and probation has been completed.

### **Time Periods:**

- 10 years - Any alcohol/drug related traffic
- 7 years - Eligible Felonies
- 5 years - Class A Misdemeanor
- 4 years – Class B Misdemeanor
- 3 years- Class C Misdemeanor and infractions
- 30 days - Dismissals

There are no limits on the number of infractions that may be expunged.

### <sup>38</sup>**Contesting a Denial**

Applicants have 30 days to file an appeal and it must include:

1. Signature of applicant
2. Grounds for review
3. The relief requested
4. Date appeal was mailed

If BCI upholds the previous decision, petitioner may appeal to district court.

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<sup>37</sup> <http://publicsafety.utah.gov/bci/expunge>.

<sup>38</sup> BCI Expungement Presentation at 2010 TAC Conference

### **Application for Certificate of Eligibility – §77-40-106**

A petitioner seeking to obtain an expungement for a criminal record shall apply for a certificate of eligibility from the bureau. A petitioner who intentionally or knowingly provides any false or misleading information to the bureau when applying for a certificate of eligibility is guilty of a class B misdemeanor and subject to prosecution. Regardless of whether the petitioner is prosecuted, the bureau may deny a certificate of eligibility to anyone providing false information on an application.

The bureau shall perform a check of records of governmental agencies, including national criminal data bases, to determine whether a petitioner is eligible to receive a certificate of eligibility under this chapter. For purposes of determining eligibility under this chapter, the bureau may review records of arrest, investigation, detention and conviction that have been previously expunged, regardless of the jurisdiction in which the expungement occurred. If the petitioner meets all of the criteria under Section 77-40-104 or 77-40-105, **the bureau shall issue a certificate of eligibility to the petitioner which shall be valid for a period of 90 days from the date the certificate is issued.** If, after reasonable research, a disposition for an arrest on the criminal history file is unobtainable, the bureau may issue a special certificate giving determination of eligibility to the court.

The bureau shall charge application and issuance fees for a certificate of eligibility in accordance with the process in §63J-1-504. The application fee shall be paid at the time the petitioner submits an application for a certificate of eligibility to the bureau. If the bureau determines that the issuance of a certificate of eligibility is appropriate, the petitioner will be charged an additional fee for the issuance of a certificate of eligibility. An issuance fee may not be assessed against a petitioner who qualifies for a certificate of eligibility under Section 77-40-104 unless the charges were dismissed pursuant to a plea in abeyance agreement or a diversion agreement.

### **Petition for Expungement – Prosecutorial Responsibility – §77-40-107**

The petitioner (defendant) shall file a petition for expungement and the certificate of eligibility in the court where the offense is filed and deliver a copy of the petition and certificate to the prosecuting agency. Upon receipt of a petition for expungement of a conviction, the prosecuting attorney shall provide notice of the expungement request by first-class mail to the victim at the most recent address of record on file.

The notice shall include a copy of the petition, certificate of eligibility, statutes and rules applicable to the petition, state that the victim has a right to object to the expungement, and provide instructions for registering an objection with the court. **The prosecuting attorney and the victim, if applicable, may respond to the petition by filing a recommendation or objection with the court within 30 days after receipt of the petition.**

The court may request a written response to the petition from the Division of Adult Probation and Parole within the Department of Corrections. If requested, the response prepared by Adult Probation and Parole shall include:

1. the reasons probation was terminated; and

2. certification that the petitioner has completed all requirements of sentencing and probation or parole.

A copy of the response shall be provided to the petitioner and the prosecuting attorney.

**The petitioner may respond in writing to any objections filed by the prosecutor or the victim and the response prepared by Adult Probation and Parole within 15 days after receipt.** If the court receives an objection concerning the petition from any party, the court shall set a date for a hearing and notify the petitioner, the prosecuting attorney, and the victim of the date set for the hearing. The petitioner, the prosecuting attorney, the victim, and any other person who has relevant information about the petitioner may testify at the hearing.

The court shall review the petition, the certificate of eligibility, and any written responses submitted regarding the petition. If no objection is received within 60 days from the date the petition for expungement was filed with the court, the expungement may be granted without a hearing. The court shall issue an order of expungement if it finds by clear and convincing evidence that:

1. the petition and certificate of eligibility are sufficient;
2. the statutory requirements have been met; and
3. it is not contrary to the interests of the public to grant the expungement.

A court may not expunge a conviction of an offense for which a certificate of eligibility may not be or should not have been issued under Section 77-40-104 or 77-40-105.

### **Expungement Orders**

Orders of expungement must include:

1. Defendant's name and date of birth
2. Date of arrest
3. Charges and class
4. Court name
5. Court disposition and date
6. Court case number
7. Judge's signature and seal

\*\*\*Copies of the Application Instructions and Application for Certificate of Eligibility are included at the end of the Resource Manual.



## **LEGAL CITATIONS**

<sup>39</sup>The Pacific Reporter, Pacific Reporter Second and Pacific Reporter Third are United States regional case law reporters containing published appellate court case decisions for the following states:

1. Alaska
2. Arizona
3. California
4. Colorado
5. Hawaii
6. Idaho
7. Kansas
8. Montana
9. Nevada
10. New Mexico
11. Oklahoma
12. Oregon
- 13. Utah**
14. Washington
15. Wyoming

When cited, the Pacific Reporter, Pacific Reporter Second and Pacific Reporter Third are abbreviated “P,” “P.2d” and “P.3d” respectively.

Other regional reporters covering other states are: North Eastern Reporter, Atlantic Reporter, South Eastern Reporter, South Western Reporter, and North Western Reporter.

<sup>40</sup>Case citation is the system used in many counties to identify the decisions in past court cases, either in special series of books called reporters or law reports, or in a ‘neutral’ form which will indentify a decision wherever it was reported. Although case citations are formatted differently in different jurisdictions, they generally contain the same key information.

Where cases are published in bound volumes the citation will contain:

1. The title of the reports;
2. The volume number;
3. Page number; and
4. Year of decision.

<sup>41</sup>Law reports or reporters are series of books which contain judicial opinions from a selection of cases decided by the courts. When a particular judicial opinion is referenced, the law report series in which the opinion is printed will determine the case citation format. In common law countries, court opinions are legally binding under the rule of

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<sup>39</sup> [http://en.wikipedia.org/wiki/Pacific\\_Reporter](http://en.wikipedia.org/wiki/Pacific_Reporter)

<sup>40</sup> [http://en.wikipedia.org/wiki/Case\\_citation](http://en.wikipedia.org/wiki/Case_citation)

<sup>41</sup> [http://en.wikipedia.org/wiki/Law\\_report](http://en.wikipedia.org/wiki/Law_report)

stare decisis.<sup>42</sup> That rule requires a court to apply a legal principle that was set forth earlier by a court of the same jurisdiction dealing with a similar set of facts. Thus, the regular publication of such opinions is important so that everyone—lawyers, judges, and laymen—can find out what the law is, as declared by judges.

The standard case citation format in the <sup>43</sup>Utah Reporter is:

*State v. Warden*, 813 P.2d 1146, 1155 (Utah 1991)

1. *State v. Warden* – is the name of the case. When citing the case use italics or underline the case.
2. 813 – is the volume number of the reporter in which the court’s written opinion in *State v Warden* is published.
3. P.2d is the abbreviation of the reporter; “P.2d” stands for Pacific Reporter Second series.
4. 1146 is the page number (in volume 813 of Pacific Reporter) where the opinion begins.
5. 1155 is the page number where a quote comes from within the case being cited.
6. “Utah” designates the court that decided the case. Utah represents the Utah Supreme Court. Utah App. represents the Utah Court of Appeals.
7. 1991 is the year in which the court rendered its decision.

These numbers are used to find a particular case, both when looking up a case in a reporter and when accessing it electronically on the Internet or through LexisNexis or Westlaw. This format also allows different cases with the same parties to be easily differentiated. For example, looking for the U.S. Supreme Court case of *Miller v. California* would yield four cases, some involving different people named Miller, and each involving different issues.

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<sup>42</sup> Wikipedia Encyclopedia, Stare decisis: “to stand by things decided;” more fully, “stare decisis et non quieta movere” is a Latin legal term, used in common law to express the notion that prior court decisions must be recognized as precedents, according to case law.

<sup>43</sup> Utah Reporter

## **GRAND JURY**

### **<sup>44</sup>Grand Jury**

A grand jury is a type of jury, in the common law legal system, which determines if there is enough evidence for a trial. Grand juries carry out this role by examining evidence presented to them by a prosecutor and issuing indictments, or by investigating alleged crimes and issuing presentments. A grand jury is traditionally larger and distinguishable from a petit jury, which is used during a trial.

A grand jury is part of the system of checks and balances, preventing a case from going to trial on a prosecutor's bare word. A prosecutor must convince the grand jury, an impartial panel of ordinary citizens, that there exists reasonable suspicion, probable cause, or a prima facie (legally sufficient) case that a crime has been committed. The grand jury can compel witnesses to testify before them. Unlike the trial proceedings, the grand jury's proceedings are secret; the defendant and his or her counsel are generally not present for other witnesses' testimony. A judge is not present either. The grand jury's decision is either a "true bill," meaning (meaning that there is not case to answer), or a "no true bill." Jurors typically are drawn from the same pool of citizens as a petit jury, and participate for a specific time period.

### **Jurisdiction**

The grand jury is an agency of a court which has general jurisdiction over crimes supposed or alleged to have been committed. Jurisdiction of a grand jury is extended equally with the jurisdiction of the court of which it is a part.

### **Grand Jury – Evidence**

The grand jury receives only legal evidence and evidence that is given by witnesses under oath, documentary evidence, or the deposition of a witness taken as provided by law.

### **Powers and Duties of Grand Jury**

One of the duties of a grand jury is to inquire into any willful and corrupt misconduct in offices of public officers and malfeasance in office. The proceedings are kept secret, and no grand juror may disclose that an indictment has been returned or an accusation has been filed until the accused is in custody, admitted to bail, or served with a summons.

The grand jury may ask the advice of the court, but the judge may not be present during its sessions except to give the advice requested by the grand jury.

A subsequent grand jury has the power to inquire into and to indict on a charge which was previously considered by another grand jury even though the other grand jury failed to return an indictment. A grand jury is a body of citizens assembled to receive complaints and accusations in criminal cases to hear evidence, and to determine whether probable cause exists that a crime has been committed and whether an indictment (true

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<sup>44</sup> [http://en.wikipedia.org/wiki/Grand\\_jury](http://en.wikipedia.org/wiki/Grand_jury)

bill) should be returned against a person for such a crime. If probable cause does not exist, the grand jury returns a "no true bill."

## **CRIMINAL PROCEDURES**

A crime is usually defined as an act that violates the laws of a community, state, or country and for which a specific punishment is prescribed.

The government is always the plaintiff in a criminal action. No state legislature can enforce a law in conflict with the United States Constitution or the constitution of that particular state.

Common law rules are made by judges, and these rules spring basically from usages and custom.

Administrative rules are made by bureaus of the government called administrative agencies.

Substantive criminal law is the law which defines what conduct is criminal and prescribes the type of punishment to be imposed for such conduct.

### **Two major classes of crimes:**

- 1. Felony**
- 2. Misdemeanor**

### **Felony**

A felony is a crime such as murder, grand larceny, arson, and rape for which the penalty can be a fine, imprisonment in a state or federal prison, both a fine and prison term, or the death penalty.

The term felony is used for very serious crimes, whereas misdemeanors are considered to be less serious offenses. It means a crime against the government. It is principally used in criminal law in the United States legal system.

The distinction between a felony and misdemeanor has been abolished by some common law jurisdictions (e.g. Crimes Act 1958 (Vic., Australia) s. 332B(1), Crimes Act 1900 (NSW., Australia) s. 580E(1)); other jurisdictions maintain the distinction, notably those of the United States. Those jurisdictions which have abolished the distinction generally adopt some other classification, e.g. in Canada, Australia, the Republic of Ireland and the United Kingdom. The crimes are divided into summary offences and indictable offences. A felon is a person responsible for committing a felony, which is generally a social stigma.

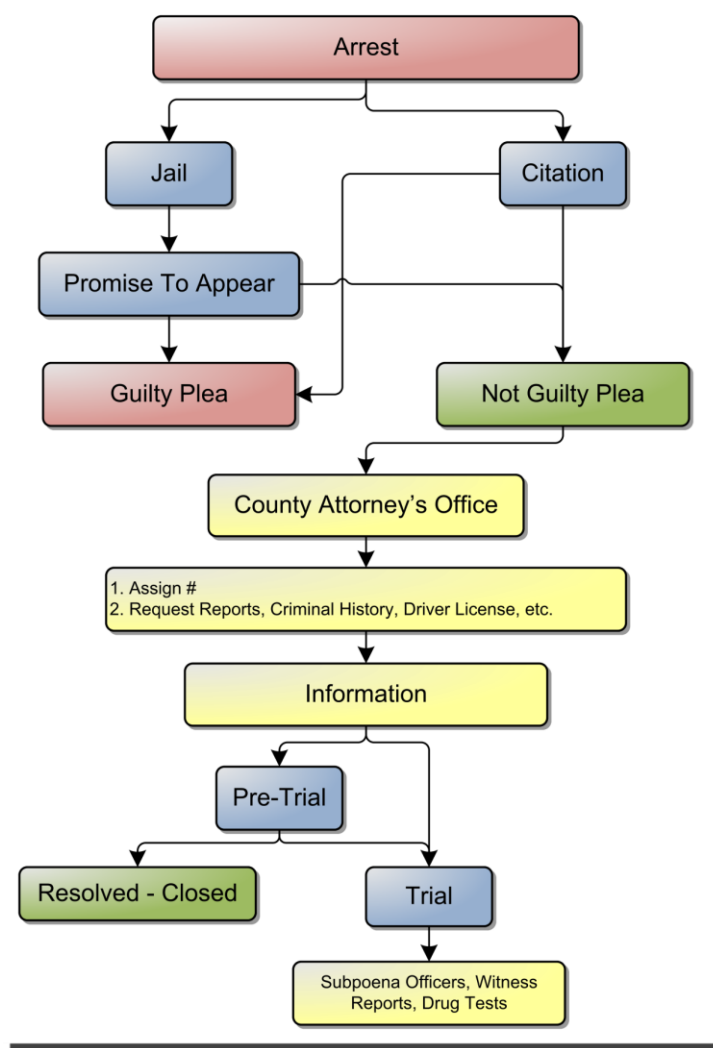
In the United States, a felony is one of the highest types of offenses, and may be punishable with death or imprisonment. It is a crime punishable by one or more years of imprisonment, and regarded as more serious than a misdemeanor.

Crimes commonly considered to be felonies include, but are not limited to: aggravated assault and/or battery, arson, burglary, drug possession, embezzlement, treason, espionage, racketeering, murder, and rape. A third offense for drinking and driving is also a felony in most states. Originally, felonies were crimes for which the punishment was either death or forfeiture of property. In modern times, felons can receive punishments which range in severity from probation, to imprisonment, to execution. In the United States felons often receive additional punishments such as the loss of voting rights, exclusion from certain lines of work, prohibition from obtaining certain licenses,

exclusion from purchase/possession of firearms or ammunition, and ineligibility to run for or be elected to public office. In addition, some states consider a felony conviction to be grounds for an uncontested divorce. These, among other losses of privileges not included explicitly in sentencing, are known as collateral consequences of criminal charges.

### **Steps in a Felony and Class A Misdemeanor Cases:**

1. Arrest
2. Initial appearance.
3. Preliminary hearing: if the judge finds probable cause to believe that the crime charged has been committed and that the defendant has committed it, the defendant is bound over for trial.
4. Formal Arraignment.
5. Pre-Trial.
6. Trial.



## **Misdemeanor**

A crime of lesser importance than a felony, such as petty larceny, drunkenness, disorderly conduct, and vagrancy, for which the penalty is a fine, imprisonment in jail, or both a fine and jail.

### **Steps in a Misdemeanor Case:**

1. Arraignment - first appearance.
2. Plead either guilty or not guilty.
3. If not guilty, a pre-trial date is set with the prosecutor. At that point if the case cannot be resolved, then it is set for trial. If it is resolved, then the defendant is sentenced.
4. Class A misdemeanors can now be set for a preliminary hearing.
5. If set for trial, the case is heard by the judge, unless a jury trial is requested. After hearing the evidence the judge decides whether the defendant is guilty or not guilty. If he is guilty he is sentenced at that point.

Criminal proceedings are usually started by a criminal complaint (information or indictment) which is sworn to by a person who believes an offense has been committed. A complaint or information is an accusation, in writing, charging a person with a public offense. Indictment is an accusation, in writing, presented by a grand jury, charging a person with a public offense.

An arrest is an actual restraint of the person arrested for submission to custody.

Bail is security given for the release of a jailed person which guarantees his attendance at all required court appearances. Own recognizance means the person is released from jail without posting bail, signing a promise to appear document.

A commercial surety is an insurance company which posts a bond for a premium. Individual sureties are persons who collectively own real or personal property within the state with a net worth of at least the amount set in order for bail.

A person charged with or arrested for a criminal offense shall be admitted to bail as a matter of right, except if the person is charged with a:

1. Capital felony, when the court finds there is substantial evidence to support the charge;
2. Felony committed while on probation or parole, or while free on bail waiting trial on a previous felony charge, when the court finds there is substantial evidence to support the current felony charge;
3. Felony when there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person or to the community, or is likely to flee the jurisdiction of the court, if released on bail; or

4. Felony when the court finds there is substantial evidence to support the charge and it finds by clear and convincing evidence that the person violated a material condition of release while previously on bail.

An arraignment is conducted in open court where the judge reads the criminal charges to the defendant or states to him the substance of the charge and gives him a copy of the complaint or information before he calls on him to plead.

The preliminary hearing is a hearing by the court to ascertain whether there is probable (reasonable) cause to show that a crime was committed and the defendant may have committed it. If the court believes there is, the defendant is bound over (transferred) to the appropriate trial court of general jurisdiction for arraignment. A preliminary hearing is not held if the defendant is indicted by a grand jury.

At the preliminary hearing the state has the burden of proof to prove all elements of the crime **beyond a reasonable doubt** and is required to proceed first with its case.

After a defendant is bound over to district court, an arraignment is held the same as in lower court. At arraignment a defendant may enter pleas of: guilty, no contest, or not guilty. If the defendant pleads guilty, the court sets a date for sentencing. If the defendant pleads no contest, the court may refuse to accept that plea until the court has made the following findings:

1. If the defendant is not represented by counsel, he has knowingly waived his right to counsel and does not desire counsel.
2. The plea is voluntarily made.
3. The defendant knows he has rights to a jury trial, and to confront and cross-examine in open court the witnesses against him, and that by entering the plea he waives all of those rights.
4. The defendant understands the nature and elements of the offense to which he is entering the plea.
5. The defendant knows the minimum and maximum sentences that may be imposed upon him.
6. Whether the tendered plea is a result of a prior plea discussion and plea agreement, and if so, what agreement has been reached.

The defendant may file a written motion for a bill of particulars asking for details concerning the nature and cause of the offense charged when these details are not set out in the information or indictment.

The defendant may file a motion to dismiss based upon failure to have a speedy trial, lack of jurisdiction, or other areas of objection.

If the defendant feels he cannot receive a fair and impartial trial in the county where the crime was committed, he may request a change of venue (change in the location of the trial.)

If the attorney feels there was not probable cause for the arrest of the defendant or that the evidence was illegally seized, he files a motion to quash search warrant and suppress evidence illegally seized.

A plea agreement means that if there are numerous charges filed against the defendant, several may be dismissed with the acceptance of a plea of guilty to one of the charges. Sometimes the charge is reduced to a lesser offense if there is only one charge filed against him.

There are six kinds of pleas to an indictment or information:

1. Not guilty.
2. Guilty.
3. No contest.
4. Not guilty by reason of insanity.
5. Guilty and mentally ill at the time of the offense.
6. Plea in Abeyance

Every plea shall be entered upon the record of the court and shall have the following effect:

1. A plea of not guilty is a denial of the guilt of the accused and puts in issue every material allegation of the information or indictment.
2. A plea of guilty is an acknowledgement that the accused is guilty of the offense charged.
3. A plea of no contest indicates the accused does not challenge the charges in the information or indictment and if accepted by the courts shall have the same effect as a plea of guilty and imposition of sentence may be rendered in the same manner as if a plea of guilty had been entered.

A plea of no contest may be entered by the accused only upon approval of the court and only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

All pleas in felony cases shall be entered by the defendant in open court and the proceedings recorded.

A plea of not guilty may be withdrawn at any time prior to conviction. A plea of guilty or no contest may be withdrawn only upon leave of the court and showing that it was not knowingly and voluntarily made, and if the motion was made within 30 days of pleading guilty or no contest.

All felony cases are tried by jury unless the defendant waives his/her right to a jury.

In capital cases where the sentence of death has been imposed, the case is automatically reviewed by the supreme court of the state.



The court may grant a new trial in the interest of justice if there is any error or impropriety which had a substantial adverse effect on the rights of a party.

If a new trial is granted, the party is in the same position as if no trial had been held, and the former verdict cannot be used or mentioned either in evidence or in argument.

### **77-17-13 Expert Testimony Generally – Notice Requirements** <sup>45</sup>

If the prosecution or the defense intends to call any expert to testify in a felony case at trial or any hearing, excluding a preliminary hearing held pursuant to Rule 7 of the Utah Rules of Criminal Procedure, the party intending to call the expert shall give notice to the opposing party as soon as practicable but not less than **30** days before trial or **10** days before the hearing.

Notice shall include the name and address of the expert, the expert's curriculum vitae (a curriculum vitae is an expert's resume detailing education and experience), and one of the following:

1. A copy of the expert's report, if one exists; or
2. A written explanation of the expert's proposed testimony sufficient to give the opposing party adequate notice to prepare to meet the testimony; and
3. A notice that the expert is available to cooperatively consult with the opposing party on a reasonable notice.

The party intending to call the expert is responsible for any fees charged by the expert for the consultation.

If an expert's anticipated testimony will be based in whole or part on the results of any tests or other specialized data, the party intending to call the witness shall provide to the opposing party the information upon request. As soon as practicable after receipt of the expert's report or the information concerning the expert's proposed testimony, the party receiving information concerning the expert's proposed testimony, the party receiving notice shall provide to the other party notice of witnesses whom the party anticipates calling to rebut the expert's testimony, including the information required above.

If the defendant or the prosecution fails to substantially comply with the requirements of this section, the opposing party shall, if necessary to prevent substantial prejudice, be entitled to a continuance of the trial or hearing sufficient to allow preparation to meet the testimony. If the court finds that the failure to comply with this section is the result of bad faith on the part of any party or attorney, the court shall impose appropriate sanctions. The remedy of exclusion of the expert's testimony will only apply if the court finds that a party deliberately violated the provisions of this section.

Testimony of an expert at a preliminary hearing held pursuant to Rule 7 of the Utah Rules of Criminal Procedure constitutes notice of the expert, the expert's qualifications, and a

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<sup>45</sup> Utah Code Annotated, Title 77.

report of the expert's proposed trial testimony as to the subject matter testified to by the expert at the preliminary hearing. Upon request, the party who called the expert at the preliminary hearing shall provide the opposing party with a copy of the expert's curriculum vitae as soon as practicable prior to trial or any hearing at which the expert may be called as an expert witness.

This section does not apply to the use of an expert who is an employee of the state or its political subdivisions, so long as the opposing party is on a reasonable notice through general discovery that the expert may be called as a witness at trial, and the witness is made available to cooperatively consult with the opposing party upon reasonable notice.

Proceedings in criminal cases are commenced by the filing of a complaint, information, or an indictment by the prosecutors, which is sworn to by a person who believes a crime has been committed. In most jurisdictions misdemeanor proceedings are based on a complaint. Generally, information's and indictments apply to felonies although this differs among various jurisdictions. An indictment is used only as the result of a grand jury's action. A warrant of arrest or a summons is issued for the appearance of the accused. When a warrant of arrest is issued, the amount of bail is usually stated on the warrant.

### **Discovery**

The prosecuting attorney must release to the defense upon request certain information or material if he has knowledge of the requested information. The prosecutor has a continuing duty to make disclosure.

Defense counsel is generally provided the contents of the prosecutor's file **with the exception of research and personal notes**. Typically county attorney offices have open file policies in regard to discovery, but occasionally there are unusual requests that should be reviewed by the prosecutor before providing it to defense counsel.

The defense must disclose to the prosecutor as required by statute such information which relates to notice of alibi or insanity. Most defense evidence is considered to be privileged.

### **Determination of the Court for a Protective Order<sup>46</sup>**

A defendant who has been arrested for an offense involving domestic violence shall appear in person before the court of a magistrate within one judicial day after the arrest. A defendant who has been charged by citation, indictment, or information with an offense involving domestic violence but has not been arrested, shall appear before the court in person for arraignment as soon as practicable, but no later than 14 days after the next day on which court is in session following the issuance of the citation or the filing of the indictment or information.

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<sup>46</sup> Utah Code Annotated, § 77-36-2.6

At the time of an appearance the court shall determine the necessity of imposing a protective order or other condition of pretrial release including, but not limited to, participating in an electronic monitoring program, and shall state its findings and determination in writing. Appearances are required and mandatory and may not be waived.

### **Enforcement of Protective Orders**<sup>47</sup>

Each law enforcement agency in this state shall enforce all orders of the court issued pursuant to the requirements and procedures described in the Utah Code Annotated § 77-36, and shall enforce: all protective orders and ex parte protective orders issued pursuant to Title 30, Chapter 6, Cohabitant Abuse Act; and all foreign protection orders enforceable under Title 30, Chapter 6a, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

The requirements of § 76-36 apply statewide, regardless of the jurisdiction in which the order was issued or the location of the victim or the perpetrator.

### **Violation of Protective Orders – Mandatory Arrest**<sup>48</sup>

A law enforcement officer shall without warrant arrest an alleged perpetrator whenever there is probable cause to believe that the alleged perpetrator has violated any of the provisions of an ex parte protective order or protective order. Intentional or knowing violation of any ex parte protective order or protective order is a class A misdemeanor, in accordance with § 77-5-108 and is a domestic violence offense, pursuant to § 77-36-1.

Second or subsequent violations of ex parte protective orders or protective orders carry increased penalties, in accordance with § 77-36-1.1. An “ex parte protective order” or “protective order” includes:

1. Any protective order or ex parte protective order issued under Title 30, Chapter 6, Cohabitant Abuse Act or Title 77, Chapter 36, Cohabitant Abuse Procedures Act;
2. Any child protective order or ex parte child protective order issued under Title 78, Chapter 3h, Child Protective Orders; or
3. A foreign protection order enforceable under Title 30, Chapter 6a, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

### **Requirements of the Accused:**

1. Appear in a lineup.
2. Speak for identification.
3. Submit to fingerprinting.
4. Pose for photographs not involving re-enactment of the crime.
5. Try on articles of clothing or other items of disguise.
6. Permit the taking of samples of blood, hair, fingernail scrapings, and other bodily materials which can be obtained without unreasonable intrusion.
7. Provide specimens of handwriting.

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<sup>47</sup> Utah Code Annotated, § 77-36-6

<sup>48</sup> Utah Code Annotated, § 77-36-2.4.

8. Submit to reasonable physical or medical inspection of his body.
9. Cut hair or allow hair to grow to approximate appearance at the time of the alleged offense.

### **Trial by Jury**

A trial jury consists of:

1. Twelve (12) persons in a capital case.
2. Eight (8) persons in felony cases.
3. Six (6) persons for class A misdemeanors.
4. Four (4) persons for class B and C misdemeanors generally heard in Justice Courts.
5. The defendant is not entitled to a jury trial on infractions; only a bench trial.
6. Eight (8) persons in a civil case at law except that the jury shall be four (4) persons in a civil case for damages of less than \$20,000, exclusive of costs, interest, and attorney fees.

In the trial of a capital felony, the parties may stipulate upon the record to a jury of lesser number than the twelve (12) established by Utah Code.

If a defendant specifically requests a jury trial it must be done 10 days in advance of the trial. In some jurisdictions trial by jury is deemed to be waived in misdemeanor cases unless the defendant makes written demand for a jury trial.

The verdict in a criminal case shall be unanimous. The verdict in a civil case shall be by not less than three-fourths of the jurors. There is no jury in the trial of small claims cases. There is no jury in the adjudication of a minor charged with what would constitute a crime if committed by an adult.

A person is competent to serve as a juror if the person is:

1. A citizen of the United States.
2. Eighteen (18) years of age or older.
3. A resident of the county.
4. Able to read, speak, and understand the English language.

A person who has been convicted of a felony that has not been expunged is not eligible to serve as a juror.

The court, on its own initiative or when requested by a prospective juror, shall determine whether the prospective juror is disqualified from jury service. The court shall base its decision on the information provided on the juror qualification form, or by interview with the prospective juror or other competent evidence. The clerk shall enter the court's determination in the records of the court.

## **POST TRIAL PROCEEDINGS**

### **Motion for New Trial**

Upon motion of a defendant or upon its own initiative, a court may grant a new trial in the interest of justice if there is any error or impropriety which had a substantial adverse effect upon the rights of a defendant. In federal cases a judge has no power to order a new trial on his own initiative. Such motion must be made only by a defendant within seven days after verdict or finding of guilty or within such further time as the court may fix unless the motion is based upon the ground of newly discovered evidence; in such case, the motion may be made within two years after final judgment.

### **Correction or Reduction of Sentence**

The federal court may correct either an illegal sentence at any time or a sentence imposed in an illegal manner within the time provided for a reduction of sentence. A sentence may be reduced within 120 days after imposition of sentence, after the court receives a mandate from the court of appeals affirming the judgment or dismissing the appeal or after entry of a denial of a petition for certiorari or appeal to the Supreme Court.

### **Appeals – Procedure**

An appeal is a request to a higher court to review a decision of a lower court. When the appellant files a notice of appeal, he must file a designation of the record describing the parts of the trial record or transcript of the proceedings to be sent to the appellate court. The appellant may be required to file a bond on appeal. A docketing statement describing the issues to be raised on appeal is to be filed in the appeal court after filing the notice of appeal. The next thing required is each party files briefs.

### **Extradition**

Extradition is the surrender by one state (arresting state) to another (demanding state) of an individual accused or convicted of an offense committed outside of the arresting state but within the territorial jurisdiction of the demanding state which demands the surrender of the accused. The defendant may challenge the extradition in a habeas corpus proceeding.

A person arrested on a fugitive warrant may waive extradition proceedings by executing in the presence of a judge in any court of record in the arresting state a writing which states that he knowingly and voluntarily consents to return to the demanding state. The judge may also require that the demanding state return the defendant within a specified period of time. The Uniform Criminal Extradition Act is to make uniform the extradition procedures in all states which have adopted the act.

### **Habeas Corpus**

The writ of habeas corpus is one of the basic guarantees of personal freedom in English and American law which prevents the unjust or wrongful imprisonment or detention of a person by legal authorities.

A state defendant who intentionally bypasses a state remedy may not seek federal jurisdiction.

A person seeking relief from federal custody files a motion to vacate, set aside, or correct sentence rather than a petition for habeas corpus.

### **Probation and Parole**

Probation is an act by the court suspending the imposition or execution of a sentence, generally under the supervision of a probation officer. This system is based on the effort to rehabilitate and encourage good behavior in a convicted criminal by releasing him on the condition that he leads a lawful and an orderly life for a stated period. Probation may not be revoked except upon a hearing in court and a finding that one or more conditions of probation have been violated.

Parole is the release of a prisoner from imprisonment on certain prescribed conditions, which if satisfactorily performed, entitle him to a termination of his sentence. A pardon releases the offender from the punishment prescribed for the offense and usually removes the finding of guilt; while by a parole, a convict is merely released before the expiration of his term and remains subject to supervision by the public authority during the remainder of his term.

An appointed body of residents of a state serves as a parole board. This board determines whether parole, pardon, commutation (change from a greater to a lesser punishment), or termination of sentence will be granted in individual cases. The board is empowered to revoke the parole of any person who is found to have violated the conditions of his parole.

Expungement means to destroy or obliterate, to blot out, or to strike out wholly. Any person who has been convicted of a crime may petition the convicting court for a judicial pardon and for sealing of his record in that court.

### **Guarantees of Justice for the Accused**

Article I, Section 9 provides the right to a writ of habeas corpus. Article I, Sections 9 and 10 prohibit both Congress and state legislatures from passing ex post facto laws (laws declaring acts which were committed before the laws were passed to be crimes). Article I, Sections 9 and 10 also prohibit both Congress and state legislatures from passing bills of attainder (legislative acts which inflict punishment without benefit of a trial). Article III, Section 2 guarantees the right to a trial by jury. Article III, Section 3 provides protection against being convicted of treason without the testimony of two witnesses to the act or on confession in open court.

*Escobedo v. Illinois* established that when police questioning begins to focus on the accused as a suspect rather than for general investigation purposes, the accused must be permitted to consult with counsel.

*Miranda v. Arizona* established that prior to any custodial interrogation, the police must warn the accused (1) that he has the right to remain silent; (2) that any statement he does make may be used as evidence against him; (3) that he has the right to have his attorney present during questioning; and (4) that if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so wishes.

## **SENTENCING GUIDELINES<sup>49</sup>**

<b>Crime</b>	<b>Maximum Jail or Prison</b>	<b>Maximum Fine</b>
Infraction	Jail cannot be imposed on an infraction	\$750
Class C Misdemeanor	Up to 90 days in the County Jail	\$750
Class B Misdemeanor	Up to 6 months in the County Jail	\$1,000
Class A Misdemeanor	Up to a Year in the County Jail	\$2,500
3 <sup>rd</sup> Degree Felony	0 to 5 years at the Utah State Prison	\$5,000
2 <sup>nd</sup> Degree Felony	1 to 15 years at the Utah State Prison	\$10,000
1 <sup>st</sup> Degree Felony	5 Years to Life at the Utah State Prison	\$10,000
<i>Capital</i>	Life in the Utah State Prison or Death Penalty	N/A

<sup>49</sup> Utah Code Annotated, Titles 76 and 77.

## **ENHANCEMENTS** <sup>50</sup>

1. Driving Under the Influence.
2. Controlled Substance Penalties.
3. Two or More Persons.
4. Weapon on School Premises.
5. Habitual Violent Offender.
6. Certain Offenses Committed by Prisoners.
7. Increase of Sentence for Violent Felony if Body Armor was used.
8. Dangerous Weapon Used.
9. Restrictions on Possession, Purchase, Transfer, and Ownership of Dangerous Weapons by Certain Persons.
10. Possession of a Dangerous Weapon by a Minor.
11. Prohibition of Possession of Certain Weapons by Minors.
12. Providing Certain Weapons to a Minor.
13. Parent or Guardian Providing Firearm to Violent Minor.
14. Theft.
15. Repeat & Habitual Sex Offenders – Additional Prison Term.
16. Repeat & Habitual Sex Offenders – Life Imprisonment.
17. Subsequent Domestic Violence Offenses.
18. Stalking.
19. Automobile Homicide.
20. Prostitution.
21. Aiding Prostitution.
22. HIV Positive Offender.
23. Providing Cigars, Cigarettes, or Tobacco to Minors.
24. Requirement of Direct, Face-to-Face Sale of Tobacco Products.
25. Unlawful Dealing of a Property by a Fiduciary.
26. Obtaining Encoded Information on a Financial Transaction Card with the Intent to Defraud the Issuer, Holder, or Merchant.
27. Cruelty to Animals Enhanced Penalties.

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<sup>50</sup> Utah Code Annotated, Titles 41, 58, 76, and 77.



### **Driving Under the Influence – 41-6a-503**

A person convicted a first or second time of Driving Under the Influence is guilty of a class B misdemeanor. It becomes a class A misdemeanor if the person has:

1. Also inflicted bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner;
2. Had a passenger under 16 years of age in the vehicle at the time of the offense; or
3. Was 21 years of age or older and had a passenger under 18 years of age in the vehicle at the time of the offense.

A person convicted of Driving Under the Influence is guilty of a third degree felony if:

1. Within the past ten years, the person has had two or more prior convictions;
2. The person has also inflicted serious bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner;
3. The person has previously been convicted of automobile homicide after July 1, 2001.

### **Controlled Substances Penalties – 58-37-8**

It is unlawful for any person to knowingly and intentionally:

1. Produce, manufacture, or dispense, or to possess with intent to produce, manufacture, or dispense, a controlled or counterfeit substance;
2. Distribute a controlled or counterfeit substance, or to agree, consent, offer or arrange to distribute a controlled or counterfeit substance; or
3. Possess a controlled or counterfeit substance with intent to distribute;

Any person convicted of a substance classified in Schedule I or II, a controlled substance analog or gammahydroxybutyric acid as listed in Schedule III, is guilty of a second degree felony and upon a second or subsequent conviction is guilty of a first degree felony.

Any person convicted of a substance classified in Schedule III or IV, or marijuana, is guilty of a third degree felony, and upon a second or subsequent conviction is guilty of a second degree felony.

Any person convicted of a substance classified in Schedule V is guilty of a class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree felony.

Any person who possesses less than one ounce of marijuana is guilty of a class B misdemeanor. Upon a second conviction the person is guilty of a class A misdemeanor, and upon a third or subsequent conviction the person is guilty of a third degree felony.

Any person convicted of possessing a controlled substance while inside the exterior boundaries of property occupied by any correctional facility or any public jail or other place of confinement shall be sentenced to a penalty one degree greater.

It is unlawful:

1. For any person knowingly and intentionally to possess or use a controlled substance analog or a controlled substance unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of his professional practice;
2. For any owner, tenant, licensee, or person in control of any building, room, tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied by persons unlawfully possessing, using, or distributing controlled substances in any of those locations; or
3. For any persons knowingly and intentionally to possess an altered or forged prescription or written order for a controlled substance.

Any person convicted of violation of the above is:

1. On a first conviction, guilty of a class B misdemeanor;
2. On a second conviction, guilty of a class A misdemeanor; and
3. On a third or subsequent conviction, guilty of a third degree felony.

### **Two or More Persons Enhancement – 76-3-203.1**

The level of offense is enhanced one degree if the person acted in concert with two or more persons. “In concert with two or more persons” means the defendant was aided or encouraged by at least two other persons in committing the offense and was aware that he was so aided or encouraged, and each of the other persons was:

1. Physically present; or
2. Participated as a party of any offense.

The enhanced penalty for a:

- a. Class B misdemeanor is a class A misdemeanor;
- b. Class A misdemeanor is a third degree felony;
- c. Third degree felony is a second degree felony;
- d. Second degree felony is a first degree felony; and
- e. First degree felony is an indeterminate prison term of not less than nine years and which may be for life.

### **Weapon on School Premises – 76-3-203.2**

The use of a dangerous weapon in offenses committed on or about school premises. Any person who commits any offense and uses or threatens to use a dangerous weapon, in the commission of the offense is subject to an enhanced degree of offense.

Any person who commits an offense against an educator when the educator is acting within the course of employment is subject to an enhanced degree of offense.

If the trier of fact finds beyond a reasonable doubt that the defendant, while on or about school premises, commits any offense and in the commission of the offense uses or threatens to use a dangerous weapon, or that the defendant committed an offense against an educator when the educator was acting within the course of his employment, the enhanced penalty is:

1. Class B misdemeanor is a class A misdemeanor;
2. Class A misdemeanor is a third degree felony;

3. Third degree felony is a second degree felony;
4. Second degree felony is a first degree felony.

### **Habitual Violent Offender – 76-3-203.5**

If a person is convicted in this state of a violent felony by plea or by verdict and the trier of fact (judge or jury) determines beyond a reasonable doubt that the person is a habitual violent offender, the penalty for a:

1. Third degree felony is as if the conviction were for a first degree felony;
2. Second degree felony as if the conviction were for a first degree felony ; or
3. First degree felony remains the penalty for a first degree penalty except:
  - a. The convicted person is not eligible for probation; and
  - b. The Board of Pardons and Parole shall consider that the convicted person is a habitual violent offender as an aggravating factor to determine the length of incarceration.

### **Enhanced Penalty for Certain Offenses Committed by Prisoner – 76-3-203.6**

As used in this section, “serving a sentence” means a prisoner is sentenced and committed to the custody of the Department of Corrections, the sentence has not been terminated or voided, and the prisoner:

1. Has not been paroled; or
2. Is in custody after arrest for a parole violation.

If the trier of fact (judge or jury) finds beyond a reasonable doubt that a prisoner serving a sentence for a capital felony or a first degree felony commits certain offenses, the court shall sentence the defendant to life in prison without parole.

However, the court may sentence the defendant to an indeterminate prison term of not less than 20 years and which may be for life if the court finds that the interest of justice would best be served and states that specific circumstances justify the disposition on the record.

### **Increase of Sentence for Violent Felony if Body Armor used – 76-3-203.7**

A person convicted of a violent felony may be sentenced to imprisonment for an indeterminate term, but if the trier of fact finds beyond a reasonable doubt that the defendant used, carried, or possessed a dangerous weapon and also used or wore body armor, with the intent to facilitate the commission of the violent felony, and the violent felony is:

1. A first degree felony, the court shall sentence the person convicted for a term of not less than six years, and which may be for life;
2. A second degree felony, the court shall sentence the person convicted for a term of not less than two years nor more than 15 years, and the court may sentence the person convicted for a term of not less than two years nor more than 20 years; and
3. A third degree felony, the court shall sentence the person convicted for a term of not less than one year nor more than five years, and the court may sentence the person convicted for a term of not less than one year nor more than ten years.

### **Increase of Sentence if Dangerous Weapon used – 76-3-203.8**

If the trier of fact finds beyond a reasonable doubt that a dangerous weapon was used in the commission of furtherance of a felony, the court:

1. Shall increase by one-year the minimum term of the sentence applicable by law; and
2. If the minimum term applicable by law is zero shall set the minimum term as one year; and
3. May increase by five years the maximum sentence applicable by law in the case of a felony of the second or third degree.
4. If the trier of fact finds beyond a reasonable doubt that a person has been sentenced to a term of imprisonment for a felony in which a dangerous weapon was used in the commission of or furtherance of the felony and that person is subsequently convicted of another felony in which a dangerous weapon was used in the commission of or furtherance of the felony, the court shall, in addition to any other sentence imposed, impose an indeterminate prison term to be not less than five nor more than ten years to run consecutively and not concurrently.

### **Restrictions on Possession, Purchase, Transfer, and Ownership of Dangerous Weapons by Certain Persons – 76-10-503**

A Category I restricted person who intentionally or knowingly agrees, consents, offers, or arranges to purchase, transfer, possess, use, or have under his custody or control, or who intentionally or knowingly purchases, transfers, possesses, uses, or has under his custody or control:

1. Any firearm is guilty of a second degree felony; or
2. Any dangerous weapon other than a firearm is guilty of a class A misdemeanor.

A Category II restricted person who purchases, transfers, possesses, uses, or has under his custody or control:

1. Any firearm is guilty of a third degree felony; or
2. Any dangerous weapon other than a firearm is guilty of a class A misdemeanor.

A person may be subject to the restrictions of both categories at the same time.

### **Possession of a Dangerous Weapon by a Minor – 76-10-509**

A minor under 18 years of age may not possess a dangerous weapon unless he has the permission of his parent or guardian to have the weapon, or is accompanied by a parent or guardian while he has the weapon in his possession.

Any minor under 14 years of age in possession of a dangerous weapon shall be accompanied by a responsible adult. Any person who violates this section is guilty of:

1. A class B misdemeanor upon the first offense; and
2. A class A misdemeanor for each subsequent offense.

#### **Prohibition of Possession of Certain Weapons by Minors – 76-10-509.4**

A minor under 18 years of age may not possess a handgun, except as provided by federal law; a minor under 18 years of age may not possess the following:

1. A sawed-off rifle or sawed-off shotgun; or
2. A fully automatic weapon.

Any person who violates this is guilty of a class B misdemeanor upon the first offense, and a class A misdemeanor for each subsequent offense.

#### **Providing Certain Weapons to a Minor – 76-10-509.5**

Any person who provides a handgun to a minor when the possession of the handgun by a minor is prohibited, is guilty of:

1. A class B misdemeanor upon the first offense, and
2. A class A misdemeanor for each subsequent offense.

#### **Parent or Guardian Providing Firearm to Violent Minor – 76-10-509.6**

A parent or guardian may not intentionally or knowingly provide a firearm to, or permit the possession of a firearm by, any minor who has been convicted of a violent felony or any minor who has been adjudicated in juvenile court for an offense which would constitute a violent felony if the minor were an adult. Any person who violates this section is guilty of:

- a) A class A misdemeanor upon the first offense; and
- b) A third degree felony for each subsequent offense.

#### **Theft – Classification of Offenses – Action for Treble Damages – 76-6-412**

Theft of property and services shall be punishable as a third degree felony if the actor has been twice before convicted of theft, any robbery, or any burglary with intent to commit theft.

#### **Repeat & Habitual Sex Offenders – Additional Prison Term for Prior Felony Convictions – 76-3-407**

If the new offense is the commission of or the attempt to commit a first or second degree felony, the court shall impose, in addition to and consecutive to any other prison term, an additional five-year term for each prior conviction for a felony sexual offense in Utah or an offense in any other state or federal jurisdiction which constitutes or would constitute a crime or an attempted crime which, if committed in Utah, is punishable under Title 76, Chapter 5, Part 4 Sexual Offenses, if the trier of fact finds the prior felony conviction was entered before the commission of the new offense.

#### **Repeat & Habitual Sex Offenders – Life Imprisonment without Parole on Third Conviction – 76-3-408**

A person who has been convicted in two or more separate prosecutions of any sexual offense which, if committed in Utah or any other state or federal jurisdiction, would contain elements sufficient to constitute any of the offenses described in § 76-5-402, § 76-5-402.1, § 76-5-402.2, § 76-5-402.3, § 76-5-403, § 76-5-403.1, § 76-5-404, § 76-5-

404.1, and § 76-5-405, shall, upon a conviction of any offense set forth in this section, be sentenced to a term of imprisonment for life without the possibility of parole if the existence of the prior felony convictions has been charged and admitted or found true in the action for the new offense and if the prior felony convictions were entered before the commission of the new offense. A prior felony conviction can be alleged for purposes of this section only if it was entered before the actual commission of the crime which constitutes the basis for the next felony conviction, subsequently entered against the accused, which is also alleged under this section.

### **Enhancement for Subsequent Domestic Violence Offenses**

A person who is convicted of a domestic violence offense for the first time is guilty of a class B misdemeanor. Subsequent offenses may be enhanced by one degree above the offense charged as long as the prior conviction has been committed within five years of the new offense. For purposes of this section, a plea in abeyance is considered a conviction.

### **Stalking Enhancement**

Stalking is a class A misdemeanor upon the offender's first violation. It becomes a third degree felony with one prior conviction, and a second degree felony if the offender has been previously convicted two or more times of the offense.

### **Automobile Homicide – 76-5-207**

Criminal homicide is automobile homicide, a third degree felony, if the person operates a motor vehicle in a negligent manner causing the death of another and:

1. Has sufficient alcohol in his body that a subsequent chemical test shows that the person has a blood alcohol concentration of .08 grams or greater at the time of the test;
2. Is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle; or
3. Has a blood or breath alcohol concentration of .08 grams or greater at the time of operation.

This charge can be a second degree felony if the person operates a motor vehicle in a criminally negligent manner causing the death of another and has been previously convicted of:

1. Driving under the influence;
2. Any alcohol, drug or a combination of both, related reckless driving; or
3. Driving with any measurable controlled substance that is taken illegally in the body.

A plea of guilty or no contest to the above violations which is held in abeyance is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement, for purposes of enhancements.

### **Prostitution – 76-10-1302**

Prostitution is a class B misdemeanor for the first offense. Any person who is convicted a second time, and on all subsequent convictions is guilty of a class A misdemeanor, except as provided in § 76-10-1309.

### **HIV Positive Offender – 76-10-1309**

A person who is an HIV positive individual and has actual knowledge of that fact and has received written personal notice of the positive test results from a law enforcement agency and is convicted of:

1. Prostitution shall be guilty of a third degree felony;
2. Patronizing a prostitute shall be guilty of a third degree felony; or
3. Sexual solicitation shall be guilty of a third degree felony.

### **Aiding Prostitution – 76-10-1304**

Aiding prostitution is a class B misdemeanor. However, a person who is convicted a second time, and on all subsequent convictions, is guilty of a class A misdemeanor.

### **Providing Cigars, Cigarettes, or Tobacco to Minors – Penalties – 76-10-104**

Any person who knowingly, intentionally, recklessly, or with criminal negligence provides any cigar, cigarette, or tobacco in any form, to any person under 19 years of age, is guilty of a class C misdemeanor on the first offense, a class B misdemeanor on the second offense, and a class A misdemeanor on subsequent offenses.

### **Requirement of Direct, Face-to-Face Sale of Tobacco Products – 76-10-105.1**

A parent or legal guardian who accompanies a person younger than 19 years of age into an area described as: vending machines, including vending machines that sell packaged, single cigarettes, and self-service displays that are located in a separate and defined area within a facility where the retailer ensures that no person younger than 19 years of age is present, or permitted to enter at any time, unless accompanied by a parent or legal guardian, and permits the person younger than 19 years of age to purchase or otherwise take a cigar, cigarette, or tobacco in any form is guilty of providing tobacco.

The first violation of this offense is a Class C misdemeanor, a class B misdemeanor on the second offense, and a class A misdemeanor on the third and all subsequent offenses.

### **Unlawful Dealing of Property by a Fiduciary – 76-6-513**

A person acting as a fiduciary is guilty of a violation if, without permission of the owner of the property or some other person with authority to give permission, he pledges as collateral for a personal loan, or as collateral for the benefit of some party, other than the owner or the person for whose benefit the property was entrusted, the property that has been entrusted to the fiduciary.

A class A misdemeanor if the actor has been twice before convicted of theft, robbery, burglary with intent to commit theft, or unlawful dealing with property by fiduciary.

### **Obtaining Encoded Information on a Financial Transaction Card with the Intent to Defraud the Issuer, Holder, or Merchant – 76-6-506.7**

Any person who has been convicted previously of an offense listed below is guilty of a third degree felony:

1. A scanning device to access, read, obtain, memorize, or store temporarily or permanently, information encoded on the magnetic strip or stripe of a financial transaction card without the permission of the card holder and with intent to defraud the card holder, the issuer, or a merchant; or
2. A Reencoder to place information encoded on the magnetic strip or stripe of a financial transaction card onto the magnetic strip or stripe of a different card without the permission of the authorized user of the card from which the information is being reencoded and with the intent to defraud the card holder, the issuer, or a merchant.

The person is guilty of a second degree felony upon a second conviction and any subsequent convictions for the offense.

### **Cruelty to Animals Enhanced Penalties – 76-9-301.7**

A person who has been convicted of cruelty to animals shall be subject to an enhanced penalty. The enhanced degrees of offense for cruelty to animals are:

- a) If the offense is a class C misdemeanor, it is a class B misdemeanor; and
- b) If the offense is a class B misdemeanor, it is a class A misdemeanor.



## **VICTIM'S RIGHTS**<sup>51</sup>

The Legislature recognizes the duty of victims and witnesses of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, the essential nature of citizen cooperation to state and local law enforcement efforts, and the general effectiveness and well-being of the criminal justice system of this state. In the Utah Code Annotated, Chapter 37, the Legislature declares its intent to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity, and that the rights extended in Chapter 37 to victims and witnesses of crime are honored and protected by law in a manner no less vigorous than protections afforded criminal defendants.

The Legislature finds it is necessary to provide child victims and child witnesses with additional consideration and different treatment than that usually afforded to adults. The treatment should ensure that children's participation in the criminal justice process be conducted in the most effective and least traumatic, intrusive, or intimidating manner.

### **Bill of Rights**

The bill of rights for victims and witnesses is:

1. Victims and witnesses have a right to be informed as to the level of protection from intimidation and harm available to them. It's a crime for anyone to threaten or hurt a victim or witness because of their testimony.
2. Victims and witnesses, including children and their guardians, have a right to be informed and assisted as to their role in the criminal justice process. All criminal justice agencies have the duty to provide this information and assistance.
3. Victims and witnesses have a right to clear explanation regarding relevant legal proceedings; these explanations shall be appropriate to the age of child victims and witnesses. All criminal justice agencies have the duty to provide these explanations.
4. Victims and witnesses should have a secure waiting area that does not require them to be in close proximity to defendants or the family and friends of defendants. Agencies controlling facilities shall, whenever possible, provide this area.
5. Victims are entitled to restitution or reparations, including medical costs. State and local government agencies that serve victims have the duty to have a functional knowledge of the procedures established by the Utah Crime Victims' Reparations Board and to inform victims of these procedures.
6. Victims and witnesses have a right to have any personal property returned. Criminal justice agencies shall expeditiously return the property when it is no longer needed for court, law enforcement or prosecution purposes.
7. Victims and witnesses have the right to reasonable employer intercession services, including pursuing employer cooperation in minimizing employees' loss of pay and other benefits resulting from their participation in the criminal justice

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<sup>51</sup> Utah Code Annotated, Title 77, Chapter 37.

- process. Officers of the court shall provide these services and shall consider victims' and witnesses' schedules so that activities which conflict can be avoided. Where conflicts cannot be avoided the victim may request that the responsible agency intercede with employers or other parties.
8. Victims and witnesses, particularly children, should have a speedy disposition of the entire criminal justice process. All involved public agencies shall establish policies and procedures to encourage speedy disposition of criminal cases.
  9. Victims and witnesses have the right to timely notice of judicial proceedings they are to attend and timely notice of cancellation of any proceedings. Criminal justice agencies have the duty to provide these notifications. Defense counsel and others have the duty to provide timely notice to prosecution of any continuances or other changes that may be required.
  10. Victims of sexual offenses have a right to be informed of their right to request voluntary testing for themselves for HIV infection as provided in U.C.A. § 76-5-503 and to request mandatory testing of the convicted sexual offender for HIV infection as provided in U.C.A. § 76-5-502. The law enforcement office where the sexual offense is reported shall have the responsibility to inform victims of this right.

### **Additional Rights for Children**

In addition to all rights afforded to victims and witnesses under Chapter 37 of the Utah Code Annotated, child victims and witnesses shall be afforded these rights:

1. Children have the right to protection from physical and emotional abuse during their involvement with the criminal justice process.
2. Children are not responsible for inappropriate behavior adults commit against them and have the right not to be questioned, in any manner, nor have allegations made, implying this responsibility. Those who interview children have the responsibility to consider the interest of the child in this regard.
3. Child victims and witnesses have the right to have interviews relating to a criminal prosecution kept to a minimum. All agencies shall coordinate interviews and ensure that they are conducted by persons sensitive to the needs of children.
4. Child victims have the right to be informed of available community resources that might assist them and how to gain access to those resources. Law enforcement and prosecutors have the duty to ensure the child victims are informed of community resources, including counseling prior to the court proceeding, and have those services available throughout the criminal justice process.

Information rights of the victim under Chapter 37 of the Utah Code Annotated are based upon the victim providing his current address and telephone number to the criminal justice agencies involved in the case.

## **UTAH RIGHTS OF CRIME VICTIMS ACT<sup>52</sup>**

### **§77-38-2 – Notification to Victims**

Within seven days of the filing of felony criminal charges against a defendant, the prosecuting agency shall provide an initial notice to reasonably identifiable and locatable victims of the crime contained in the charges except as otherwise provided in Chapter 38 of the Utah Code Annotated.

The initial notice of the victim of a crime shall provide information about electing to receive notice of subsequent important criminal justice hearings which include:

1. Any preliminary hearing to determine probable cause;
2. Any court arraignment where practicable;
3. Any court proceeding involving the disposition of charges against a defendant or minor or the delay of a previously scheduled trial date but not including any unanticipated proceedings to take an admission or a plea of guilty as charged to all charges previously filed or any plea taken at an initial appearance;
4. Any court proceeding to determine whether to release a defendant or minor and, if so, under what conditions release may occur, excluding any such release determination made at an initial appearance;
5. Any criminal or delinquency trial, excluding any actions at the trial that a court might take in camera, in chambers, or a sidebar conference;
6. Any court proceeding to determine the disposition of a minor or sentence, fine, or restitution of a defendant or to modify any disposition of a minor or sentence, fine, or restitution of a defendant.

The prosecuting agency shall provide notice to a victim of a crime for the above important criminal justice hearings, which the victim has requested. The responsible prosecuting agency may provide initial and subsequent notices in any reasonable manner, including telephonically, electronically, orally, or by means of a letter or form prepared for this purpose.

In the event of an unforeseen important criminal justice hearing for which a victim has requested notice, a good faith attempt to contact the victim by telephone shall be considered sufficient notice, provided that the prosecuting agency subsequently notifies the victim of the result of the proceedings.

In a case in which the Board of Pardons and Parole is involved, the responsible prosecuting agency shall forward any request for notice that it has received from a victim to the Board of Pardons and Parole.

A victim's address, telephone number, and victim impact statement maintained by a peace officer, prosecuting agency, Youth Parole Authority, Division of Youth Corrections, Department of Corrections, and Board of Pardons and Parole, for purposes of providing notice under this section, is classified as protected.

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<sup>52</sup> Utah Code Annotated, Title 77, Chapter 38.

The victim's address, telephone number, and victim impact statement is available only to the following persons or entities in the performance of their duties:

1. A law enforcement agency, including the prosecuting agency.
2. A victim's rights committee as provided in the U.C.A. § 77-37-5.
3. A governmentally sponsored victim or witness program.
4. The Department of Corrections.
5. Office of Crime Victims' Reparations.
6. Commission on Criminal and Juvenile Justice.
7. The Board of Pardons and Parole.

#### **§ 77-38-4 – Victims' Right to be Present & Heard**

The victim of a crime shall have the right to be present and heard at the important criminal or juvenile justice hearings. This includes, upon request to the judge hearing the matter, the right to be present and heard at the initial appearance of the person suspected of committing the conduct or criminal offense against the victim on issues relating to whether to release a defendant or minor and, if so, under what conditions release may occur.

The victim may exercise any right under U.C.A. § 77-38-10 at his discretion to be present and to be heard at a court proceeding, including a juvenile delinquency proceeding. The absence of the victim at the court proceeding does not preclude the court from conducting the proceeding. A victim shall not refuse to comply with an otherwise lawful subpoena under U.C.A. § 77-38-10. A victim shall not prevent the prosecution from complying with requests for information within a prosecutor's possession and control under U.C.A. § 77-38-10.

#### **§ 77-38-6 – Victims' Right to Privacy**

The victim of a crime has the right, at any court proceeding, including any juvenile court proceeding, not to testify regarding the victim's address, telephone number, place of employment, or other locating information unless the victim specifically consents or the court orders disclosure on finding that on compelling need exists to disclose the information. A court proceeding on whether to order disclosure shall be in camera.

A defendant may not compel any witness to a crime, at any court proceeding including any juvenile court proceeding, to testify regarding the witness's address, telephone number, place of employment, or other locating information unless the witness specifically consents or the court orders disclosure on finding that a compelling need for the information exists. A court proceeding on whether to order disclosure shall be in camera.

#### **§ 77-38-7 – Victims' Right to a Speedy Trial**

In determining a date for any criminal trial or other important criminal or juvenile justice hearing, the court shall consider the interests of the victim of a crime to a speedy resolution of the charges under the same standards that govern a defendant's or minor's right to a speedy trial.

The victim of a crime has the right to a speedy disposition of the charges free from unwarranted delay caused by or at the behest of the defendant or minor, and to prompt and final conclusion of the case after the disposition or conviction and sentence, including prompt and final conclusions of all collateral attacks on dispositions or criminal judgments.

In ruling on any motion by a defendant or minor to continue a previously established trial or other important criminal or juvenile justice hearing, the court shall inquire into the circumstances requiring the delay and consider the interest of the victim of a crime to a speedy disposition of the case.

If a continuance is granted, the court shall enter in the record the specific reason for the continuance and the procedures that have been taken to avoid further delays.

### **§77-38-8 – Age Appropriate Language at Judicial Proceedings**

In a criminal proceeding or juvenile court proceeding regarding or involving a child, examination and cross-examination of a victim or witness 13 years of age or younger shall be conducted in age-appropriate language.

The court may appoint an advisor to assist a witness 13 years of age or younger in understanding questions asked by counsel. The advisor is not required to be an attorney.

### **§77-38-9 – Representative of Victim**

A victim of a crime may designate, with the approval of the court, a representative who may exercise the same rights that the victim is entitled to exercise under this chapter. The victim may revoke the designation at any time. In cases where the designation is in question, the court may require that the designation of the representative be made in writing by the victim.

In cases in which the victim is deceased or incapacitated, upon request from the victim's spouse, parent, child, or close friend, the court shall designate a representative or representatives of the victim to exercise the rights of a victim under this chapter on behalf of the victim. The responsible prosecuting agency may request a designation to the court.

If the victim is a minor, the court in its discretion may allow the minor to exercise the rights of a victim under this chapter or may allow the victim's parent or other immediate family member to act as a representative of the victim. The court may also, in its discretion, designate a person who is not a member of the immediate family to represent the interests of the minor.

The representative of a victim of a crime shall not be: (a) the accused or a person who appears to be accountable or otherwise criminally responsible for or criminally involved in the crime or conduct, a related crime or conduct, or a crime or act arising from the same conduct, criminal episode, or plan as the crime or conduct is defined under the laws of this state; (b) a person in the custody of or under detention of federal, state, or local

authorities; or (c) a person whom the court in its discretion considers to be otherwise inappropriate.

Any notices that are to be provided to a victim pursuant to this chapter shall be sent to the victim or the victim's lawful representative. On behalf of the victim, the prosecutor may assert any right to which the victim is entitled under this chapter, unless the victim requests otherwise or exercises his own rights. In any homicide prosecution, the prosecution may introduce a photograph of the victim taken before the homicide to establish that the victim was a human being, the identity of the victim, and for other relevant purposes.

#### **§77-38-10 – Victim’s Discretion**

The victim may exercise any rights under this chapter at his discretion to be present and to be heard at a court proceeding, including a juvenile delinquency proceeding. The absence of the victim at the court proceeding does not preclude the court from conducting the proceeding. A victim shall not refuse to comply with an otherwise lawful subpoena under this chapter. A victim shall not prevent the prosecution from complying with requests for information within a prosecutor's possession and control under this chapter.

#### **§ 77-38-12 – Severability Clause – No right to set aside convictions, adjudication, admission, or plea.**

All of the provisions contained in U.C. A., Chapter 38 Rights of Crime Victims Act, shall be construed to assist the victims of crime. This chapter may not be construed as creating a basis for dismissing any criminal charge or delinquency petition, vacating any adjudication or conviction, admission or pleas of guilty or no contest, or for appellate, habeas corpus, except in juvenile cases, or other relief from a judgment in any criminal or delinquency case.

#### **§ 77-38-14 – Notice of Expungement Petition – Victim’s right to object**

The Department of Corrections or the Juvenile Probation Department shall prepare a document explaining the right of a victim or a victim’s representative to object to a petition for Expungement under U.C.A. § 77-18-11 or § 78-3a-905 and the procedures for obtaining notice of any such petition. The department or division shall also provide each trial court a copy of the document which jurisdiction over delinquencies or criminal offenses subject to Expungement.

The prosecuting attorney in any case leading to a conviction or an adjudication subject to Expungement shall provide a copy of the document to each person who would be entitled to notice of a petition for Expungement under U.C. A. § 77-18-11 and § 78-3a-905.

## **RIGHT TO ACCESS TO COURT RECORDS**

Rule of thumb: generally speaking, any document in a court file is a matter of public record unless it is sealed by the court or is classified as confidential or private by statute or by judicial council rule.

RULE 4-202 of the Code of Judicial Administration governs access to court records. Currently, court records are classified into four categories: PUBLIC, PRIVATE, CONFIDENTIAL, AND SEALED.

**PUBLIC** means data on individuals collected and maintained by the courts which is not classified as private or confidential under Rule 4-202 and is open to the public, unless otherwise exempted or restricted from disclosure by law.

**PRIVATE** means data on individuals collected and maintained by the courts which is available only to the courts, to others by the express consent of the individuals, and to the individuals themselves or next-of-kin when needed to acquire the benefits due a deceased person.

**CONFIDENTIAL** means data on individuals collected and maintained by the courts which is available only to the courts, but not to the individual who is the subject of the data or any other individual except upon order of the court.

**SEALED** means data which has been ordered sealed by the court pursuant to statute or court rule.

# **CIVIL PROCEDURES**

## **SUNSHINE LAWS**

### **Government Records Access and Management Act**

### **Open Meetings Act**

1. Overall Purpose and Public Policy.
2. Public Records.
3. How are Records Classified
4. GRAMA Classifications:
  - a. Public.
  - b. Private.
  - c. Controlled.
  - d. Protected.
5. Classification and Retention Scheduling.
6. Records Request and Appeals Process.
  - a. Request Forms.
  - b. Timeliness.
  - c. Sharing and Subpoenas.
  - d. Fees.
  - e. Appeals Process.

Utah has laws providing for both open records and open meetings which date back to before statehood. In 1992, the Legislature adopted a comprehensive law regarding open records which is referred to as the Government Records Access and Management Act (GRAMA) (§ 63-2-101, et seq.) and which compiles a variety of earlier statutes and case law into one comprehensive package. The Legislature adopted the Open Meetings Act (§ 52-4-1, et seq.) in 1977 to set certain requirements and procedures regarding public attendance at government meetings. Both these laws are designed to insure that government activities, meetings and records are “kept in the sunshine.”

## **GRAMA**

### **1. Overall Purpose and Public Policy**

The general purpose of GRAMA is to establish that the majority of government records are available to the public, to set specific procedures for classifying records as either public or confidential, and to permit citizen access to those records in accordance with established procedures.

### **2. Public Records**

GRAMA provides that all government records are considered public records; therefore, the presumption in government always lies on the side of providing public access to a record. § 63-2-202(2).



There are, however, two notable exceptions to the general rule of public access: first, any record which is expressly designated as confidential, by statute, is not a public record; second, GRAMA provides for treating records as confidential if disclosure would constitute a “clearly unwarranted invasion of personal privacy.” § 63-2-302(2)(d).

### **3. How are records classified?**

The first issue is defining whether materials are considered a “record” for GRAMA purposes. Materials are considered a “record,” and therefore liable for disclosure and classification, regardless of the format or media and all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, electronic data, or other documents are considered records for GRAMA purposes if they are prepared, owned, received, or retained by the government and if the information is reproducible by photocopy, electronics, or other means.

Certain materials are not considered records at all and, therefore, do not need to be disclosed or classified. “Non records” include temporary drafts, computer programs, copyrighted materials, catalogued books in a library, judicial notes, proprietary software, personal calendars and notes, privately owned materials, and junk mail. § 3-2-103(19).

### **4. GRAMA Classifications:**

#### **a. Public.**

As stated above, all government records are considered “public” with the two exceptions mentioned. Thus, there is no comprehensive listing of every kind of record that might be considered a public document. GRAMA specifically mentions, however, that the following records are always considered public information: Laws, names, pay, job title, and other information regarding public employees; final opinions and orders in administrative or judicial proceedings; final interpretations of statutes; minutes of open meetings; judicial records; county recorder records; commercial code information; information where the subject of the record has given written permission for publication; documentation regarding payments made to contractors; summary data; and voter registration records. Other materials are defined by GRAMA as usually public, if the government entity so classifies. This material includes: staff and policy manuals, contractors’ compliance, documentation of services provided by a contractor; contracts; information regarding receipt or expenditure of governmental funds; inducements to relocate a business; police reports; correspondence regarding government rights and duties; empirical material contained in drafts; drafts circulated outside the government; drafts that were never finalized, but were still relied upon; original data in a computer program; arrest and search warrants; disciplinary actions against employees; certain mining information; audit reports; occupational, professional and business licenses; and records regarding disciplinary actions against persons professionally licensed by the government. § 63-2-301. Public records are made available to any person requesting the record. § 63-2-201.

**b. Private**

“Private” records are generally those that deal with specific individuals and their personal circumstances. Private records include information regarding unemployment, social services, and welfare benefits; medical information; library information that would identify a patron; legislative ethics information; Senate confirmation information; personal employee information including home address, telephone number, social security number and marital status; social security number; voter registration information that discloses driver’s license or social security numbers; employee information about race, religion, or disabilities; certain individual financial records; and records which are treated as “private” by the laws of the United States or another state.

Also included is a general rule that there is no disclosure of information when doing so would constitute a clearly unwarranted invasion of personal privacy. § 63-2-302. Private records are available to the subject of the record, the parent or guardian of a minor subject of a record; or those who are granted access by a power of attorney, a release, or court order. § 63-2-202(1).

**c. Controlled**

The “controlled” record classification is a very narrow set of records and consists of medical information about a named individual – either medical or psychiatric – where the government is given information that suggests that the record should not be released to the subject of the record, as access might be detrimental to the subject’s mental health or to another person’s safety. § 63-2-303. A controlled record is available to physicians or other health workers who have a release from the subject of the record or persons with a release or court order. This information is not available, however, to the subject of the record. § 63-2-202(2).

**d. Protected**

A “protected” record is one in which the privacy interest is held by the government itself and the release of such information might be harmful to government processes and activities, such as investigations, audits or similar matters. Records made confidential as “protected” include certain trade secrets and other commercial information, test questions and answers, information regarding real estate purchasing, records regarding criminal, civil, or administrative investigations, prosecutions or audits, information which would jeopardize the life or safety of individuals or jeopardize the security of governmental property, including correctional facilities; board of pardons and parole information; Tax Commission records; audit work papers and information; attorney-client records including materials prepared in anticipation of litigation, attorney work product and communications between government attorneys and clients; legislators’ personal files and other legislative information; drafts; strategic information regarding collective bargaining or pending litigation; personal recommendations of individuals; University information regarding tenure and other employee information; certain information from the Governor’s Office and Legislative Fiscal Analyst; information regarding settlement

negotiations (but the final settlement figures must be made public); deliberation notes of an administrative law judge or in quasi-judicial functions; donor information where anonymity is requested; certain accident reports; certain personal information held by educational faculty; information detailing the location of explosives; and certain child and family service records. § 63-2-304.

Protected records are made available only to the person who submitted the record and to others who have a power of attorney or release from all government entities which have an interest in the protected information. § 63-2-202(4).

## **5. Classification and Retention Scheduling**

GRAMA imposes on state and local governments the requirement that all government records be inventoried, classified as either public or non-public, and scheduled for retention. Classification of a record is based on its use or purpose and individual parts of an otherwise public record may be edited out before disclosure, to protect non-public information. When a local government establishes a record's classification and retention schedule, notification thereof must be sent to State Archives. There is no requirement that records be classified until the government entity receives a request for the particular record. § 63-2-306.

## **6. Records Request and Appeals Process**

### **a. Request Forms**

There is no specific form required for a GRAMA request; however, a GRAMA request must be in writing and contain the name, mailing address, day-time phone number, and a reasonably specific description of the records requested. § 63-2-204(1). (Even though GRAMA requires a written request, many government agencies respond to routine requests orally or over the telephone – the extent to which this is done depends on the nature of the record and the entity's practice in responding to routine requests).

### **b. Timeliness**

Upon receipt of a written request, the government entity is required to respond "as soon as reasonably possible" but in no more than 10 days after receiving the request. If the GRAMA request comes from a member of the news media, the government entity must respond within 5 days. If the government entity cannot respond within the required time, it should either notify the requestor that it cannot immediately approve or deny the request and the requestor may, after the designated time, treat the request as having been denied.

Notwithstanding the foregoing, there are specific circumstances, set out in GRAMA, which permit a government entity to extend the time limit for responding to a GRAMA request. Under the following circumstances, the time limit may be extended as needed: another government entity is currently using the record; the request is for a voluminous quantity of records; the entity is currently responding to a large number of requests; the request requires extensive research to find the record requested; legal advice is needed to determine whether the record may be released; or segregating public

information from non-public information requires either extensive editing or new computer programming. If the government entity claims any of these extraordinary circumstances, it must notify the requestor and give the requestor an estimate of the time required to respond to the request. § 63-2-204.

**c. Sharing and Subpoenas**

Government entities are permitted to share records, including non-public records, with another governmental entity, such as the Federal government or another state. Certain limitations and requirements are included in the provisions regarding records sharing, and the requesting entity must provide assurances that it will treat non-public information with the appropriate level of confidentiality. § 63-2-206. If a government entity receives a subpoena requiring disclosure of records, public records may be immediately provided pursuant to the subpoena; however, if the subpoena requests private, controlled or protected records, that information is released only after the court has conducted a hearing to determine whether release is appropriate and the subpoena must be signed by the judge, rather than by a clerk or attorney. § 63-2-207.

**d. Fees**

A government entity **may not** charge a fee to a person who only wants to inspect or view a record, without receiving a copy. § 63-2-201(1). A government entity may charge a reasonable fee to cover the actual cost of duplicating a record – that fee must be approved by the entity’s executive officer. A government entity may charge the cost of staff time needed to find, summarize, or edit records in response to a request. Local government entities need to establish fees by ordinance or by a written formal policy. A government entity may require payment in advance if the expected cost exceeds \$50 or if the records requestor has not paid fees from prior requests. There are provisions in GRAMA, not mandatory, providing for the waiver of fees for impecunious requestors or when otherwise in the public interest. § 63-2-203.

**e. Appeals Process**

GRAMA includes a statutory appeals process which is available to records requestors or other members of the public. Persons are permitted to appeal any aspect of the records requesting process, including classification, refusal, or fees imposed. The initial appeal is in the nature of an administrative hearing (similar to a personnel grievance) which is decided by the head of the government entity, such as a county commission or city council. If the records requestor is dissatisfied with the response received, a further appeal may be taken either to the State Records Committee or to district court. § 63-2-401, 403, and 404.

# **OPEN MEETINGS ACT**

1. Declaration of Policy.
2. Application of the Act to Certain Groups.
3. Notice Requirements.
4. Closed Meetings.
  - a. Subject Matter.
  - b. Procedures.
5. Minutes.
  - a. Open Meetings.
  - b. Closed Meetings.
6. Electronic Meetings.
7. Citizen Participation.
8. Enforcement and Remedies.

## **1. Declaration of Policy**

Like GRAMA, the public policy behind the Open Meetings Act suggests that all government meetings are open to the public with only certain listed exceptions. The Act specifically states that it is the Legislature's intent that government agencies and political subdivisions conduct their activities and deliberations openly. § 52-4-1.

## **2. Application of the Act to Certain Groups**

Not all group meetings of government employees are covered by the Open Meetings Act; rather, the Act's application has certain limits. The law applies to meetings conducted by any administrative, advisory, executive or legislative body – in state or local government – which is supported by tax revenues and is vested with authority to make decisions regarding public business. The law, therefore, applies generally to groups and bodies which are created by statute or ordinance and empowered, by that statute or ordinance, with the authority to make official decisions. The Act does not apply to meetings among elected officials generally, nor to department or staff meetings; it does not apply to groups which exercise both executive and legislative authority (such as a county commission) when convened to discuss administrative or executive activities; it does not apply to chance meetings or social affairs; and it does not apply to a meeting between two elected officials if no action is taken by them. The law does apply to any meeting which is called by a person who has the legal authority to call the meeting and which is convened with a quorum present for the purpose of discussing or acting upon a subject within that group's legal authority. § 52-4-2.

## **3. Notice Requirements**

Any board or group which is covered by the Open Meetings Act is required to publish notice of its meetings. If the group conducts meetings on a regular basis all year long (such as the second and fourth Tuesday of each month), then it is required to publish an annual notice of the regular meeting schedule. This notice must include the date,

time and place of regularly scheduled meetings. In addition to an annual notice, every individual meeting of the group must be preceded by a 24-hour individual notice which includes date, time and place of the meeting and also includes all agenda items to be discussed. This notice must be posted at the public body's office or at its regular meeting place and a copy of the notice given to local media representatives. There are provisions for conducting emergency meetings without 24-hour notice. § 52-4-6.

#### **4. Closed Requirements**

##### **a. Subject Matter**

As mentioned, almost all meetings of a government body must be open and available to the public. Meetings which discuss certain subjects may, however, be closed to the public. A meeting can be closed only for the following limited purposes:

1. discuss the health, character or competence of an individual (that is a person, not a corporation);
2. strategy sessions discussing collective bargaining, pending or reasonably imminent litigation, or real estate purchases;
3. deployment of security personnel or devices; or
4. discussions regarding criminal investigations. § 52-4-5.

##### **b. Procedures**

In order to conduct a closed meeting, the group needs to start with an open meeting in which the appropriate 24-hour notice has been published. A meeting can be closed only if there is an affirmative vote of two-thirds of the members present; no ordinance, rule, contract, or appointments can be made in a closed meeting; and meeting minutes must be taken as explained below. § 52-4-4.

#### **5. Minutes**

##### **a. Open Meetings**

Minutes must be taken at all meetings covered by the Act. Open meeting minutes must include the date, time and place of the meeting; the members of the body present and absent; the matters discussed and votes taken thereon; the names of citizens appearing and a summary of their statements; and other information which is requested to be included in the minutes. Minutes must be made available within a reasonable time after the close of the meeting and are considered public records under GRAMA. § 52-4-7.

##### **b. Closed Meetings**

Minutes must also be taken during closed meetings. These minutes must include the date, time and place of the meeting; members present and absent; the names of other persons present, unless to do so would reveal the nature of the closed meeting; the reason for closing the meeting and the vote for and against closure, by members' names; and matters discussed. If the matters discussed include the character, competence or health of an individual, or the

deployment of security personnel or devices, then detailed minutes need not be kept and the presiding officer must sign an affidavit affirming the purpose of the closed meeting. If the meeting is closed to discuss any other matter, then detailed written minutes or a tape recording must be kept. The minutes of a closed meeting are considered protected documents under GRAMA. § 52-4-7.5.

## **6. Electronic Meetings**

A public body may conduct meetings electronically, such as by telephone, video conferencing, or computer. Public notice is required and the body must put in place procedures which govern the conduct of the meeting and make available facilities for citizens to participate in or monitor the open portions of an electronic meeting. § 52-4-7.8.

## **7. Citizen Participation**

Private citizens and representatives of the news media may attend any public portion of meetings governed by the Act. Participation may be limited solely to listening – citizen comment or input is not required by the Act, though in some cases a statute may require a “public hearing” in which citizen input and comments are provided. The group may direct the removal of persons who significantly disrupt a meeting. Persons attending may record the meeting, provided that the recording process does not disrupt the meeting. § 52-4-5(3).

## **8. Enforcement and Remedies**

Violations of the Open Meetings Act may be remedied and enforcement undertaken by the Attorney General, a county attorney, or any private individual denied rights under the Act. A lawsuit must be commenced within 90 days (or 30 days for matters regarding the issuance of bonds). Remedies include an injunction against violating the Act, a declaration voiding any actions taken in violation of the Act, and attorneys’ fees. § 52-4-8 & 9.

## **SMALL CLAIMS PROCEDURES** <sup>53</sup>

### **Rule 1 General Provisions**

1. These rules constitute the simplified rules of procedure and evidence in small claims cases required by Utah Code § 78-6-1 and shall be referred to as the Rules of Small Claims Procedure. They are to be interpreted to carry out the statutory purpose of small claims cases, dispensing speedy justice between the parties.
2. These rules apply to the initial trial and any appeal under Rule 12 of all actions pursued as a small claims action under Utah Code § 78-6-1 et seq.
3. If the Supreme Court has approved a form for use in small claims actions, parties must file documents substantially similar in form to the approved form.
4. By presenting a document, a party is certifying that to the best of the party's knowledge it is not being presented for an improper purpose and the legal and factual contentions are made in good faith. If the court determines that this certification has been violated, the court may impose an appropriate sanction upon the attorney or party.

### **Rule 2 Beginning the Case**

A case is begun by plaintiff filing with the clerk of the court by either:

1. An affidavit stating facts showing the right to recover money from defendant; or
2. An interpleader<sup>54</sup> affidavit showing that plaintiff is holding money claimed by two or more defendants.

The affidavit qualifies as a complaint under Utah Code § 78-12a-2 and § 78-27-25.

Unless waived upon filing an affidavit of impecuniosity, the appropriate filing fee must accompany the small claims affidavit. If an interpleader action, plaintiff must pay the money into the court at the time of filing the Affidavit or acknowledge that he or she will pay the money to whomever the court directs. Upon filing the affidavit, the clerk of the court shall schedule the trial and issue the summons for the defendant to appear.

### **Rule 3 Service of the Affidavit**

After filing the affidavit and receiving a trial date, plaintiff must serve the affidavit and summons on defendant. To serve the affidavit, plaintiff must either:

1. Have the affidavit served on defendant by a sheriff's department, constable, or person regularly engaged in the business of serving process and pay for that service; or
2. Have the affidavit delivered to defendant by a method of mail or commercial courier service that requires defendant to sign a receipt and provides for return of that receipt to plaintiff.

The Affidavit must be served at least 30-calendar days before the trial date. Service by mail or commercial courier service is complete on the date the receipt is signed by

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<sup>53</sup> Utah Court Rules Annotated; Utah Rules of Small Claims Procedure.

<sup>54</sup> A proceeding to enable a person to compel parties making the same claim against him to litigate the matter between themselves.



defendant. Proof of service of the affidavit must be filed with the court no later than 10 business days after service. If service is by mail or commercial courier service, plaintiff must file a proof of service. If service is by a sheriff, constable, or person regularly engaged in the business of serving process, proof of service must be filed by the person completing the service.

Each party shall serve on all other parties a copy of all documents filed with the court other than the counter affidavit. Each party shall serve on all other parties all documents as ordered by the court. Service of all papers other than the affidavit and counter affidavit may be by first-class mail to other party's last known address. The party mailing the papers shall file proof of mailing with the court no later than 10 business days after service. If the papers are returned to the party serving them as undeliverable, the party shall file the returned envelope with the court.

#### **Rule 4 Counter Affidavit**

Defendant may file with the clerk of the court a counter affidavit stating facts showing the right to recover money from plaintiff. Unless waived upon filing an affidavit of impecuniosity, the appropriate filing fee must accompany the counter affidavit. Any counter affidavit must be filed at least 15 calendar days before the trial. The clerk of the court will mail a copy of the counter affidavit to plaintiff at the address provided by plaintiff on the affidavit. A counter affidavit for more than the monetary limit for small claims actions may not be filed under these rules.

#### **Rule 5 No Answer Required**

No answer is required to an affidavit or counter affidavit. All allegations are deemed denied.

#### **Rule 6 Pretrial**

No discovery may be conducted but the parties are urged to exchange information prior to the trial. Written motions and responses may be filed prior to trial. Motions may be made orally or in writing at the beginning of the trial. No motions will be heard prior to trial. One postponement of the trial date per side may be granted by the clerk of the court. To request a postponement, a party must file a motion for postponement with the court at least 5 business days before trial. The clerk will give notice to the other party. A postponement for more than 45 calendar days may be granted only by the judge. The court may require the party requesting the postponement to pay the costs incurred by the other party.

#### **Rule 7 Trial**

All parties must bring to the trial all documents related to the controversy regardless of whose position they support. Parties may have witnesses testify at trial and bring documents. To require attendance by a witness who will not attend voluntarily, a party must subpoena the witness. The clerk of the court or a party's attorney may issue a subpoena pursuant to Utah Rule of Civil procedure 45. The party requesting the

subpoena is responsible for service of the subpoena and payment of any fees. A subpoena must be served at least 5 business days prior to trial.

The Judge will conduct the trial and question the witnesses. The trial will be conducted in such a way as to give all parties a reasonable opportunity to present their positions. The judge may allow parties or their counsel to question witnesses. The judge may receive the type of evidence commonly relied upon by reasonably prudent persons in the conduct of their business affairs. The rules of evidence shall not be applied strictly. The judge may allow hearsay that is probative, trustworthy and credible. Irrelevant or unduly repetitious evidence shall be excluded.

After trial, the judge shall decide the case and direct the entry of judgment. No written findings are required. The clerk of the court will serve all parties present with a copy of the judgment. Costs will be awarded to the prevailing party and to plaintiff in an interpleader action unless the judge otherwise orders.

### **Rule 8 Dismissal**

Except in interpleader cases, if plaintiff fails to appear at the time set for trial, plaintiff's claim will be dismissed. If defendant has filed a counter affidavit and fails to appear at the time set for trial, defendant's claim will be dismissed. A party may move to dismiss its claim at any time before trial. Dismissal is without prejudice unless the judge otherwise orders. The appearing party shall serve the order of dismissal on the non-appearing party.

### **Rule 9 Default Judgment**

If defendant fails to appear at the time set for trial, the court may grant plaintiff judgment in an amount not to exceed the amount requested in plaintiff's affidavit. If defendant has filed a counter affidavit and plaintiff fails to appear at the time set for trial, the court may grant defendant judgment in an amount not to exceed the amount requested in defendant's counter affidavit. The appearing party shall immediately serve the default judgment on the non-appearing party. In an interpleader action if a defendant fails to appear, a default judgment may be entered against the non-appearing defendant.

### **Rule 10 Set Aside of Default Judgments and Dismissals**

A party may request that the default judgment or dismissal be set aside by filing a motion to set aside within 15 calendar days after entry of the judgment or dismissal. If the court receives a timely motion to set aside the default judgment or dismissal and good cause is shown, the court may grant the motion and reschedule a trial. The court may require the moving party to pay the costs incurred by the other party. The period for moving to set aside a default judgment or dismissal may be extended by the court for good cause if the motion is made in a reasonable time.

### **Rule 11 Collections of Judgments**

Judgments may be collected under the Utah Rules of Civil Procedure. Upon payment in full of the judgment, including post-judgment costs and interest, the judgment creditor

shall file a satisfaction of judgment for the judgment creditor; the clerk of the court shall enter the satisfaction upon the docket. The judgment debtor may file a satisfaction of judgment and proof of payment. If the judgment creditor fails to object within 10 business days after notice, the court may enter satisfaction of the judgment. If the judgment creditor objects to the proposed satisfaction, the court shall rule on the matter and may conduct a hearing.

If the judgment creditor is unavailable to accept payment of the judgment, the judgment debtor may pay the amount of the judgment into court and serve the creditor with notice of payment in the manner directed by the court as most likely to give the creditor actual notice, which may include publication. Thirty (30) calendar days after final notice, the debtor may file a satisfaction of judgment and the court may conduct a hearing. The court will hold the money in trust for the creditor for the period required by state law. If not claimed by the judgment creditor, the clerk of the court shall transfer the money to the Unclaimed Property Division of the Office of the State Treasurer.

## **Rule 12 Appeals**

Any party may appeal a final order or judgment within 30 calendar days after entry of judgment or order or after denial of a motion to set aside the judgment or order, whichever is later. To appeal, the appealing party must file a notice of appeal in the court issuing the judgment. Unless waived upon filing an affidavit of impecuniosity, the appropriate fee must accompany the notice of appeal. Upon the receipt of the notice of appeal, the clerk of the district court shall schedule the new trial and notify the parties.

All proceedings on appeal will be held in accordance with these rules, except that the parties will not file an affidavit or counter affidavit. The district court shall issue all orders governing the new trial. The new trial of a justice court adjudication shall be heard in the district court nearest to and in the same county as the justice court from which the appeal is taken. The new trial of an adjudication by the small claims department of the district shall be held at the same district court.

A judgment debtor may stay the judgment during appeal by posting a supersedeas bond with the district court. The stay shall continue until entry of the final judgment or order of the district court. Within 10 business days after filing the notice of appeal, the justice court shall transmit to the district court the notice of appeal, the district court fees, a certified copy of the register of actions and the original of all papers filed in the case.

Upon the entry of the judgment or final order of the district court, the clerk of the district court shall transmit to the justice court that rendered the original judgment notice of the manner of disposition of the case. The district court may dismiss the appeal and remand the case to the justice court if the appellant:

1. Fails to appear;
2. Fails to take any step necessary to prosecute the appeal; or
3. Requests the appeal be dismissed.

### **Rule 13 Representation**

A party in a small claims action may be self-represented, represented by an attorney admitted to practice law in Utah, represented by an employee, or, with the express approval of the court, represented by any other person who is not compensated for the representation.

## **ORDINANCES, RESOLUTIONS, AND OTHER <sup>55</sup>MUNICIPAL OR LOCAL LEGISLATION**

Requirements for the enactment or promulgation of an ordinance or resolution may be set by a state's constitution provision requiring that, on the final vote on any ordinance or resolution, the name of each member voting and how that member voted shall be recorded. Furthermore, the general rule is that when a state legislature has prescribed the manner in which a local government may pass an ordinance, or a resolution, the local government must follow those procedures. If the local government fails to observe the mandatory prerequisites, the ordinance or resolution will be considered void and set aside. In addition, a statute requiring that an action be taken by ordinance cannot be accomplished by a mere resolution. A municipal charter may also include provisions specifying procedures for the enactment of ordinances. At the same time though, where a municipal government is not constrained by particular procedural requirements regarding specific matters, they may use their own discretion in reaching decisions.

Rules may include requirements such as the reading of a proposed ordinance, deliberations required before the passage of an ordinance, a 2/3 majority vote requirement for the enactment of an ordinance, the recording and retention of a record of the voters of individual members, or the minutes of the council meeting. Once a new law is enacted, the voters in some jurisdictions have the right to reject it through a referendum. In such jurisdictions, the referendum power extends only to matters legislative in character and not to mere administrative acts.

### **ORDINANCES**

A local ordinance is a municipal legislative enactment. While an ordinance does not have the dignity of a state legislative enactment, it does have the force and effect of law within the limits of statutory and applicable organic limitations. Furthermore, it is something more than a mere verbal motion or resolution, and it must be invested, not necessarily literally, but substantially, with specific formalities, solemnities, and characteristics.

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<sup>55</sup> American Jurisprudence 2d Section IX Ordinances, Resolutions, and Other Municipal or Local Legislation, Sections 295 through 301, 304, 305, and 307.

An ordinance is the equivalent of a municipal statute, passed by the city or county council, or equivalent body, such as commissions or legislative bodies, and it governs matters not already covered by federal or state law.

An ordinance is distinctively a legislative act and, being the equivalent of a statute, is superior to city departmental regulations.

Documents such as agreements or contracts may be adopted and enacted as ordinances where the documents adopted are sufficiently identified and made part of the public record so there is no uncertainty about them.

An ordinance provides a permanent rule of government or conduct designed to affect matters arising subsequent to its adoption that operates as any other law, absent conflict with a state statute, and relates to the corporate affairs of the municipality within the enacting authority's corporate limits, until it is repealed. Indeed, it has been stated that all legislation that creates liability or that affects people of municipality in an important or material way should be enacted by an ordinance. In some jurisdictions, legislation of charter townships must be by ordinance.

## **RESOLUTION**

A "resolution," in effect, encompasses all actions of a municipal body other than ordinances. In this connection, it may be observed that a resolution deals with matters of a special or temporary character that does not create a new expense or status of a constant and continuing nature, while an "ordinance" prescribes some permanent rule of conduct or government, to continue in force until the ordinance is repealed. Thus, an ordinance is distinctively a legislative act, while a resolution may be simply an expression of opinion or mind concerning some particular item of business coming within the legislative body's official cognizance, ordinarily ministering in character and relating to the administrative business of the municipality. While the legislative body of a municipal corporation may act by resolution, or by ordinance, unless a particular mode of action is required by constitution, statute, city charter or another city ordinance, a resolution is customarily passed without the forms and delays that constitutions and municipal charters generally require for the enactment of valid laws or ordinances. Nevertheless, actions by resolution are subject generally to the same restraints as actions by ordinance.

A resolution is ordinarily sufficient for council action on ministerial, administrative, or executive matters, but it does not rise to the dignity of an ordinance.

Depending on the exact circumstances and enabling laws involved, resolutions have been used to deal with matters such as:

1. Administrative decisions of a city council.
2. Rate increases for extending city water mains.
3. Non-legislative powers.
4. Establishing educational requirements for employee promotion.

5. Authorizing the taking of an appeal in a civil action.
6. Amending the master plan of a municipal planning commission.

### **Generally**

Requirements for the enactment or promulgation of an ordinance or resolution may be set by a state's constitution. Thus, one court has held that all ordinances are subject to a state constitution provision requiring that, on the final vote of any ordinance or resolution, the name of each member voting and how that member voted shall be recorded.

Furthermore, the general rule is that when a state legislature has prescribed the manner in which a local government may pass an ordinance, or a resolution, the local government must follow those procedures. If the local government fails to observe the mandatory prerequisites, the ordinance or resolution will be considered void and set aside. In addition, a statute requiring that an action be taken by ordinance cannot be accomplished by a mere resolution. A municipal charter may also include provisions specifying procedures for the enactment of ordinances. At the same time though, where a municipal government is not constrained by particular procedural requirements regarding specific matters, they may use their own discretion in reaching decisions.

Such rules may include requirements such as the reading of a proposed ordinance, deliberations required before the passage of an ordinance, a 2/3 majority vote requirement for the enactment of an ordinance, the recording and retention of a record of the votes of individual members, or the minutes of the council meeting. Once a new law is enacted, the voters in some jurisdictions have the right to reject it through a referendum. In such jurisdictions, the referendum power extends only to matters legislative in character and not to mere administrative acts.

### **Form and Contents, Generally**

In a number of jurisdictions, requirements as to the contents and title of municipal ordinances similar to those relating to the contents and title of legislative acts are made applicable to municipal legislation by specific constitutional provisions, general state statutes, or provisions of the municipal charters. However, such provisions generally are not strictly construed. In the absence of an express provision, a resolution need not be in any set form.

### **Title**

The title is a part of an ordinance, just as it is of a statute. The title satisfies a charter or constitutional requirement of describing an ordinance if it fairly advises the city council and the public of the real nature and subject matter of the legislation sought to be enacted. At the same time, though, if the language of an ordinance is plain, a title cannot restrict its meaning. To determine the true character of a legislative enactment it is necessary to look beyond the title.

Conformity of the subject matter of an ordinance to its title is not necessary unless required by statute. In at least one jurisdiction the title of an ordinance does not control its meaning unless the title must be read to clear up an ambiguity in the body and, in any

event, the title is not to be interpreted in a way that would enlarge the scope of the ordinance to include a subject not expressed in its body.

### **Preamble**

The preamble is a part of an ordinance, just as it is of a statute. A preamble to an ordinance is a prefatory statement, an explanation, or a finding of facts, by the municipal legislative body, purporting to state the purpose, reason, or occasion for enacting the ordinance to which it is affixed. Ordinarily, the contents of a preamble are not given substantive effect, particularly where the enacting portion of an ordinance is expressed in clear and unambiguous terms. Rather, its office is only to expound powers conferred.

### **Requirement that Ordinance Contain One Subject**

It is the rule in some jurisdictions that a municipal ordinance must contain only a single subject. The term “subject” as used in provisions is given a broad and extended meaning, to allow the legislative municipal body full scope to include in one act all matters having a logical or natural connection. If all parts of an act are related directly or indirectly to the general subject of the act, it is not open to the objection of plurality. Furthermore, it has been held that an ordinance violates this proscription only when it contains subjects which are so dissimilar as to have no legitimate connection.

### **Publication**

The purpose of the publication of an ordinance is to give the public notice of the provisions of the ordinance, and some courts have held that an ordinance is unenforceable until the public has received its statutorily –required notice. The mode of publication may vary. The usual method of publication is to set forth the ordinance in some newspaper within the municipality. One city charter permits publication either in full or by title only, with a reference to the place where the full ordinance is available for public inspection. Where a statute provides two or more ways in which a municipal ordinance may be published to become effective, and does not require the specific mode of its publication to be stated in the ordinance, it has been held that a publication in any method authorized by statute is a proper publication of the ordinance. Furthermore, in at least one jurisdiction, even an ordinance adopted with an emergency clause attached may not be effective and enforced until it has been published.

However, publication may not be required in a variety of situations. For instances, publication is not required where—

1. An ordinance which expired by its own terms and applied to only a small area was not a “general or permanent ordinance” and did not fall within the purview of a city charter requiring publication of all ordinances of a general, public or permanent nature.
2. A water—rate ordinance, though technically noncompliant with statutory dictates in its publication and recordation, was upheld where the ordinance had been recognized by the community and given effect by the local government for over 20 years.

3. A city ordinance providing for the payment of charges for electrical utility services furnished by the city, and giving rise to a lien for unpaid charges against the real property upon which services were furnished did not come within the purview of the statute requiring that an ordinance pertaining to tax and tax-like measures be published in two publications.

Where a statute granting municipalities the power to adopt, by reference, the terms of an existing code and requiring the municipalities, when doing so, to file a copy of the code so adopted in the office of the city auditor for public use and examination, did not apply to a self-contained ordinance which did not adopt an existing code by reference, and thus the city was not required to file a copy of that ordinance in the office of the city auditor.

A municipal ordinance may be published at any time when the time of publication is not fixed by statute.

### **Time of Taking Effect**

The effective date of an ordinance is often set by statute or other rule. Where no statutory provision has been enacted or there is no specific provision covering the time of passage, it rests within the power of the legislative body passing an ordinance to fix the time of its taking effect.

It is the general rule that an ordinance is not effective until published as required by law. When the statute provides that an ordinance shall go into effect within a specified time after it is published, if it is never properly published it never goes into effect, but when the statute merely provides that it shall be published a certain number of times within a specified time after its enactment, it goes into effect at once, subject to defeasance if it is not properly published.

### **Emergency Measures**

The passage of an emergency ordinance is a proper exercise of legislative discretion under both state law and appropriate city charter provisions. Under some provisions, a statement of facts indicating the necessity for immediate effectiveness of the ordinance must be given. If the emergency statement is not given, the ordinance may still take effect in the same manner as a regular ordinance if no proceedings to institute a referendum or other challenge to it is made. However, the factual basis for an emergency need not be stated when the charter is silent on the requirements of a factual determination.

## **STATUTES**<sup>56</sup>

A “statute” is an act of the legislature as an organized body; it is the written will of the legislature, expressed according to the form necessary to constitute it a law of the state and rendered authentic by certain prescribed forms and solemnities.

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<sup>56</sup> American Jurisprudence 2d, Section 1.



In the strict sense of the term an administrative regulation is not actually a “statute,” but an offspring of a statute. A regulation may be deemed to come within the term “statute,” and have the same force and effect as a statute, although there is also authority for the view that rules are less than the equivalent of statutory law.

An amendment has been defined as a legislative act designed to change some prior and existing law by adding to or taking from it some particular provision. Amendments to a statute either clarify the law or change it. In this regard, it has been said that whether an act is amendatory of an existing law is determined not by the title alone or by declarations in the new act that it purports to amend an existing law, but rather by an examination and comparison of its provisions with the existing law. If the act’s aim is to clarify or correct uncertainties which arose from the enforcement of the existing law, or to reach situations which were not covered by the original statute, the act is amendatory, even though, in its working, it does not purport to amend the language of the prior act.

A statute designed to improve an existing statute by adding something thereto without changing the original text has been regarded as a supplemental act. The functions of a statute declared to be supplementary to a previous statute are to supply deficiencies in the previous statute, and to add to, complete or extend that statute without changing or modifying it.

## **REGULATIONS**

Regulations are adopted by government agencies when a state or federal statute authorizes them to do so. Examples of some regulations are:

1. Department of Health.
2. Americans with Disabilities Act Rules.
3. Occupational and Professional Licensing.
4. ADA Compliance Procedures.
5. School Emergency Response Plans.
6. Child Nutrition Programs.
7. Gas Processing and Waste Crude Oil Treatment.
8. Wildlife Resources Maps and Rules.
9. Aquaculture and Fish Stocking.
10. Building Codes.

## **ETHICS**

Support staff in a prosecutor's office is held to the same ethical standards regarding confidentiality as are prosecutors. The support staff cannot be disciplined by the Utah State Bar; however, their bosses can be disciplined for standards or rules they break.

“Support Staff” may include: receptionist, office specialist, file clerk, legal secretary or assistant, paralegal.

1. <sup>57</sup>Support staff shall not perform any of the duties that attorneys only may perform nor take any actions that attorneys may not take.
2. Support staff shall not:
  - a. Establish an attorney-client relationship;
  - b. Establish the amount of a fee to be charged for legal services;
  - c. Give legal opinions or advice;
  - d. Represent a client before a court or agency unless so authorized by that court or agency;
  - e. Engage in, encourage, or contribute to any act which would constitute the unauthorized practice of law; and
  - f. Engage in any conduct or take any action, which would assist or involve the attorney in a violation of professional ethics or give the appearance of professional impropriety.
3. Support staff may perform any task which is properly delegated and supervised by an attorney provided the attorney maintains responsibility for the work product, maintains a direct relationship with the client, and maintains responsibility to the client.
4. Support staff shall ensure that all client confidences are preserved.
5. Support staff shall take reasonable measures to prevent conflict of interest resulting from his or her employment affiliates, or outside interests.
6. Support staff must strive to maintain integrity and a high degree of competency through education and training with respect to professional responsibility, local rules and practice, and through continuing education in substantive areas of law to better assist the legal profession in fulfilling its duty to provide legal services.
7. Support staff shall abide by all court rules, agency rules and statutes, as well as the Utah State Bar's Rules of Professional Conduct.
8. Support staff in a prosecutor's office must:
  - a. Be honest and ethical in their conduct, including ethical handling of actual or apparent conflicts of interest between personal and professional relationships.
  - b. Comply with applicable government laws, rules and regulations.
  - c. Maintain the confidentiality of information entrusted to them by the office which they are employed except when authorized or otherwise legally obligated to disclose.

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<sup>57</sup> Adapted from the Utah State Bar Paralegal Division – Canons of Ethics (1 through 7)

- d. Deal fairly with all associations within the prosecutor's office.
- e. Proactively promote ethical behavior as a responsible partner among peers in the work environment.

## **GENERAL OFFICE KNOWLEDGE**

<sup>58</sup>A business letter has four parts and a variety of features:

1. Heading – letterhead or return address, and date line
2. Opening – inside address, and salutation
3. Body – message
4. Closing – complimentary closing, writer's signature block, and reference initials

<sup>59</sup>A business letter is usually arranged in one of the following styles:

1. **Modified Block Style—Standard Format.** The date line, the complimentary closing, the company signature, and the writer's identification all begin at center. All other lines begin at the left margin.
2. **Modified Block Style—With Indented Paragraphs.** This style is exactly the same as the standard format described above except for one additional feature: the first line of each paragraph is indented 0.5 inch.
3. **Block Style.** All lines typically begin at the left margin. Nothing is indented except for displayed quotations, tables, and similar material.
4. **Simplified Style.** As in the block style, all lines begin at the left margin. However, the simplified style has these additional features: the salutation is replaced by a subject line in all-caps, the complimentary closing is omitted, the writer's signature block is typed in all-caps on one line, and open punctuation is always used.

### **<sup>60</sup>Top Margin**

1. **First Page.** As a general rule, leave a top margin of about 2 inches; this is the standard top margin for all business documents. To create a 2-inch top margin space down 6 times from the default top margin of 1 inch. When using letterhead, leave at least a 0.5 inch space between the letterhead and the first element to be typed (ordinarily the date line). If the letterhead design is especially deep, the use of vertical centering or a 2-inch top margin may not provide an adequate visual break between the letterhead and the date line.
2. **Continuation Pages.** Use a top margin of about 1 inch on each continuous page of a letter. These pages are always typed on blank stationary, (even if the first page is prepared on a printed letterhead). Any subsequent pages should be on the same quality paper as the letterhead

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<sup>58</sup> The Gregg Reference Manual, 10<sup>th</sup> Edition, 2005

<sup>59</sup> The Gregg Reference Manual, 10<sup>th</sup> Edition, 2005

<sup>60</sup> The Gregg Reference Manual, 10<sup>th</sup> Edition, 2005

### **<sup>61</sup>Side Margins**

1. Determine the default of side margins of the word processing software you are using; 1.25 inch for Microsoft Word, 1 inch for Word Perfect. For letter and executive stationary, these default side margins are usually adequate.
2. Under certain circumstances, you may wish to use wider side margins—whether to lengthen a short letter or to make a letter more attractive or easier to read.
3. If you are using letterhead stationary with a column of printed copy running down the left side of the page, set the left margin 0.5 inch to the right of this copy. Set the right margin at a minimum of 1 inch, or simply use the default right margin.
4. Once you have established the side margins, the number of characters you can fit on a line of text will depend on the font and the font size you select.

### **<sup>62</sup>Bottom Margin**

1. Leave a bottom margin of at least 1 inch. If you are typing a one-page letter that is to be centered vertically, the bottom margin will be automatically established.
2. If the letter requires more than one page, you may increase the bottom margin on the first page up to 2 inches.
3. If you are using letterhead stationary with a band of printed copy running across the bottom of the page, leave a minimum margin of 0.5 inch between the last line of text and the band of printed copy.

### **<sup>63</sup>Adjusting the Length of a Letter**

1. **Lengthening a Short Letter.** To spread a short letter (under 8 lines of text) over one page, use any combination of the following techniques:
  - a. Increase the side margins.
  - b. Change the paper size from letter to executive or half letter.
  - c. Increase the font size or select a font that yields fewer characters to an inch.
  - d. Insert extra space above the inside address, the signature line, and the reference initials. However, do not use more than twice the recommended space in each case.
2. **Shortening a Long Letter.** To condense a long letter (over 23 lines of text), use any combination of the following techniques:
  - a. If you have been using wide side margins, reduce them to 1 inch on letter and executive stationary.
  - b. If you have been using executive or half-letter stationary, change to letter stationary.
  - c. If a small amount of text carries over to a second page, you may be able to reduce the text to fit on a single page by using the make-it-fit or shrink-fit option in your word processing software. Another option is to use a slightly smaller font or font size that fits more characters on a line. Be

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<sup>61</sup> The Gregg Reference Manual, 10<sup>th</sup> Edition, 2005

<sup>62</sup> The Gregg Reference Manual, 10<sup>th</sup> Edition, 2005

<sup>63</sup> The Gregg Reference Manual, 10<sup>th</sup> Edition, 2005

sure, however that after you make such adjustments, the type is still quite readable.

- d. Reduce the space between the date and the inside address to 2 blank lines (instead of the customary 3).
- e. Reduce the space for the signature from 3 blank lines to 2.

## <sup>64</sup>**Punctuation**

The message in a business letter is always punctuated with normal punctuation. The other parts may be punctuated according to one of the following patterns:

1. **Standard (Mixed) Pattern.** Use a colon after a salutation and a comma after the complimentary closing. This is the style most commonly used.
2. **Open Pattern.** Use no punctuation at the end of any line outside the body of the letter unless that line ends with an abbreviation (for example, Jr.).

The comma has two primary functions: it sets off nonessential expressions that interrupt the flow of thought from subject to verb to object or complement, and it separates elements within a sentence to clarify their relationship to one another. Two commas are typically needed to set off, but only a single comma is needed to separate. Basic rules for commas that separate:

1. To separate the two main clauses in a compound sentence when they are joined by and, but, or, or nor.
2. To separate three or more in a series—unless all the items are joined by and or or.
3. To separate two or more adjectives that modify the same noun.
4. To separate the digits of numbers into groups of thousands.
5. To indicate the omission of key words or to clarify meaning when the word order is unusual.

Quotation marks have three main functions:

1. To indicate the use of someone else's exact words.
2. To set off words and phrases for special emphasis.
3. To display the titles of certain literary and artistic works.

## <sup>65</sup>**Spacing**

Type all letters single spaced. Leave 1 blank line between paragraphs. Legal documents should always be double spaced. When you are offered a choice of one or two spaces following a mark of punctuation at the end of a sentence choose one space as a rule unless two spaces are needed to create an adequate visual break between sentences. The following guidelines provide a handy summary of the number of spaces to be left before and after marks of punctuation:

1. **Period**
  - a. No space before.
  - b. One or two spaces after the end of a sentence.

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<sup>64</sup> The Gregg Reference Manual, 10<sup>th</sup> Edition, 2005

<sup>65</sup> The Gregg Reference Manual, 10<sup>th</sup> Edition, 2005

- c. One or two spaces after a period when it follows a number or letter that indicates an enumeration.
  - d. One space after an abbreviation within a sentence.
  - e. No space after a decimal point.
  - f. No space after another mark of punctuation follows the period.
- 2. **Comma**
  - a. No space before.
  - b. One space after unless a closing quotation mark follows the comma.
  - c. No space after a comma within a number.
- 3. **Semicolon**
  - a. No space before, one space after
- 4. **Colon**
  - a. No space before
  - b. No space before or after in expressions of time (8:20 p.m.), in proportions (2:1), or in reference initials (EJN:GPL).
  - c. One or two spaces after within a sentence.
  - d. One or two spaces after reference notations, attention and subject lines, enclosure and copy notations, and postscripts.
  - e. Two or more spaces after displayed guide words in memos (TO:, FROM:, DATE:) and in other business documents (SHIP TO:, BILL TO:).
- 5. **Opening Quotation Mark**
  - a. One or two spaces before when quoted material starts a new sentence or follows a colon.
  - b. No space before when a dash or an opening parenthesis precedes.
  - c. One space before in all other cases.
  - d. No space after.
- 6. **Closing Quotation Mark**
  - a. No space before.
  - b. One or two spaces after when quoted materials end the sentence.
  - c. No space after when other mark of punctuation immediately follows (for example, a semicolon or colon).
  - d. One space after in all other cases.
- 7. **Opening Single Quotation Mark**
  - a. One space before when a double quotation mark immediately precedes.
  - b. One or two spaces before when the material within single quotation marks follows a colon and is not immediately preceded by a double quotation mark.
  - c. One or two spaces before when the material within single quotation marks begins a new sentence and is not immediately preceded by a double quotation mark.
  - d. No space after.
- 8. **Closing Single Quotation Mark**
  - a. Not space before.
  - b. One space after when a double quotation mark immediately follows.
  - c. Not space after when some other mark of punctuation immediately follows.

- d. One or two spaces after when the material within the single quotation marks ends a sentence and another sentence follows within the quotation.
- e. One space after in all cases.

## <sup>66</sup>**Envelopes**

**Delivery Address.** The delivery address is the most important information on your mailpiece. Use the following format for your delivery addresses:

Name or attention line:	JANE L MILLER
Company:	MILLER ASSOCIATES
Delivery address:	1960 W CHELSEA AVE STE 2006
City, state, ZIP Code:	ALLENTOWN PA 18104

Automated mail processing machines read addresses on mailpieces from the bottom up and will first look for a city, state, and ZIP Code. Then the machines look for a delivery address. If the machines can't find either line, then your mailpiece could be delayed or misrouted. Any information below the delivery address line (a logo, a slogan, or an attention line) could confuse the machines and misdirect your mail.

Use the following guidelines:

1. Always put the address and the postage on the same side of your mailpiece.
2. On a letter, the address should be parallel to the longest side.
3. **All capital letters.**
4. **No punctuation.**
5. At least 10-point type.
6. One space between city and state.
7. Two spaces between state and zip code.
8. Simple type fonts.
9. Left justified.
10. Black ink on white or light paper.
11. No reverse type (white printing on a black background).
12. If your address appears inside a window, make sure there is at least 1/8-inch clearance around the address. Sometimes parts of the address slip out of view behind the windows and mail processing machines can't read the address.
13. If you are using address labels, make sure you don't cut off any important information. Also make sure your labels are on straight. Mail processing machine have trouble reading crooked or slanted information.

## **Tips**

1. Always put the attention line on top – never below the city and state or in the bottom corner of your mailpiece.

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<sup>66</sup> <http://pe.usps.com/businessmail101/addressing/deliveryAddress.htm>

2. If you can't fit the suite or apartment number on the same line as the delivery address, put it on the line ABOVE the delivery address, not on the line below.
3. Words like "east" and "west" are called directional's and they are VERY important. A missing or a bad directional can prevent your mail from being delivered correctly.
4. Use the free ZIP Code Lookup and the ZIP+4 code lookup on the Postal Explorer Web site to find the correct ZIP Codes and ZIP+4 codes for your addresses.
5. Almost 25% of all mailpieces have something wrong with the address – for instance, a missing apartment number or a wrong ZIP Code. Can some of those mailpieces get delivered, in spite of the incorrect address? Yes. But it costs the Postal Service time and money to do that.
6. Fancy type fonts such as those used on wedding invitations do not read well on mail processing equipment. Fancy fonts look great on your envelopes, but also may slow down your mail.
7. Use common sense. If you can't read the address, then automated mail processing equipment can't read the address.
8. Some types of paper interfere with the machines that read addresses. The paper on the address side should be white or light in color. No patterns or prominent flecks, please! Also, the envelope shouldn't be too glossy – avoid shiny, coated paper stock.

### **<sup>67</sup>Capitalization in Legal Documents**

Although it has been traditional in legal documents to capitalize many words that would ordinarily be written in lowercase, there is no agreement on one uniform style for these documents. The prevailing practice currently is to capitalize key terms – for example, reference to the parties (the Buyer, the Seller, the Landlord, the Tenant, the Plaintiff, the Defendant), references to the nature of the document (the Agreement, the Affidavit, the Motion, the Memorandum), and spelled out amounts of money. The use of all-caps for such reference is losing ground, but terms like ORDERED, GRANTED, and DENIED still often appear this way in court orders. Leading authorities for the plain language movement advocate eliminating capitalization, especially for terms that refer to the document unless these terms are proper nouns.

### **Rules for Formatting a Document**

1. Set paragraph indents five spaces or one tab on your computer.
2. Place headings and subheadings in the position they are to occupy on the final printed page and capitalize headings consistently.
3. Leave a margin of at least one inch on all four sides.
4. Legal documents should always be double spaced.
5. Set off quoted material from the rest of the text by indenting it from the left margin or from both the left and right margins. Indent lists of items in a similar

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<sup>67</sup> The Gregg Reference Manual, 10<sup>th</sup> Edition, 2005



manner. Space above and below extracts and lists to separate them from the rest of the text copy.

6. If the signature line appears on the last page of a document, the page number “date” line, and at least one line from the body of the document should also appear on the last page.
7. Only capitalize the first letter of the first word in a close of a letter; i.e., Sincerely, Very truly yours, etc.
8. Esquire never precedes a name and is never used with any other title, i.e., Mr., Mrs., Dr., etc.
9. Envelopes should be addressed as follows:

MR JOSEPH ROCKFORD  
222 E 2222 N  
SALT LAKE CITY UT 84111

This enables the post office to sort mail in a quicker and more efficient manner.

10. Periods and commas always go **inside** the closing quotation mark. Semi colons and colons always go **outside** the closing quotation mark.<sup>68</sup>
11. When it is necessary to add a postscript to a letter, place it two line spaces below the last notation on the letter. The left margin of the postscript should be indented when paragraphs in the letter are also indented.
12. In salutation involving two people, use **and**, not **&**, between the names.
13. In salutation involving three or more people, separate the names with commas and insert **and**, not **&**, between the last two names.
14. Standard rules for spacing:
  - 1 space after a comma
  - 1 space after a semicolon
  - 2 spaces after every sentence
  - 2 spaces after a colon
  - No spaces before or after a dash
  - No spaces before or after a hyphen
  - No spaces between quotation marks and the matter enclosed
  - No spaces between parenthesis and the matter enclosed
  - No spaces between any work and the punctuation following it
  - 1 space after an exclamation mark used in the body of a sentence
  - 1 space after a period following an abbreviation or an initial
  - 2 spaces after a period following a figure or letter at the beginning of a line in a list of all items

### **Telephone Etiquette Tips**<sup>69</sup>

The telephone is one of the tools used in business. However, most of us don’t think of the telephone as a tool, and consequently we misuse it. The telephone is our link to the outside world. Unfortunately, we don’t always realize what kind of message we are sending to our callers.

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<sup>68</sup> The Gregg Reference Manual, 10<sup>th</sup> Edition, 2005

<sup>69</sup> <http://units.osu.edu/users/etiquette.php>

## **Rules of Etiquette**

1. Speak directly into the mouthpiece. If this is a problem because you use other equipment while on the telephone (i.e., computer), consider purchasing a headset, which will free your hands.
2. Don't eat or chew gum while talking on the telephone (your caller may ask what you're having for lunch!!)
3. If someone walks into your office while you're talking on the telephone, DON'T cover it with your hands or press it against your chest (the caller may understand what you're saying). Depress the HOLD button.
4. Don't place the handset in the cradle until you've depressed the HOLD button.
5. Don't lay the receiver on the desk, without placing the caller on hold (the caller will hear everything being discussed in your office).

## **Answering the Telephone/Greeting**

Answer your own telephone whenever possible and answer within 2-3 rings. There are a number of ways to identify yourself and your organization:

LARGER ORGANIZATIONS – “Thank you for calling (dept name). How may I direct your call?”

SMALLER ORGANIZATIONS – “Thank you for calling (dept name). May I help you?”

DEPARTMENTS – “(dept name), Mary Smith,” OR “Mary Smith, may I help you?”

There has been a lot of discussion of using “good morning” or “good afternoon.” This is unnecessary if you use the right tone. Also, people tend to make mistakes when using these phrases (i.e., saying “good morning” when it's really afternoon and vice versa).

## **Placing Caller on Hold**

1. Remember to ask your caller “Do you mind holding?” or “May I put you on hold?” before doing so.
2. If you take the time to ask your caller to hold, be sure to listen to the response.
3. After placing your caller on hold, check back periodically (between 30-45 seconds). Give them the option to continue to hold if it will take longer to find information OR offer to call them back.
4. When returning to your caller, remember to thank them for waiting.
5. If your caller cannot hold, offer to take a message; transfer to another party; or arrange for them to return the call at a specific time.
6. If you are not in a position to ask your caller to hold, tell the caller, “Please Hold” before depressing the hold button. NOTE: When placing multiple calls on hold, remember to return to the first caller you placed on hold first!!

## **Transferring Calls**

1. Tell the caller the REASON you are transferring the call before you do so. Then ASK if it is all right to transfer their call.
2. Call the department or person where you are transferring a call and make sure that they can take the call. If they are able to take the call, give them the person's name, their request, and any other relevant information.

3. Then, return to your caller and give them the name of the person they are being transferred to, the department and the telephone number (if possible).
4. When you're not sure to whom a call should be transferred, take their name and number and find out where the call needs to be directed. Also, give them your name and number as a reference in case the appropriate party does not contact them.

### **Screening Calls**

There is a lot of controversy over whether or not telephone calls should be screened. It is not recommended to screen calls for good public relations!! If you must announce calls, "Yes he's in. May I tell him who's calling, please?" is an appropriate response.

When it's necessary to screen calls (i.e., if someone is available ONLY to certain individuals), "She's away from her office; may I take your name and number?" OR "May I say who's calling? Thank you. Let me check and see if he's in." are suggested responses.

If you are required to ask who is calling or what the nature of the call is, be aware of your tone of voice. Screening calls is always a delicate situation, so it is critical not to offend or put your caller on the defensive with your voice tone.

### **"In Conference" Trap**

Because the phrases, "He's in conference" or "She's in a meeting," are greatly overused, many people don't believe it. The most appropriate response you can give is that someone is NOT AVAILABLE or is UNAVAILABLE. However, it is imperative to indicate when the person will be available (i.e., "She's not available, but I do expect her back in the office at 3:00 p.m.).

Other inappropriate responses include:

- He isn't in yet (and it's 10:00 a.m.)
- She's out for coffee
- He's gone for the day (and it's 3:00 p.m.)
- She's in, but she's busy

**NOTE: If, on occasion, you say that an individual is "in a meeting," ALWAYS include an approximate time when he or she will be available.**

### **Taking Phone Messages**

Whenever possible, use telephone message forms to record accurate and complete information. A good phone message includes:

1. Name of person for whom the message was left
2. Caller's name (get the correct spelling), company or dept. and number
3. Date and time
4. Message
5. Action to be taken (i.e., "Please Call," "Will call back," or "URGENT")

It is important to deliver the message as soon as possible and maintain confidentiality with all messages. Either turn the message over or fold them in half, so there is no danger that they can be read by other staff or visitors.

## **Returning Phone Calls**

Most people find it frustrating when they return phone calls only to learn the other person isn't in. To avoid playing telephone tag, try the following:

When calling someone, establish specific call-back times. Ask, "When is the best time for me to call again?" or "When is the best time for them to call me back?"

When taking calls for another individual, schedule return calls during specific blocks of time (i.e., "I expect him to return by 2:00 p.m. You can reach him between 2 and 5").

## **Placing Outbound Calls**

Whenever you make a telephone call for yourself or your boss, be sure you have the right number before you place the call. Keep a "frequently called numbers" list within your reach and follow these suggestions:

1. Get ready. Visualize your caller as a friendly, positive person
2. Plan ahead of time the objectives you want to accomplish by jotting them down
3. Identify the information you need to obtain from the conversation by stating your concerns up front
4. Anticipate questions or objections you may encounter to avoid making additional calls
5. Take notes during the call
6. Spell out any follow-up action to the caller (such as when you plan to get back to him)

## **Answering Devices**

If you reach an answering device (i.e., answering machine or voice mail), leave the following information:

1. Your name, including the correct spelling, if necessary
2. Your department and telephone number
3. Date and time
4. Message, including a good time to reach you

## **Closing the Conversation**

Many times people find it difficult to end a telephone conversation. There are some specific things that you can say to close you conversation professionally:

1. Talk in the past tense and use "closing" phrases (i.e., "I'm really glad you called" or "I'm glad we resolved this concern").
2. State the action you will take
3. Spell out follow-up action, including time frames/deadlines.
4. Thank them for calling and say "Good-bye" not "bye-bye," "Okie-dokie," "Alrighty," or any other slang phrase

## **Proper Telephone Language**

Although we tell our callers a lot through our voice tone, the words and phrases we use convey a message. Unfortunately, sometimes we send a negative message to our caller. Be aware of the language you are using. Instead of saying "You have to... You need to... Why didn't you?" try "Will you please... Would you please?"

“Your problem” or “Your complaint,” would sound better phrased as “Your question,” “Your concern,” or “this situation.” Many people use phrases like “I can’t do that” or “it’s not my job.” Instead, tell the caller what you can do (i.e., “While I’m not able to establish policy on this matter, I will speak to my manager about your concern.”)

At all costs, avoid sounding abrupt. The following are examples:

“Hang on.”

“Hold on.”

“Who’s calling?”

“I can’t hear you, speak up!”

“I can’t help you. You’ll have to speak to someone else.”

The following would be more appropriate:

“May I put you on hold?”

“May I say who is calling please?”

“I am having a little difficulty hearing you. Can you please speak up?”

“I need to transfer your call to (dept.) so that they can answer your question. May I do so?”

## **Closing**

Telephone techniques are built from a few basic rules and principles. In fact, telephone etiquette can be summarized in one word: **COURTESY**. Unfortunately, courtesy is not something people are used to being shown routinely in the business world.

If the caller is a potential customer and you are courteous to him, you have an excellent chance of gaining a new customer. If he is an existing customer, you’ll keep him for life!

## **Rules for Using Cell Phones at Work**<sup>70</sup>

Having your cell phone at work can be useful but it can also be very disruptive. Your friends and family can reach you anytime, anywhere, which can be annoying.

When you’re on your own time, the choice to turn off your cell phone is entirely yours.

When it comes to using your cell phone at work, however, you have to be mindful of your co-workers and your boss, not to mention your own ability to get your job done.

Here are some rules you should follow if you have your cell phone at work.

### **1. Turn your Cell Phone Ringer Off**

If you have your cell phone at work, it shouldn’t ring. If you don’t want to turn off your cell phone completely, at least set it to vibrate. The sounds of different ring tones going off all the time can be very annoying to others. In addition, you don’t want your boss to know how often you get calls.

### **2. Use your Cell Phone Only for Important Calls**

If you have your cell phone at work, you should only use it for important calls. What should you classify as an important call? The school nurse calling to say your child is ill, your child calling to say he’s arrived home from school safely, and family emergencies that you must deal with immediately are important. Your friend calling to chat, your child calling to say the dog had an accident, or your mom calling to tell you your cousin Tilly is engaged should not be considered important.

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<sup>70</sup> By [Dawn Rosenberg McKay](#), About.com Guide

### 3. Let Your Cell Phone Calls Go to Voice Mail

While you are at work if you are in doubt about whether an incoming call is important, let voice mail pick it up. It will take much less time to check your messages than it will to answer the call and then tell the caller you can't talk.

### 4. Find a Private Place to Make Cell Phone Calls

While it's okay to use your cell phone at work for private calls during breaks, **don't stay at your desk**. Find somewhere else to talk, where your conversation can't be overheard, even if what you're discussing isn't personal. You may be on a break but your co-workers have a job to do.

### 5. Don't Bring Your Cell Phone Into the Restroom . . . Ever

This rule should apply to using your cell phone at work or anywhere. Why? Well, if you must ask — you never know who's in there; the person on the other end of the line will hear bathroom sounds, e.g., toilets flushing; it is an invasion of your co-workers' privacy.

### 6. Don't Bring Your Cell Phone to Meetings

Even if you have your cell phone set to vibrate, if you receive a call you will be tempted to see who it's from. This is not only rude, it is a clear signal to your boss that your mind isn't 100 percent on your job. All calls can wait until your meeting is over or until there is a break. **Remember, there was a time before we had cell phones.**

## **Front Office Etiquette**<sup>71</sup>

**1. Appearance:** You are the first person a client sees when they enter your business, and we all know how important first impressions are. Grooming is paramount. Hair should be clean and well styled. Clothing and hairstyle should be appropriate to the work environment. **Obviously, if you are working in an attorney's office, you will likely be required to present a very professional appearance with conservative hairstyle and business dress (in other words, leave the piercings at home).** However, if you are working at an avant garde graphic design firm, you may be expected to dress in a much more fashion forward style. Whatever the work style of your office, make sure you meet the standards of dress and grooming applicable to your situation.

**2. Keep your work area neat!** Again, first impressions are everything. Even though you are probably working on multiple projects at a time, you do not need to have them all scattered across your desk at the same time. Make use of drawers, file cabinets and letter trays to stow in-progress projects when they aren't currently in use. The impression you want to give is of someone who is busy but organized.

**3. Speaking of busy,** if you ever lack work, ask for work if you don't have anything to do.

**4. When you greet a client, stand up.** This will add confidence and friendliness to your greeting. Don't forget to smile. If they are there for a meeting, don't forget to ask for a name and make note of the pronunciation so you can announce them properly. If they ask a question you can't answer, just say you don't know and

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<sup>71</sup> <http://administrativearts.com/2008/03/10>

tell them you will get the answer for them. Then get the answer! Your goal is to make the client feel comfortable and welcomed.

- 5. If a call comes in while talking to a client, excuse yourself and answer the phone.** Ask the caller to hold a moment (don't forget to say thank you) and finish with the waiting client. Then go back to the person holding on the phone.
- 6. Know your office.** At the front desk, you will be the person asked about how to find the restroom or water fountain, where to park (and if you validate parking), where supplies are located and myriad other facts. When you start a new job, try to make note of these kinds of information. They will come in handy in your day to day job.
- 7. Cultivate patience.** You will have to deal with difficult clients. You will have to stave off salespeople. You will have 3 people walk in the door at the same time that every phone line is ringing. Whatever happens, keep your cool and project an aura of confident ability. A certain amount of bravura can get you through a lot. And remember....
- 8. Always know when and who to ask for help.** When things are getting out of hand, don't be afraid to ask for backup. If you don't know the answer to the question, find out who knows. If all the phones are ringing and you have a line at your desk, take a few seconds to signal a backup to help. Needing help is not a negative. Not asking for help when it is needed is.

## **Notary Public**

### **§ 46-1-2. Definitions.**

1. "Acknowledgment" means a notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has admitted, in the presence of the notary, to voluntarily signing a document for the document's stated purpose.
2. "Commission" – means:
  - (a) to empower to perform notarial acts; and
  - (b) the written authority to perform those acts.
3. "Copy certification" means a notarial act in which a notary certifies that a photocopy is an accurate copy of a document that is neither a public record nor publicly recorded.
4. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
5. "Jurat" means a notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has made, in the notary's presence, a voluntary signature and taken an oath or affirmation vouching for the truthfulness of the signed document.
6. "Notarial act" and "notarization" mean any act that a notary is empowered to perform under this section.
7. "Notarial certificate" means the part of or attachment to a notarized document for completion by the notary and bearing the notary's signature and seal.

8. Notary" means any person commissioned to perform notarial acts under this chapter.
9. "Oath" or "affirmation" means a notarial act in which a notary certifies that a person made a vow or affirmation in the presence of the notary on penalty of perjury.
10. "Official misconduct" means a notary's performance of any act prohibited or failure to perform any act mandated by this chapter or by any other law in connection with a notarial act.
11. "Personal knowledge of identity" means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed.
12. "Satisfactory evidence of identity" means identification of an individual based on:
  - a. valid personal identification with the individual's photograph, signature, and physical description issued by the United States government, any state within the United States, or a foreign government;
  - b. a valid passport issued by any nation; or
  - c. the oath or affirmation of a credible person who is personally known to the notary and who personally knows the individual.
13. "Satisfactory evidence of identity" does not include:
  - a. a driving privilege card; or
  - b. another document that is not considered valid for identification.

#### **§ 46-1-6. Powers and Limitations.**

The following notarial acts may be performed by a notary within the state:

1. acknowledgments;
2. copy certifications;
3. jurats; and
4. oaths or affirmations.

#### **§46-1-7. Disqualifications.**

A notary may not perform a notarial act if the notary:

1. is a signer of the document that is to be notarized except in case of a self-proved will; or
2. is named in the document that is to be notarized except:
  - (a) in the case of a self-proved will as; or
  - (b) in the case of a licensed attorney that is listed in the document only as representing a signer or another person named in the document;
3. will receive directly from a transaction connected with a financial transaction in which the notary is named individually as a principal; or
4. will receive directly from a real property transaction in which the notary is named individually as a grantor, grantee, mortgagor, mortgagee, trustor, trustee, beneficiary, vendor, vendee, lessor, or lessee.

A notary may keep, maintain, and protect as a public record, and provide for lawful inspection a chronological, permanently bound official journal of notarial acts, containing



numbered pages. For every notarial act, the notary may record the following information in the journal at the time of notarization:

1. the date and time of day of the notarial act;
2. the type of notarial act;
3. a description of the document or proceeding;
4. the signature and printed name and address of each person for whom a notarial act is performed;
5. the evidence of identity of each person for whom a notarial act is performed, in the form of:
  - a. a statement that the person is "personally known" to the notary;
  - b. a description of the identification document, its issuing agency, its serial or identification number, and its date of issuance or expiration; or
  - c. the signature and printed name and address of a credible witness swearing or affirming to the person's identity
6. the fee, if any, charged for the notarial act.

A notary may record in the journal the circumstances in refusing to perform or complete a notarial act. If a notary maintains a journal, the notary shall safeguard the journal and all other notarial records as valuable public documents and may not destroy the documents; and keep the journal in the exclusive custody of the notary, not to be used by any other notary or surrendered to an employer upon termination of employment.

### **Steps to Proper Notarization**

1. Require personal appearance of person signing the document.
2. Review the document (question blank spaces, reject white out anywhere in the document).
3. Correct mistakes only by lining through and initialing.
4. Complete the notarial certificate (Jurat, certified copy, acknowledgement), fill in all blank spaces.
5. Affix notary seal and sign name exactly as it appears on the seal.

### **Common Mistakes to Avoid**

1. Missing venue:           State of Utah   )  
   County of \_\_\_\_)
2. Whiteout was used on the document.
3. Dates on the document conflict.
4. The notary has left space blank on the notarial certificate.
5. Incorrect notarial language.
6. No notarial certificate.
7. Notary seal impression is not legible.
8. Notary did not sign document exactly as name appears on notary seal.

# SAMPLE FORMS

1. Salt Lake County Countywide Policy on Retention and Classification of Electronic Mail
2. Provo City Attorney's Office Request for Further Information
3. Provo City Attorney's Office Domestic Violence Pretrial Criminal Protective Order
4. Provo City Attorney's Office Domestic Violence Sentencing Criminal Protective Order
5. Salt Lake City Justice Court Pro Se Defendant's Request for Discovery
6. Wasatch County Drug Court Program
7. Wasatch County Plea in Abeyance and Drug Court Agreement
8. Weber County Drug Diversion Program
9. Weber County Drug Court Program
10. Ordinance
11. Resolution
12. Notary Language samples
13. Application Instructions for Certificate of Eligibility
14. Application for Certificate of Eligibility

# **SALT LAKE COUNTY COUNTYWIDE POLICY ON RETENTION AND CLASSIFICATION OF ELECTRONIC MAIL**

## **References**

Government Records Access Management Act (GRAMA); Utah Code Annotated § 63-2-101 et seq. Salt Lake County Code of Ordinances: Title 2; Chapter 3.82 *Records Management* Salt Lake County Countywide Policies and Procedures, GRAMA Policies 2000 through 2120, *Electronics Communications Policy* 1036, *Computing and Networking Systems* 1400

## **Purpose**

The intent of this policy is to provide and explain the requirements, guidelines, and best practices for electronic mail (e-mail) that meet the criteria for public records as defined by the Government Records Access Management Act (UCA Title 63 Chapter 2). This policy provides assistance to court agency employees in complying in their use of e-mail as a communication and business tool. In addition, this policy advances the best practices in capturing, managing, and retaining electronic messages as public records.

## **1.0 Background**

Electronic mail systems, commonly called “e-mail”, have become the communications method of choice for many employees. E-mail messages are often used as a communication substitute for the telephone as well as to transmit substantive information or records previously committed to paper and transmitted by more traditional methods. E-mail systems touch on many functions that county agencies utilize to conduct business: administrative, fiscal, and legal. The need to properly manage e-mail messages and systems is the same as for other record-keeping systems: to ensure compliance with state law and county ordinance concerning the creation, retention of, and access to public records.

Email created or received by employees, agents, or representative of Salt Lake County is subject to GRAMA and therefore must be managed and maintained appropriately. By identifying e-mails that are records and establishing their relevant retention periods, the county ensures compliance with state records law and promotes good management protocol of county information systems. By their nature, e-mail records may be inventory-resistant, meaning they are not controlled by the County through any practical application of technology but are under individual employee control.

## **2.0 Email System**

E-mail systems are fundamentally software systems that transport messages from one computer user to another. E-mail systems range in scope and size. It may be a local e-mail system that transmits messages to user within an agency or office over a local area network (LAN), an enterprise-wide e-mail system that carries message to a multiple of users in various locations over a wide area network, or a system that directs message around the world over the Internet. Often an e-mail system may serve all three functions simultaneously.

### **3.0 E-mail Messages**

E-mail messages are electronic communication created on and sent or received by a computer system. This definition applies equally to the contents of the communication, the transactional information, to the extent that such information can be reproduced, and attachments associated with the communication. E-mail messages are similar to other forms of communicated messages such as correspondence, memoranda, and circular letters – which fall within the definition of a record as defined in UCA § 63-2-103 (19)(a):

. . .all books, letters documents, papers, maps, plans, photographs, films, cards, tapes, recordings, electronic data, or other documentary materials regardless of physical form or characteristics; which are prepared, owned, received, or retained by a governmental entity or political subdivision; and where all of the information in the original is reproducible by photocopy or other mechanical or electronic means.

An email message is a document, or other similar item, created and/or received by a county agency and is a record as defined by state statute. E-mail message that, by definition, meet the criteria of a government record must be made available to the public upon request during the required retention period, unless the content of the message is classified other than Public. E-mail records, irrespective of classification, must be retained for the duration of the appropriate retention period.

Disclosure of e-mail is governed by the Government Records Access Management Act (GRAMA). Employees responding to a GRAMA Request for access to e-mail need to ensure they are complying with the classification and access restrictions required by GRAMA.

### **4.0 Retention Requirements**

#### **4.1 Content**

Retention and disposition of e-mail message must be related to the information they contain or the purpose they serve. Content, transaction information, to the extent that such information can be reproduced, and attachments to the messages are considered records. Since content varies considerably, the length of time the message is to be retained and its classification must be circumspectly evaluated.

#### **4.2 Backups**

E-mail backups that are maintained for disaster recovery and business continuity purposes, either to tapes or other media, are not considered appropriate for managing e-mail retention.

#### **4.3 Categories**

E-mail may be categorized into four broad types: Non-records, Routine Requests and Notices, Administrative Support Records, and Policy and Program Records.

## **5.0 Managing E-mail**

Employees must take responsibility to understand the content of messages sent and received, and maintain or delete e-mail records according to content. It is the e-mail's sender or originator's responsibility to determine if it is a record and determine the appropriate retention period. Incoming e-mail that is acted upon by the recipient may become a record and subject to maintenance and retention as a record. The following categories of records and retention periods have been identified:

### **5.1 Non-Records**

(No Retention)

E-mail messages that do not meet the criteria of a record as defined by GRAMA do not need to be maintained by the user, scheduled and retained for retention, or granted public access under county policy.

Data not considered a record (as defined by GRAMA) includes:

- 5.1.1 temporary drafts or similar materials
- 5.1.2 materials legally owned by an individual in his private capacity,
- 5.1.3 materials to which access is limited by copyright or patent,
- 5.1.4 proprietary software,
- 5.1.5 junk mail or commercial publications,
- 5.1.6 books or other materials catalogued as part of the library collection,
- 5.1.7 daily calendars and other personal notes,
- 5.1.8 notes or internal memoranda prepared as part of the deliberative process by a member of the judiciary

In addition, Non-record messages include

#### **5.1.10 Personal Correspondence**

Email neither received nor created nor retained in the normal course of county business.

#### **5.1.11 Non-Governmental Publications or Documents**

Publications, promotional material from vendors, junk mail, and similar material that are publicly available; listserv messages (other than those posted in an official capacity), unsolicited promotional material, files copied or downloaded from Internet sites, and other materials defined as non-records under 5.1.

### **5.2 Records**

E-mail messages meeting the definition of a record must be scheduled, retained, classified and disposed of appropriately. Employees creating or originating documents should manage their e-mails at the desktop by creating folders for each category and deleting them when retention has been met. Retention criteria that allow users to print hard copies of e-mail messages and related attachments must ensure the printed copy includes the sender's name, date sent, receivers' names, attachment information, and the message. When providing access to e-mail

records, the user must ensure the appropriate classification guidelines are followed.

#### 5.2.1 Attachments

Documents attached to an email identified as a record should also be managed as a record and retained appropriately. The sender or originator should ensure the most recent version of the attachment has been saved according to retention guidelines of this policy. The attachment does not need to be retained if it is retained elsewhere, unless needed to provide context to the e-mail.

#### 5.2.2 Routine Requests and Notices (Short-term Retention)

The following records are considered Routine Requests and Notices. This information may be in the body of the e-mail or included as an attachment.

- Routine requests for information such as requests for policies, reports, etc;
- Non-official notices for training, meetings, parking restrictions, blood drives, etc;
- Request for supplies;
- Approvals to attend workshops and training;
- Schedule and activity records such as duty rosters or work assignments; schedules, appointment or telephone logs, or other daily activity logs.
- Working copies of documents which are not considered drafts under UCA 63-2-103(b)(i)(ii) and records relating to daily agency activities that do not reflect policy or official actions;
- Cover letters or memos that reference an attached document.

Retention: Retain until the administrative need ends, but no long than thirty (30) days.

#### 5.2.3 Administrative Support Records (Medium-term Retention)

The following records are considered Administrative Support Records. This information may be in the body of the e-mail or included as an attachment.

- General administrative or agency business correspondence (both sent and received); interoffice or interdepartmental communications that do not result in policy;
- Reference materials, activity reports which are summarized in annual reports;
- Internal training distributed to County employees.

Retention: Save to an electronic medium or print to paper and retain for no longer than two (2) years. Refer to Administrative Retention

Schedule or other County schedules for specific retention and classifications.

#### 5.2.4 Policy and Program Records (Long-Term or Permanent Retention)

The following records are considered Policy and Program Records, regardless of whether this information is in the body of the e-mail or included as an attachment.

- Executive correspondence (both sent and received) that documents aspects of county administration concerning agency public policies, programs, directives, and service delivery matters;
- Final policies and procedures and similar regulations;
- Annual, financial, or statistical reports;
- Organizational charts and mission statements;
- Program studies;
- Correspondence or directives to staff on policy issues;
- External training presentations to the general public;
- Agendas and minutes of meetings which are covered by the Utah Open Meetings Act;
- Public relations issues, photographs, published materials, and audio or video attachments.

Retention: Print to paper and retain permanently. Refer to Administrative Retention Schedule or other County schedules for specific retention and classifications.

### 5.3 User Responsibilities

#### 5.3.1 Sender

It is the responsibility of the sender or originator to manage e-mail when it is a record by selecting the appropriate retention, maintaining the record for the required time period, and complying with the classification requirements of the record.

When using a “distribution list” (not a listserv, but a specified list of individuals) the sender or originator must maintain a copy of it for as long as the required retention period of the associated message. Printing or saving a copy of the “sent” message automatically retains the names on the distribution list.

#### 5.3.2 Recipient

The recipient of e-mail may need to retain it according to retention guidelines if it is received from outside the County network and is from; 1) either the public as a constituent of county government or 2) a company or individual doing business with the County, or 3) another governmental entity. The recipient may also need to maintain email received from other

County employees if it significantly impacts the activities and functions of the recipient's agency. Examples of agencies that may need to retain email received in the agency included elected officials, department and division directors, and program managers.

## **6.0 Agency Responsibilities**

Agency administrators, employees, records managers, information technology (IT) managers and server administrators share responsibility for managing electronic records. Agencies should clearly identify the role of each staff member, adopt procedures, train staff, and monitor compliance on a regular basis. Agencies should take appropriate measures to preserve data integrity, confidentiality and physical security of e-mail records.

## **7.0 Managing Electronic Mail at the System Level**

### **7.1 Storage and Deletion of E-mail**

The county has established criteria for the appropriate use of the e-mail system (refer to Electronic Communications Policy 1036). Deleted e-mail messages will be maintained for thirty (30) days and then permanently removed according to policy.

### **7.2 Retention for Audit or Legal Proceedings**

E-mail identified as a record that has completed its period of retention, but has also been earmarked as part of an audit or legal proceeding, must be retained until completion of the audit or resolution of the legal proceeding.

## **8.0 E-mail as Evidence**

E-mail may be used in court as evidenced and appropriate consideration must be given to manage it as a record.

APPROVED and PASSED this 23 day of November, 2004.

SALT LAKE COUNTY COUNCIL

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Steve Harmsen, Chair

Attest:

APPROVED AS TO FORM:

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Sherrie Swensen, County Clerk

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District Attorney's Office Date



## **REQUEST FOR FURTHER INFORMATION**

**PROVO CITY ATTORNEY'S OFFICE  
RICK ROMNEY • STEVE SCHREINER**

May 17, 2011

**TO:            OFFICER:  
Records:**

**FROM:        Rick Romney**

**RE:            Proposed information to be filed against  
DEFENDANT(S):**

**Case No.**



*A police report was presented by you to our office for the filing of an information against the person referenced above. We are requesting that you submit the following material(s) Immediately so that we have the necessary information to assist us in reviewing this case.*

- ( ) 1. The following report(s):
- \_\_\_\_\_ Initial Reports
  - \_\_\_\_\_ Supplementary Report
  - \_\_\_\_\_ Witness Statements
  - \_\_\_\_\_ Pictures
  - \_\_\_\_\_ Videos
  - \_\_\_\_\_ Field Sobriety Tests
  - \_\_\_\_\_ BAC and/or Toxicology Report
  - \_\_\_\_\_ Offense Tracking Number
  - \_\_\_\_\_ Accident Report
- ( ) 2. Warrant and Affidavit in Support of Warrant
- ( ) 3. Complete Witness Information
- ( ) 4. Needed for Trial/Pre-Trial which is scheduled for:
- ( ) 5. Above items needed Immediately for Motion for Discovery
- (XX) 6. Other: **Please see Rick immediately regarding this case before we can file charges.**

**IF REQUESTED ITEM(S) ARE NOT RECEIVED WITHIN 15 DAYS FROM THIS DATE, THIS CASE WILL BE DECLINED, DUE TO THE LACK OF NECESSARY INFORMATION.**

**FOURTH DISTRICT COURT, MUNICIPAL DIVISION, STATE OF UTAH**

**UTAH COUNTY, PROVO DEPARTMENT**

<p>PROVO CITY CORPORTION Plaintiff,</p> <p>vs.</p> <p>_____, Defendant.</p>	<p><b>DOMESTIC VIOLENCE PRETRIAL CRIMINAL PROTECTIVE ORDER</b></p> <p>Police No.2007001234</p> <p>Case No. _____</p> <p>Judge _____</p> <p>Division _____</p>
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**THIS ORDER TAKES PRECEDENCE OVER ANY PRIOR COURT ORDER**

PERSON TO BE RESTRAINED/DEFENDANT (Name): _____			
Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female	Ht: _____	Wt: _____	Eye Color: _____
Age: _____	DOB: _____	Race: _____	
<input type="checkbox"/> The defendant is a police officer or is in the military.			

Based upon the request of the prosecuting attorney or the alleged victim/cohabitant(s), \_\_\_\_\_, the defendant having been given an opportunity for hearing on the matter and good cause there appearing, the court hereby determines that it is necessary to impose a pre-trial criminal protective order in this case pursuant to § 77-36-2.6 Utah Code Ann. The defendant has been charge with having committed the following type of criminal offense against a cohabitant:

\_\_\_\_\_ **misdemeanor**          \_\_\_\_\_ **felony**

☐ The court finds that the defendant presents a credible threat to the physical safety of the victim/cohabitant(s).

**It is hereby ordered:**      (initialed boxes only)

1. \_\_\_\_\_ that the defendant is to have no personal contact with the alleged victim/cohabitant(s).
2. \_\_\_\_\_ that the defendant is not to threaten the alleged victim/cohabitant(s).
3. \_\_\_\_\_ that the defendant is not to knowingly enter onto the premises of the alleged victim/cohabitant(s)'s residence or any premises temporarily occupied by the alleged victim/cohabitant(s).
4. \_\_\_\_\_ that the defendant is enjoined from threatening to commit or committing acts of domestic violence or abuse against the alleged victim/cohabitant(s) and the following designated family or household member(s): \_\_\_\_\_
5. \_\_\_\_\_ that the defendant is prohibited from harassing, telephoning, contacting or otherwise communicating with the alleged victim/cohabitant(s), directly or indirectly.

6. \_\_\_\_\_ that the defendant is removed and excluded from the residence of the alleged victim/cohabitant(s) and shall not knowingly go or remain within 500 feet of the victim/cohabitant(s) at any time.
7. \_\_\_\_\_ that the defendant is to stay away from the residence, school, place of employment of the alleged victim/cohabitant(s) and the following specified places(s) frequented by the alleged victim/cohabitant(s) and any designated family member: \_\_\_\_\_
8. \_\_\_\_\_ the following relief is determined to be necessary to protect and provide for the safety of the victim/cohabitant(s) and any designated family or household member:
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

**This order is effective until dismissed or modified by the court.**

**Violation of this order may result in a charge of a third degree felony if the defendant's underlying charge is a felony and/or a class A misdemeanor if the underlying charge is a misdemeanor. Violation of this order shall result in the revocation or modification of your release status.**

**This Order is given under the authority of this Court and is directed toward the defendant. The victim cannot waive, alter or dismiss this Order. Only the Court has the authority to enter, modify or revoke this Order.**

Dated \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Judge

Served on defendant this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

By \_\_\_\_\_  
Law Enforcement Officer

**Respondent was afforded both notice and opportunity to be heard in the hearing that gave rise to this order. Pursuant to the Violence Against Women Act 1994, P.L. 103-322, 108 Stat. 1996, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of Columbia, tribal lands, and United States Territories.**

#### **CERTIFICATE OF SERVICE TO VICTIM**

I hereby certify that on \_\_\_\_\_, a certified copy of the foregoing DOMESTIC VIOLENCE PRETRIAL CRIMINAL PROTECTIVE ORDER was mailed and/or delivered to the victim/cohabitant.

\_\_\_\_\_  
Provo City Prosecutor's Office

**FOURTH DISTRICT COURT, MUNICIPAL DIVISION, STATE OF UTAH**

**UTAH COUNTY, PROVO DEPARTMENT**

<b>PROVO CITY CORPORATION</b> Plaintiff,  vs.  _____, Defendant.	<b>DOMESTIC VIOLENCE SENTENCING CRIMINAL PROTECTIVE ORDER</b> Police No. 2007001234 Case No. _____ Judge _____ Division _____
--	---

**THIS ORDER TAKES PRECEDENCE OVER ANY PRIOR COURT ORDER**

PERSON TO BE RESTRAINED/DEFENDANT (Name): _____			
Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female	Ht: _____	Wt: _____	Eye Color: _____
Age: _____	DOB: _____	Race: _____	
<input type="checkbox"/> The defendant is a police officer or is in the military.			

The defendant having been convicted of a domestic violence offense, the Court hereby determines that it is necessary to impose a sentencing criminal protective order for the protection of the victim/cohabitant(s), \_\_\_\_\_, in this case pursuant to § 77-36-5 Utah Code Ann. after having given the defendant an opportunity for hearing on this matter.

- ☐ The court finds that the defendant presents a credible threat to the physical safety of the victim/cohabitant(s).

**It is hereby ordered:** (initialed boxes only)

1. \_\_\_\_\_ that the defendant is to have no personal contact with the alleged victim/cohabitant(s).
2. \_\_\_\_\_ that the defendant is not to threaten the alleged victim/cohabitant(s).
3. \_\_\_\_\_ that the defendant is not to knowingly enter onto the premises of the alleged victim/cohabitant(s)'s residence or any premises temporarily occupied by the alleged victim/cohabitant(s).
4. \_\_\_\_\_ that the defendant is enjoined from threatening to commit or committing acts of domestic violence or abuse against the alleged victim/cohabitant(s) and the following designated family or household member(s): \_\_\_\_\_
5. \_\_\_\_\_ that the defendant is prohibited from harassing, telephoning, contacting or otherwise communicating with the alleged victim/cohabitant(s), directly or indirectly.
6. \_\_\_\_\_ that the defendant is removed and excluded from the residence of the alleged victim/cohabitant(s) and shall not knowingly go or remain within 500 feet of the victim/cohabitant(s) at any time.

7. \_\_\_\_\_ that the defendant is to stay away from the residence, school, place of employment of the alleged victim/cohabitant(s) and the following specified places(s) frequented by the alleged victim/cohabitant(s) and any designated family member: \_\_\_\_\_

8. \_\_\_\_\_ the following relief is determined to be necessary to protect and provide for the safety of the victim/cohabitant(s) and any designated family or household member:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**This order is effective until dismissed or modified by the court.**

**Violation of this order may result in a charge of a third degree felony if the defendant's underlying charge is a felony and/or a class A misdemeanor if the underlying charge is a misdemeanor. Violation of this order shall result in the revocation or modification of your release status.**

**This Order is given under the authority of this Court and is directed toward the defendant. The victim cannot waive, alter or dismiss this Order. Only the Court has the authority to enter, modify or revoke this Order.**

Dated \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Judge

Served on defendant this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

By \_\_\_\_\_  
Law Enforcement Officer

**Respondent was afforded both notice and opportunity to be heard in the hearing that gave rise to this order. Pursuant to the Violence Against Women Act 1994, P.L. 103-322, 108 Stat. 1976, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of Columbia, tribal lands, and United States Territories.**

#### **CERTIFICATE OF SERVICE TO VICTIM**

I hereby certify that on \_\_\_\_\_, a certified copy of the foregoing DOMESTIC VIOLENCE PRETRIAL CRIMINAL PROTECTIVE ORDER was mailed and/or delivered to the victim/cohabitant.

\_\_\_\_\_  
Provo City Prosecutor's Office

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SALT LAKE CITY JUSTICE COURT  
SALT LAKE COUNTY, STATE OF UTAH

---

SALT LAKE CITY,

Plaintiff,

-vs-

Defendant.

PRO SE DEFENDANT'S  
REQUEST FOR DISCOVERY

Case No. \_\_\_\_\_

Judge \_\_\_\_\_

Defendant, \_\_\_\_\_, acting pro se,  
hereby requests that the plaintiff, Salt Lake City, fully disclose all information and  
evidence pursuant to Rule 16(c) of the Utah Rules of Criminal Procedure to the  
defendant at least ten (10) days before trial.

The defendant's request for the foregoing information and evidence is  
necessary in order for the defendant to adequately prepare his/her case.  
Defendant requests that the information and evidence be mailed to (address):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
DEFENDANT

## **WASATCH COUNTY DRUG COURT PROGRAM**

**PARTICIPATING AGENCIES:** Fourth District Court, Wasatch County Drug & Alcohol Treatment, Wasatch County Attorney's Office, Wasatch County Public Defenders, Wasatch County Jail.

**DRUG COURT JUDGE:** Steven L. Hansen

**D.C. ADMINISTRATOR:** Kathy Day

**PURPOSE:** The primary purpose of this drug court is to reduce the likelihood of a defendant re-offending by:

- Collaborative planning between the judicial, prosecution, defense, and substance abuse treatment systems.
- Integration of treatment and cases processing through non-adversarial methods.
- Establishing clearly defined performance measures and compliance verification.
- Providing frequent personal contact with the Drug Court Judge (via status hearings).
- Building progressive incentives based on performance.
- Initiation immediate sanctions for non-compliance.

**ELIGIBILITY CRITERIA:** Non-violent history  
(Admittance is discretionary. First –time felony drug offender  
No person has legal right If space permits, repeat misdemeanor drug  
to be admitted to Drug Court.) offenders may be admitted.

**TOTAL PARTICIPANTS:** 12-20 Participants

**PRIMARY GOALS:** Remain crime free  
Abstain from the use of addictive substances  
Maintain stable employment  
Obtain high school degree or GED (if appropriate)

**ADDITIONAL GOALS:** Resolve all outstanding legal issues  
Improve personal and social relationships  
Improve educational status  
Improve health/medical status  
Development of a recovery-friendly support system  
Maintain or establish stable living arrangements

**TIME COMMITMENT:** Minimum of one year

#### ADMISSION PROCESS:

1. County attorney screens case and determines eligibility for participation.
2. Plea-in-Abeyance is offered in return for participation and successful completion of all drug court requirements.
3. Defense attorney reviews drug court requirements with defendant and participation forms are signed.
4. Client meets with the Drug Court Case Manager (Wasatch County Prevention Program) for an orientation session to learn of treatment requirements of drug court.
5. Client appears before the court and agrees to the Plea-in-Abeyance, participation in drug court.
6. Client meets with case manager for a substance abuse assessment and is assigned a therapy program.
7. Client enters Phase 1 and is responsible to fully comply with all requirements and expectations of drug court.

**PHASE SYSTEM:** Phases are pre-determined time periods which incorporate graduating performance measurements. Graduation from phase to phase is at Administrator's discretion.

**TREATMENT PROGRAMS:** Every client is required to be actively participating in a treatment program throughout his/her involvement in drug court. Treatment programs include: General Outpatient; Intensive Outpatient; Day Treatment and Residential Treatment.

**PERFORMANCE EVALUATION:** Weekly progress reports are provided to Judge Hansen for each client even if they are not appearing before the judge that week. Performance requirements have been quantified and a compliance percentage is determined on a weekly basis. Advancement from one phase to another is dependent on the percentages obtained by the client. Clients whose percentages drop below 80% are reviewed for sanctioning by the Court.



## PHASE 1: ORIENTATION & ASSESSMENT

**Minimum Time in this Phase:** 4 Weeks

<b>PRIMARY GOALS FOR PHASE 1</b>		<b>PERFORMANCE INDICATORS</b>
1. Drug Court Orientation & Intake	→	Completed within 24 hours
2. Needs Assessment & Treatment Referral	→	Completed within 3-5 days
3. Admission into Treatment Program	→	Completed within first 14 days
4. Detoxification from Substance of Abuse	→	Completed within 7-14 days
5. Development of Treatment Plan	→	Completed within first 30 days
6. Abstinence from all Substances of Abuse	→	Demonstrated by 6 consecutive negative UA's

<b>CORE REQUIREMENTS</b>	
Drug Court Appearances:	<b>One per week</b>
Minimum Valid Drug Tests:	<b>Three per week</b>
Meeting with D.C. Case Manager	<b>One per week</b>
Weekly Fee:	<b>\$30.00</b>
<b>Community Support Group</b>	<b>Two per week*</b>

\* If dirty tests, no-show, and missed appointment ratio relative to appointments for any of these scheduled services rises to over 20% (so that less than 80% of appointments are kept), then the defendant will be considered non compliant for that requirement.

## PHASE 2: STABILIZATION

**Minimum time in this Phase:** 16 weeks

<b><u>PRIMARY GOALS FOR PHASE</u></b> <b><u>2</u></b>		<b><u>PERFORMANCE INDICATORS</u></b>
1. Continue Abstinence.	→	Minimum of 24 valid UA's <i>and</i> 14 consecutive (most recent) clean UA's.
2. Continue Treatment.	→	Weekly report from treatment program.
3. Participation in Community Based Support Networks.	→	Verification of attendance at community support group meetings (AA, NA, RR, etc.) at least two times per week.
Maintain Living Environment Supportive of Continued Recovery.	→	Verification by individual therapist.
Continue Adult Continuing Education Program, if appropriate.	→	Documentation of high school degree, or verification of progress in adult continuing education program.
Maintain Employment.	→	Verification of employment, job search, or vocational training.

<b>CORE REQUIREMENTS</b>	
<b>Drug Court Appearances:</b>	<b>4 in 1* month, 2 per month thereafter* (minimum of 6 total)</b>
<b>Minimum Valid Drug Tests:</b>	<b>2 per week* (minimum of 24 valid UA's; most recent 14 consecutive, must be clean to advance)</b>
<b>Meeting with D.C. Case Manager</b>	<b>One per week* (minimum of 16 total)</b>
<b>Weekly Fee:</b>	<b>\$20.00</b>
<b>Community Support Group</b>	<b>Two per week*</b>
<b>Satisfactory Employment and/or Education Progress Under the Circumstances.</b>	
<b>No New Criminal Offenses Charged.</b>	

\* If dirty tests, no-show, and missed appointment ratio relative to appointments for any of these scheduled services rises to over 20% (so that less than 80% of appointments are kept), then the defendant will be considered non compliant for that requirement.

### PHASE 3: MAINTENANCE

**Minimum time in this Phase:** 16 weeks

<b><u>PRIMARY GOALS FOR PHASE</u></b> <b><u>3</u></b>		<b><u>PERFORMANCE INDICATORS</u></b>
1. Continue Abstinence.	→	Minimum of 12 valid UA's <i>and</i> 8 consecutive (most recent) clean UA's.
2. Continue Treatment.	→	Weekly report from treatment program.
3. Participation in Community Based Support Networks.	→	Verification of attendance at community support group meetings (AA, NA, RR, etc.) at least two times per week.
4. Maintain Living Environment Supportive of Continued Recovery.	→	Verification by D.C. Case Manager
5. Continue Adult Continuing Education Program, if appropriate.	→	Documentation of progress toward or completion of high school diploma (GED), or continuing education program.
6. Maintain Employment.	→	Verification of employment, job search, or vocational training.

<b>CORE REQUIREMENTS</b>	
<b>Drug Court Appearances:</b>	<b>1 per month* (minimum of 4 total)</b>
<b>Minimum Valid Drug Tests:</b>	<b>1 per week* (minimum of 12 valid UA's; most recent 8 consecutive, must be clean to advance)</b>
<b>Meeting with D.C. Case Manager</b>	<b>2 per month* (minimum of 66 total)</b>
<b>Weekly Fee:</b>	<b>\$10.00</b>
<b>Community Support Group</b>	<b>Two per week*</b>
<b>Satisfactory Employment and/or Education Progress Under the Circumstances.</b>	
<b>No New Criminal Offenses Charged.</b>	

\* If dirty tests, no-show, and missed appointment ratio relative to appointments for any of these scheduled services rises to over 20% (so that less than 80% of appointments are kept), then the defendant will be considered non compliant for that requirement.

## PHASE 4: GRADUATION & TRANSITION

**Minimum time in this Phase:** 12 weeks

<b><u>PRIMARY GOALS FOR PHASE</u></b> <b><u>4</u></b>		<b><u>PERFORMANCE INDICATORS</u></b>
1. Continue Abstinence.	→	All UA's performed weekly, must be clean.
2. Continue Treatment as determined by therapist.	→	Weekly report from treatment program.
3. Participation in Community Based Support Networks.	→	Verification of attendance at community support group meetings (AA, NA, RR, etc.) at least four times per week.
4. Maintain Living Environment Supportive of Continued Recovery.	→	Verification by D.C. Case Manager
5. Continue Adult Continuing Education Program, if appropriate.	→	Documentation of progress toward or completion of high school diploma (GED), or continuing education program.
6. Maintain Employment.	→	Verification of employment, job search, or vocational training.

<b>CORE REQUIREMENTS</b>	
<b>Drug Court Appearances:</b>	<b>1 per month* (minimum of 3 total)</b>
<b>Minimum Valid Drug Tests:</b>	<b>1 per week* (all 12 UA's must be clean.)</b>
<b>Meeting with D.C. Case Manager</b>	<b>1 per month* (minimum of 3 total)</b>
<b>Weekly Fee:</b>	<b>\$10.00</b>
<b>Community Support Group</b>	<b>One per week*</b>
<b>Satisfactory Employment and/or Education Progress Under the Circumstances.</b>	
<b>No New Criminal Offenses Charged.</b>	

\* If dirty tests, no-show, and missed appointment ratio relative to appointments for any of these scheduled services rises to over 20% (so that less than 80% of appointments are kept), then the defendant will be considered non compliant for that requirement.

Wasatch County Attorney  
Tricia Lake, #8538  
Deputy County Attorney  
805 West 100 South  
Heber City, UT 84032  
Telephone: (435) 654-2909  
Facsimile: (435) 654-2947

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IN THE FOURTH JUDICIAL DISTRICT COURT  
IN AND FOR WASATCH COUNTY, STATE OF UTAH

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STATE OF UTAH,	:	PLEA IN ABEYANCE
	:	AGREEMENT and DRUG COURT
Plaintiff,	:	AGREEMENT
	:	
vs.	:	
	:	
JOHN DOE,	:	Case No. _____
Defendant.	:	
	:	Judge Thomas L. Low

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**PLEA IN ABEYANCE AGREEMENT**

This agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2006, between Plaintiff and Defendant. Defendant has been fully advised of his/her rights, and hereby acknowledges that he/she has entered, and by signing this document does enter, a plea of guilty to the charge of **COUNT I: POSSESSION OF A CONTROLLED SUBSTANCE, POSSESSION WITH INTENT TO DISTRIBUTE (DFZ), a Second Degree Felony.**

After investigating the offense and the Defendant's background, the State believes that it will best serve the interests of justice, of the State of Utah, and of the Defendant to hold the Defendant's guilty plea in abeyance, and not enter judgment of conviction or

corresponding sentence upon the Defendant, pending Defendant's compliance with the following terms of this Plea in Abeyance Agreement.

#### TERMS AND CONDITIONS OF PLEA IN ABEYANCE

1. Defendant has been represented by counsel or has knowingly and intelligently waived the right to be represented by counsel in negotiating this agreement.
2. Defendant knowingly and intelligently waives his/her right to be sentenced within the time period provided in Rule 22(a) of the Utah Rules of Criminal Procedure.
3. Defendant's guilty plea previously accepted by this Court will be held in abeyance for the duration of Defendant's participation in Drug Court, which will be no less than one year and may be up to two-and-one-half years.
4. Defendant will comply with all the terms and conditions of the Drug Court Agreement which is also contained in this document, below, and will graduate from Drug Court. Defendant's signature below constitutes his enrollment in Drug Court.
5. Defendant agrees to commit no law violations, excluding minor traffic violations constituting class C misdemeanors or less. If Defendant is arrested, cited, or questioned by a law enforcement officer, Defendant will notify Treatment personnel within forty-eight hours.
6. By executing this agreement, Defendant waives any physician-patient or other privilege related to evaluation and treatment performed pursuant to the Drug Court Agreement. As a result, the State, through its law enforcement officers, attorneys, or other agents, may interview treatment providers regarding Defendant's treatment.

7. Defendant will at all times keep the Court, County Attorney' s Office, and Drug Court personnel informed of his or her current address
8. Compliance with this Plea in Abeyance Agreement and graduation from Drug Court will result in Defendant's guilty plea(s) to the above-referenced criminal charges being withdrawn and the charges dismissed with prejudice.
9. Failure to comply with this Plea in Abeyance Agreement will result in Defendant's guilty plea(s) to the above-referenced criminal charges being entered as conviction(s), and Defendant will be sentenced according to the provisions of law.

#### DRUG COURT AGREEMENT

1. Defendant hereby enrolls in Wasatch County's Drug Court Program.
2. Defendant understands that the Drug Court Program is a special program which requires reliance on drug testing and the recommendations of treatment personnel ("Treatment") in imposing treatment conditions and/or sanctions for violating Drug Court rules, policies, or requirements.
3. The Program: The rules, policies, and requirements of Drug Court are set forth in a separate document entitled Wasatch County Drug Court Program, ("the Program") which the Defendant has read and understood. These rules, policies, and requirements may be modified from time to time in minor ways upon the recommendation of Treatment and by leave of the Court, to permit the Program to adapt to further information and science in relation to the treatment of addiction. Defendant understands that he/she does not have the right to insist that the Program remain the same throughout his/her participation in Drug Court.

4. Drug Court Team: The Drug Court Team consists of:

- a. The Drug Court Judge
- b. The Drug Court Coordinator.
- c. Any representative(s) from the Wasatch County Attorney's Office
- d. Any representative(s) from Heber Valley Counseling.
- e. Any representative(s) from Adult Probation and Parole.
- f. Any representative(s) from the Public Defenders Office
- g. Any representative(s) from the Wasatch County Sheriff's Office and Heber City Police Department.
- h. Any representative(s) from the Division of Child and Family Services (DCFS).
- i. All clerks, secretaries, paralegals and other similar personnel from the above offices.
- j. Others as may become necessary.

Defendant understands that the membership of the Drug Court Team is subject to change and there are times when substitutions are made because of absence or other reasons.

5. Waiver of Confidentiality: Defendant hereby waives any and all rights of privacy and confidentiality under State or Federal law, including, but not limited to, the Health Information Privacy Protection Act. The Defendant understands that all members of the Drug Court Team as well as counselors and other similar individuals discuss each individual's situation and performance in the Drug Court Program. This waiver includes any and all components and aspects which are involved in drug treatment and the Drug Court Program.

6. Procedures: Defendant understands that in the event there is a claim that he/she failed a drug test or is otherwise not in compliance with the policies, rules or requirements of the Drug Court Program, the Court may impose sanctions, other than removal from the Program, without conducting an evidentiary hearing and without providing Defendant with counsel. Defendant specifically waives



his/her right to evidentiary hearings, and to counsel at such hearings and consents to the Court's imposition of sanctions based on the information the Court receives from treatment providers and directly from Defendant.

7. Sanctions: Defendant understands that the sanctions which the Court may impose without removing Defendant from the program include, but are not limited to, modification of treatment conditions, administrative sanctions, community service, fines, day jail or a specified jail term.

8. Revocation and Removal from Drug Court:

- a. Lack of Progress: The Drug Court Program is divided into four phases, with each Phase lasting a certain time period as set forth in the "Wasatch County Drug Court Program." If Defendant fails to fulfill the requirements of any Phase within the time range set forth, the right to participate in Drug Court may be revoked. However, if Defendant is in complete compliance with the program with the sole exception that his/her timely, undiluted, untampered drug tests have not been clean for the required length of time, the Treatment may request that the Court extend the Phase for an additional period of time if, in Treatment's opinion, doing so will nevertheless permit Defendant to complete the Phase within a reasonable time. Otherwise, an Order to Show Cause will be issued to him/her removed from Drug Court.
- b. Failure to Comply: Defendant understands that, although all aspects of participation in Drug Court are important, the following two aspects will have the greatest and most immediate effect on creating a recommendation

for removal from Drug Court: (1) strict compliance with the drug testing requirements, and (2) timely completion of all actions imposed. Repeated failure to submit to timely, undiluted, untampered drug tests will result in removal from Drug Court. Repeated failure to complete in a timely manner any sanctions imposed will result in removal from Drug Court.

- c. Procedures for Revocation and Removal: If Defendant's failures in the Drug Court Program result in a recommendation of termination from the program, Defendant shall have the right to an evidentiary hearing on that issue. If, based on the evidence presented at such a hearing, the Court concludes by a preponderance of the evidence that Defendant's involvement in the Drug Court Program should be terminated without graduation; the Court shall revoke the Plea in Abeyance Agreement, enter Defendant's guilty plea(s) as convictions, and sentence Defendant accordingly.

- 9. Signatures: Defendant agrees to sign all agreements, releases of information, and other documents required by the Drug Court Program Administrator for entry into and satisfactory completion of the Drug Court Program.

- 10. Evidence of Drug Test Results: Defendant understands that Defendant's urine samples will be tested by Treatment or sent to an outside laboratory. Defendant agrees that the results of these tests will be admissible in court without further foundation, and without the need for the appearance of Treatment personnel or lab employees to testify in Court.

11. Current Phone Number: Defendant agrees to keep the Treatment Provider and the Court advised of her/her current phone number(s) at all times.
12. Truthfulness & Candor: Defendant understands that the Drug Court Program is designed to help, and that its effectiveness is directly related to Defendant's truthfulness and candor both to Treatment and to the Court. Defendant agrees to be cooperative, compliant, and truthful in all dealings with Treatment and the Court.
13. Association: Defendant agrees to not knowingly associate with any person who is involved in criminal activity, or who has been convicted of a felony without approval from the Treatment Provider.
14. Employment: Defendant understands that education and/or gainful employment are central to the Drug Court Program and necessary for self-improvement and to overcome addiction. Unless otherwise authorized by Treatment, Defendant agrees to seek, obtain, and maintain verifiable, lawful, full-time (32 hours per week minimum) employment as approved by Treatment. Changes in Defendant's employment will be communicated to Treatment within forty-eight hours of the change.
15. Weapons: Defendant may not possess, have under control, have in his/her custody or on the premises where he/she is residing any explosives, firearms, or dangerous weapons because a felony charge is pending. Defendant's possession of a dangerous weapon, therefore, may result in a felony charge of Possession of a Dangerous Weapon by a Restricted Person being filed against the Defendant.
16. Visits and Searches: Defendant will permit law enforcement officers of

any Drug Court Team Member to visit his/her place of residence, place of employment, or elsewhere to ensure compliance with this condition of Drug Court. Any law enforcement officer and/or Drug Court Team member may search Defendant's person, residence, vehicle, or any other property under Defendant's control without a warrant, at any time day or night, upon reasonable suspicion, to ensure compliance with the law and the condition of Drug Court. Additionally, Defendant agrees to submit to all tests of his or her breath, blood, urine, or hair upon request of any law enforcement officer or Drug Court Team member, either randomly or upon reasonable suspicion of a violation. Failure to submit will be treated as a positive test.

#### **CERTIFICATION**

I, **John Doe**, hereby certify and state that I have read this agreement or had it read and explained to me. I further certify that I understand the terms and conditions of the Plea in Abeyance Agreement and Drug Court Agreement, and I agree to comply with them.

#### **SIGNATURES**

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**John Doe**  
Defendant

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Attorney for Defendant

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Deputy Wasatch County Attorney

**ORDER ADOPTING PLEA IN ABYEANCE AGREEMENT  
AND ACKNOWLEDING DRUG COURT AGREEMENT**

The Court, having reviewed the above Plea in Abeyance Agreement and Drug Court Agreement, concluding that the Defendant has knowingly and voluntarily entered into this Agreement, and in the interests of justice, hereby enters the following Order:

**ORDER**

The Court approves and adopts the Plea in Abeyance Agreement and Drug Court Agreement as set forth above.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

BY THE COURT:

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JUDGE THOMAS L. LOW

## **WEBER COUNTY DRUG DIVERSION PROGRAMS**

Criteria: Defendant's must have no felony or drug related convictions on their criminal histories.

Program: Defendant's enter a Plea in Abeyance and sign an agreement.  
Defendant's must pay a Plea in Abeyance fee (varies between counties) before signing their agreements.

Treatment varies from 6 months for misdemeanors to 18 months for felonies.

## **WEBER COUNTY DRUG COURTS**

Criteria: Defendant's must be charged with felony Possession of a Controlled Substance.

Defendant's can have no violent offenses on their criminal histories.

Defendants must have at least one prior conviction for a drug related offense.

Program: Defendant's enter a Plea in Abeyance and sign an agreement.

Defendants must come back to court weekly at first and then every two weeks, three weeks and four weeks depending on the level they are in treatment.

Defendants must pay a set-up fee to the County Attorney's Office and the Public Defenders Office as well as all treatment fees.

Sanctions are decided by the Drug Court Team.

Treatment is a minimum of one year.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE REZONING CERTAIN REAL PROPERTY FROM GRAZING TO RECREATION FORESTRY IN THE JORDANELLE AREA AND COMMONLY KNOWN AS THE LOIS ANDERS PROPERTY, WHICH IS MORE PARTICULARLY DESCRIBED HEREIN; AND AMENDING THE OFFICIAL ZONING MAP TO REFLECT THE REZONING.**

**WHEREAS**, Dennis Van Den Akker requested a zone change from Grazing (hereinafter "G-1") to Recreation Forestry (hereinafter "RF-1") of certain real property more particularly described in Exhibit A, attached hereto and shown on a map in Exhibit B, attached hereto; and

**WHEREAS**, the Planning Commission considered the zone change on October 19, 2000, in which the Planning Commission recommended approval of the zone change to the County Commission; and

**WHEREAS**, the County Commission held a public hearing on the zone change on November 13, 2000; and

**WHEREAS**, the zone change came before the County Council on November 13, 2000, for adoption or rejection of the zone change; and

**WHEREAS**, the Board of County Council of Wasatch County specifically finds, for the above stated reasons, that a compelling public interest exists in rezoning certain real property from G-1 to RF-1 in the Jordanelle area and commonly known as the Lois Anders Property, which is more particularly described herein; and amending the official zoning map to reflect the rezoning.

**NOW THEREFORE**, be it resolved that the Board of County Council of Wasatch County, ordains as follows:

1. The Board of County Council of Wasatch County having found a compelling public interest exists, hereby rezones certain real property from G-1 to RF-1 in the Jordanelle area and commonly known as the Lois Anders Property which is more particularly described in Exhibit A.
2. The Wasatch County GIS Department is hereby ordered to amend the official zoning map to reflect this rezoning
3. The Wasatch County Clerk, and ex officio Clerk of the Board of County Council is hereby ordered, in accordance with the requirements of § 17-15-1, Utah Code Annotated, 1953, as amended, to do as follows:
  - a. Enter at length this ordinance in the ordinance book;

- b. Deposit three (3) copies of this ordinance in the office of the County Clerk;
- c. Publish a short summary of this ordinance, together with a statement that a complete copy of the ordinance is available at the County Clerk's office and with the name of the members voting for and against the ordinance, for at least one publication in a newspaper published in and having general circulation in the county; and
- d. Post a complete copy of this ordinance in nine (9) public places within the County.

**APPROVED** and **PASSED** this \_\_\_\_\_ day of \_\_\_\_\_, 2006

**ATTEST:**

**BOARD OF COUNTY COUNCIL  
OF THE COUNTY OF WASATCH**

\_\_\_\_\_  
Brent R. Titcomb  
Wasatch County Clerk / Auditor

\_\_\_\_\_  
Jay Price, Chair  
Wasatch County Council

**VOTE**

Jay Price, Chairman	_____
Neil Anderton, Vice Chair	_____
Kipp Bangerter	_____
Kendall Crittenden	_____
Val Draper	_____
Steve Farrell	_____
Michael Kohler	_____



### ADOPTION OF ORDINANCE AFFIDAVIT

STATE OF UTAH                    )  
  :ss.  
COUNTY OF WASATCH        )

I, the undersigned, the duly qualified and acting County Clerk of Wasatch County, Utah, and ex officio Clerk of the Board of County Council do hereby further certify, according to the records of said Board in my official possession, and upon my own knowledge and belief, that I have fulfilled the requirements of § 17-53-208, Utah Code annotated, 1953, as amended, by:

- ☐ (a) Causing this ordinance to be entered at length in the ordinance book;
- ☐ (b) Causing three (3) copies of this ordinance to be deposited in the office of County Clerk;
- ☐ (c) Causing a short summary of this ordinance, together with a statement that a complete copy of the ordinance is available at the County Clerk's office and with the name of the members voting for and against the ordinance to be published for at least one publication in *the Wasatch Wave*, a newspaper of general circulation within the geographical jurisdiction of Wasatch County; or posting a complete copy of this ordinance in nine (9) public places within the County.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and impress hereon the official seal of the Wasatch County Council, State of Utah, this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Brent R. Titcomb  
Wasatch County Clerk/Auditor

SUBSCROIBED AND SWORN to me, a Notary Public, this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public

Residing in: \_\_\_\_\_

My commission expires:\_\_\_\_\_

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT  
BETWEEN WASATCH COUNTY AND MIDWAY CITY RELATING TO  
SNOW REMOVAL ON CITY AND COUNTY ROADS.**

**WHEREAS**, Wasatch County is a political subdivision of the State of Utah; and

**WHEREAS**, Midway City is a municipal corporation; and

**WHEREAS**, the Utah Interlocal Cooperation Act, Utah Code Ann. § 11-31-1, *et seq.*, provides that any power or powers, privileges, or authority exercised or capable of exercise by a town, city or county, may be exercised and enjoyed jointly with any other town, city, or county having the power or powers, privileges or authority; and

**WHEREAS**, the Utah Interlocal Cooperation Act, Utah Code Ann. § 11-13-1, *et seq.*, authorizes towns, cities, and counties to enter into agreements with one another for joint or cooperative action; and

**WHEREAS**, the County and Midway City have determined that jointly cooperating in the removal of snow from city and county roads will provide for greater efficiency and eliminate wasteful duplication of services;

**NOW THEREOFRE**, be is resolved by the Board of County Commissioners of Wasatch County as follows:

1. The attached Interlocal Cooperation Agreement is hereby approved and adopted.

DATED this 25<sup>th</sup> day of February, 2006.

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Jay Price, Chairman  
Wasatch County Council

Attest:

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Brent Titcomb  
Wasatch County Clerk-Auditor

## NOTARIAL LANGUAGE SAMPLES

## Acknowledgment Certificate

State of Utah     )  
                              §  
County of         )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 2\_\_\_\_\_, before me \_\_\_\_\_,

DAY                  MONTH                  YEAR                  NOTARY PUBLIC NAME

a notary public, personally appeared \_\_\_\_\_ ,  
NAME OF DOCUMENT SIGNER

proved on the basis of satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to this instrument, and acknowledged (he/she/they) executed the same.

Witness my hand and official seal.

NOTARY PUBLIC

SEAL

**Attorney – in – Fact acknowledgment**

State of Utah     )  
                              §  
County of         )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 2\_\_\_\_\_, personally appeared before me

DAY                      MONTH                      YEAR

\_\_\_\_\_, who being by me duly sworn/affirmed, did say that he/she is the attorney-in-fact of \_\_\_\_\_, and that said instrument was signed on behalf of said \_\_\_\_\_ acknowledged to me that he/she as such attorney-in-fact executed the same.

NOTARY PUBLIC

SEAL

**Note: Signing in a Representative Capacity:** The notary must require a signer acting in a representative capacity to present the “ORIGINAL Power of Attorney” document as satisfactory evidence of authority to sign.

The Attorney-in-Fact would sign the signer's name on the document and then his/her own signature as 'attorney-in-fact.'

I, \_\_\_\_\_, translator fully competent in both the \_\_\_\_\_ and English languages do verify that the above is a true translation of the document submitted to me in the \_\_\_\_\_ language to the best of my knowledge and belief.

State of )  
§  
County of )

(Name of Signer)

State of Utah     )  
                              §  
County of         )

and that said document was signed by him/her in behalf of said \*Corporation by Authority of its Bylaws, or (Resolution of its Board of Directors), and said \_\_\_\_\_ acknowledged to me that said \*Corporation executed the same.

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**Signing in a Representative Capacity:** An authorized officer, agent, partner, trustee, member or other representative may sign on behalf of their representative business, be it a corporation, partnership, trust, limited liability company or other entity providing they have been given authority to sign in their representative capacity.

The notary must require the signer to present satisfactory documentary evidence and administer an oath or affirmation.

**Copy Certificate**

State of Utah )

§

County of )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 2\_\_\_\_\_, I certify that the preceding or  
DAY MONTH YEAR

attached document, is a true, exact, complete and unaltered photocopy made by me of

\_\_\_\_\_  
DESCRIPTION OF DOCUMENT

presented to me by the document's custodian,

\_\_\_\_\_, and that, to the best of my knowledge, the  
NAME OF CUSTODIAN

photocopied document is neither a public record nor a publicly recorded document,

certified copies of which are available from an official source other than a notary.

\_\_\_\_\_  
NOTARY PUBLIC

SEAL

**Credible Witness Acknowledgment**

State of Utah )

§

County of )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, personally  
appeared before me \_\_\_\_\_, and satisfactorily proved to be  
the signer of the above document by the oath of \_\_\_\_\_,  
who is personally known to me and is a competent and credible witness for  
that purpose, by me duly sworn, and he/she acknowledged that he/she

executed the same.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission Expires

**NOTE:** A credible identifying witness is a person who *personally knows both* the notary and the document signer. This credible witness is a walking, talking ID card that personally vouches for the identity of an unknown document signer without an ID card. The notary must administer an oath to the credible identifying witness attesting to the signer's identity.

**Jurat Certificate**

State of Utah    )  
                          §  
County of        )

Subscribed and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_, in the year 2\_\_\_\_\_  
DAY MONTH YEAR  
by \_\_\_\_\_  
NAME OF DOCUMENT SIGNER

\_\_\_\_\_  
NOTARY PUBLIC

SEAL

**Sample of Survivorship Notarization**

My name is \_\_\_\_\_,

I live at \_\_\_\_\_,  
STREET ADDRESS, CITY, STATE, ZIP

my proof of identification is \_\_\_\_\_ and  
DRIVERS LICENSE #, STATE ID #, INS IDENTIFICATION, PASSPORT, ETC.

I hereby certify that this statement of survivorship was signed by me in the presence of a notary public on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, as  
DAY MONTH YEAR

proof of my existence.

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State of Utah )

§

Subscribed and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by  
DAY MONTH YEAR

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## APPLICATION INSTRUCTIONS FOR CERTIFICATE OF ELIGIBILITY

Enclosed is an application for a Certificate of Eligibility to expunge a record of arrest, detention, investigation or conviction from the State of Utah, Department of Public Safety, Bureau of Criminal Identification. Please complete all of the steps described below. Failure to properly complete one of the steps may cause a delay in processing your application.

1. Fill out the top portion of the application. List all of your previous names including married and maiden names. Be sure to read and sign the application.
2. Take the application to a law enforcement agency such as your city police department or county sheriff's office. Request that they print the four fingers of your right hand on the space provided. Make sure the law enforcement official who takes your fingerprints fills out the portion of the application labeled "OFFICIAL TAKING PRINTS." Valid government-issued photo ID must be provided (for example, passport, state ID card, consulate ID card, and driver license.) **"Utah Driving Privilege Cards" WILL NOT be accepted by BCI as valid ID. Utah Driving Privilege Cards state on them that they are not to be used as ID. NOTE:** The fingerprints may be taken at our office, Bureau of Criminal Identification, 3888 West 5400 South, Taylorsville, Utah.
3. The application fee is \$25.00. Select a method of payment by making a check mark in the appropriate box. Checks and money orders must be made payable to "Utah Bureau of Criminal Identification." To pay by credit card (Visa or MasterCard), please fill out the requested information on the application. Credit card numbers must include: the signature of the cardholder, the three-digit control number located on the back of the card, the expiration date, and the zip code of card billing address. Cash is accepted only when applying in person. **DO NOT SEND CASH IN THE MAIL.**
4. Your eligibility letter will be mailed to the mailing address indicated on the application form. If the information needs to be sent to a third party, the third party release form must be filled out and submitted along with your application.
5. Mail the application, fee and release form (if applicable) to:  
  
UTAH BUREAU OF CRIMINAL IDENTIFICATION  
3888 West 5400 South  
Taylorsville, Utah 84118
6. If your charges were acquitted, you must mark the box on the application form in order for the bureau to expedite your application. You must include documentation to indicate that the charges were acquitted.
7. If your charges were dismissed, you must provide documentation to indicate whether the charges were dismissed with or without prejudice.
8. If you are seeking to expunge a record of arrest where no charges have been filed, you must provide documentation from the investigating law enforcement agency or the prosecutor to indicate whether there has been a final determination that no charges have been filed.

For expungement criteria or any other questions, please go to our website at <http://publicsafety.utah.gov/bci/>

**The Bureau of Criminal Identification does not expunge Juvenile Court records and any request to expunge those records must be made directly to the Juvenile Court.**



RECEIPT # \_\_\_\_\_

## APPLICATION FOR CERTIFICATE OF ELIGIBILITY

Utah Department of Public Safety • Bureau of Criminal Identification  
3888 West 5400 South, Taylorsville, Utah 84118



**WHEN FILLING OUT THIS APPLICATION TYPE OR PRINT IN BLACK INK.** Your application will not be processed unless **all** sections of this form are filled out completely and accompanied by a **\$25.00** application fee.

NAME: \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_  
(Last Name) (First Name) (Middle Name)

PREVIOUSLY USED NAME(S) (Maiden, AKA, etc.) \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_  
(Street/Box number) (City) (State) (Zip)

**SOCIAL SECURITY:**\_\_\_\_\_ **DRIVER LICENSE # AND STATE:**\_\_\_\_\_ /

HOME PHONE NUMBER: \_\_\_\_\_ DAYTIME PHONE NUMBER: \_\_\_\_\_

☐ CHECK BOX IF AQUITTAL- DOCUMENTATION MUST BE PROVIDED FOR EXPEDITED PROCESSING

Pursuant to Utah Code Ann. § 77-40-106(1)(b), a petitioner who intentionally or knowingly provides false or misleading information to the bureau when applying for a certificate of eligibility is guilty of a class B misdemeanor and subject to prosecution under Section 76-8-504.6. A certification of eligibility or an application for expungement may be denied if the petitioner provides false information.

I \_\_\_\_\_, declare under criminal penalty of the State of Utah that the foregoing is true and correct.  
(Name of Petitioner)

(Signature)

Executed on: \_\_\_\_\_  
(Date)

**METHOD OF PAYMENT (Only to be filled out if application is mailed in. Check appropriate box for payment) \$25.00 FEE**

- ☐ Check, Money Order or Cashier's Check (Payable to "Utah Bureau of Criminal Identification" in the amount of \$25.00)  
☐ Credit Card ☐ Visa OR ☐ Master Card

**Credit Card payment must include 3-digit control number found on the back of the credit card. There is a \$20.00 service charge for any returned check.**

Credit Card Number

\* 3 digit control #

Expiration Date

☐ ☐ ☐ ☐    ☐ ☐ ☐ ☐    ☐ ☐ ☐ ☐    ☐ ☐ ☐ ☐    ☐ ☐ ☐    ☐ ☐ ☐ ☐

PRINT NAME as it appears on the card: \_\_\_\_\_ Zip code: \_\_\_\_\_

Cardholder signature: \_\_\_\_\_ Date: \_\_\_\_\_

**FINGERPRINT INSTRUCTIONS: (OFFICIAL TAKING PRINTS)** Confirm identity of applicant with identification that shows photo, signature and date of birth. Confirm ID with the information above, then list the type of government issued ID used and the ID number in the space provided below. Fingerprint the four fingers of the applicant's right hand simultaneously in the box located in the lower right portion of this form.

## OFFICIAL TAKING PRINTS

Type of identification used: \_\_\_\_\_  
Utah Driving Privilege Cards are **not** valid ID and will not be accepted

Identification number: \_\_\_\_\_

Name on ID: \_\_\_\_\_

Fingerprints taken by: \_\_\_\_\_

Agency Name: \_\_\_\_\_ Badge # \_\_\_\_\_  
(If applicable)

Date Printed: \_\_\_\_\_ (if applicable)

BUREAU USE ONLY AFIS Confirmation

SID# \_\_\_\_\_ R&amp;F \_\_\_\_\_

## FINGERPRINTS