

Joint Resolution Amending Court Rules Related to Capital Felony Cases

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Candice B. Pierucci

Senate Sponsor: Daniel McCay

LONG TITLE

General Description:

This resolution amends court rules related to capital felony cases.

Highlighted Provisions:

This resolution:

- amends Utah Rules of Appellate Procedure, Rule 23B, to address remand of a capital felony case for findings on ineffective assistance of counsel;
- amends Utah Rules of Criminal Procedure, Rule 27, to address a stay of the execution of a sentence; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This resolution provides a special effective date.

Utah Rules of Appellate Procedure Affected:

AMENDS:

Rule 23B, Utah Rules of Appellate Procedure

Utah Rules of Criminal Procedure Affected:

AMENDS:

Rule 27, Utah Rules of Criminal Procedure

Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:

As provided in Utah Constitution Article VIII, Section 4, the Legislature may amend rules of procedure and evidence adopted by the Utah Supreme Court upon a two-thirds vote of all members of both houses of the Legislature:

29 Section 1. **Rule 23B**, Utah Rules of Appellate Procedure is amended to read:

30 **Rule 23B . Motion to remand for findings necessary to determination of**
31 **ineffective assistance of counsel claim.**

32 [~~(a) Grounds for motion; time.~~] **(a) Grounds for motion; time.** A party to an appeal in a
33 criminal case that is not a capital case with a sentence of death may move the court to remand
34 the case to the trial court for entry of findings of fact, necessary for the appellate court's
35 determination of a claim of ineffective assistance of counsel. The motion will be available only
36 upon a nonspeculative allegation of facts, not fully appearing in the record on appeal, which, if
37 true, could support a determination that counsel was ineffective.

38 The motion must be filed before or at the time of the filing of the appellant's brief. Upon a
39 showing of good cause, the court may permit a motion to be filed after the filing of the
40 appellant's brief. After the appeal is taken under advisement, a remand pursuant to this rule is
41 available only on the court's own motion and only if the claim has been raised and the motion
42 would have been available to a party.

43 [~~(b) Content of motion.~~] **(b) Content of motion.** The content of the motion must conform to
44 the requirements of Rule 23. The motion must include or be accompanied by affidavits or
45 declarations alleging facts not fully appearing in the record on appeal that show the claimed
46 deficient performance of the attorney. The affidavits or declarations must also allege facts that
47 show the claimed prejudice suffered by the appellant as a result of the claimed deficient
48 performance. The motion must also be accompanied by a proposed order of remand that
49 identifies the ineffectiveness claims and specifies the factual issues relevant to each such claim
50 to be addressed on remand.

51 [~~(c) Orders of the court; response; reply.~~] **(c) Orders of the court; response; reply.** If a
52 motion under this rule is filed at the same time as appellant's principal brief, any response and
53 reply must be filed within the time for the filing of the parties' respective briefs on the merits,
54 unless otherwise specified by the court. If a motion is filed before appellant's brief, the court
55 may elect to defer ruling on the motion or decide the motion prior to briefing.

56 (1) If the court defers the motion, the time for filing any response or reply will be the
57 same as for a motion filed at the same time as appellant's brief, unless otherwise specified by
58 the court.

59 (2) If the court elects to decide the motion prior to briefing, it will issue a notice that any
60 response must be filed within 30 days of the notice or within such other time as the court may
61 specify. Any reply in support of the motion must be filed within 20 days after the response is
62 served or within such other time as the court may specify.

63 (3) If the requirements of ~~[parts]~~ paragraphs (a) and (b) of this rule have been met, the
64 court may order that the case be temporarily remanded to the trial court to enter findings of
65 fact relevant to a claim of ineffective assistance of counsel. The order of remand will identify
66 the ineffectiveness claims and specify the factual issues relevant to each such claim to be
67 addressed by the trial court. The order will also direct the trial court to complete the
68 proceedings on remand within 90 days of issuance of the order of remand, absent a finding by
69 the trial court of good cause for a delay of reasonable length.

70 (4) If it appears to the appellate court that the appellant's attorney of record on the
71 appeal faces a conflict of interest upon remand, the court will direct that counsel withdraw and
72 that new counsel for the appellant be appointed or retained.

73 ~~[(d) Effect on appeal.]~~ **(d) Effect on appeal.** If a motion is filed at the same ~~[time as]~~ time as
74 appellant's brief, the briefing schedule will not be stayed unless ordered by the court. If a
75 motion is filed before appellant's brief, the briefing schedule will be automatically stayed until
76 the court issues notice of whether it will defer the motion or decide the motion before briefing.

77 ~~[(e) Proceedings before the trial court.]~~ **(e) Proceedings before the trial court.** Upon remand
78 the trial court will promptly conduct hearings and take evidence as necessary to enter the
79 findings of fact necessary to determine the claim of ineffective assistance of counsel. Any
80 claim of ineffectiveness not identified in the order of remand will not be considered by the trial
81 court on remand, unless the trial court determines that the interests of justice or judicial
82 efficiency require consideration of issues not specifically identified in the order of remand.
83 Evidentiary hearings will be conducted without a jury and as soon as practicable after remand.
84 The burden of proving a fact will be upon the proponent of the fact. The standard of proof will
85 be a preponderance of the evidence. The trial court will enter written findings of fact
86 concerning the claimed deficient performance by counsel and the claimed prejudice suffered
87 by appellant as a result, in accordance with the order of remand. Proceedings on remand must
88 be completed within 90 days of entry of the order of remand, unless the trial court finds good
89 cause for a delay of reasonable length.

90 ~~[(f) Preparation and transmittal of the record.]~~ **(f) Preparation and transmittal of the record.**
91 At the conclusion of all proceedings before the trial court, the clerk of the trial court will
92 immediately prepare the record of the supplemental proceedings as required by these rules. If
93 the record of the original proceedings before the trial court has been transmitted to the
94 appellate court, the clerk of the trial court will immediately transmit the record of the
95 supplemental proceedings upon preparation of the supplemental record. If the record of the
96 original proceedings before the trial court has not been transmitted to the appellate court, the

97 clerk of the court will transmit the record of the supplemental proceedings upon the
 98 preparation of the entire record.

99 ~~[(g) Appellate court determination.]~~ **(g) Appellate court determination.** Errors claimed to
 100 have been made during the trial court proceedings conducted pursuant to this rule are
 101 reviewable under the same standards as the review of errors in other appeals. The findings of
 102 fact entered pursuant to this rule are reviewable under the same standards as the review of
 103 findings of fact in other appeals.

104 **(h) Capital case with death sentence.** If a criminal case is a capital case with a sentence of
 105 death, the court may not remand the criminal case under this rule to the trial court for entry of
 106 findings of fact on a claim of ineffective assistance of counsel.

107 Section 2. **Rule 27**, Utah Rules of Criminal Procedure is amended to read:

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

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

111 ~~[(a)(1) A sentence of death is stayed if a motion for a new trial, an appeal or a petition~~
 112 ~~for other relief is pending.]~~

113 **(1) Stay of a sentence of death.**

114 (A) Except as provided in this paragraph (a)(1), a court may not stay or suspend the
 115 execution of a sentence of death.

116 (B) A court must issue a temporary stay of a sentence of death when:

117 (i) a timely motion for a new trial is filed;

118 (ii) the judgment is appealed;

119 (iii) the judgment is automatically reviewed as described in Utah Code section
 120 76-3-207;

121 (iv) the individual sentenced to death files a first petition for postconviction relief
 122 after a direct appeal;

123 (v) the individual sentenced to death files a timely notice of appeal from a final
 124 order of a first petition for postconviction relief;

125 (vi) the individual sentenced to death is appointed counsel to represent the
 126 individual in an action on a first petition for postconviction relief;

127 (vii) counsel enters an appearance to represent the individual sentenced to death in
 128 an action for a first petition for postconviction relief; or

129 (viii) the court finds that an individual sentenced to death is pregnant.

130 **(C) (i) A court may only grant a temporary stay upon a petition to determine whether**

131 an individual sentenced to death is incompetent to be executed if there are circumstances
132 beyond the court's control that prevent the court from ruling on the petition before the
133 scheduled execution date.

134 _____ (ii) If a court finds an individual sentenced to death is incompetent to be executed
135 and the court has not issued a temporary stay under this rule, the court must issue a temporary
136 stay of the execution of the sentence of death.

137 _____ (iii) If a court finds an individual sentenced to death is competent to be executed,
138 the Utah Supreme Court may not issue a temporary stay of an execution unless a stay is
139 necessary to rule on an appeal or a petition for extraordinary relief before the scheduled
140 execution date.

141 _____ (iv) If the court issues a stay under this paragraph (a)(1)(C), the stay is
142 automatically lifted upon a finding that the individual is competent to be executed.

143 _____ (D) A court may not issue a temporary stay of a sentence of death when the
144 individual sentenced to death files a petition for postconviction relief, or a timely notice of
145 appeal from a final order on the petition, after a first petition of postconviction relief has been
146 denied or dismissed, unless the court finds all of the following:

147 _____ (i) the claims would not be barred under Utah Code section 78B-9-106;

148 _____ (ii) the claims are potentially meritorious; and

149 _____ (iii) the petition or appeal may not be reasonably disposed of before the execution
150 date.

151 _____ (E) If a court issued a temporary stay under paragraph (a)(1)(B)(iii), the court must
152 vacate the stay when the automatic review of the defendant's sentence is concluded.

153 _____ (F) If a court issued a temporary stay under paragraph (a)(1)(B)(vi) or (vii), the court
154 must vacate the stay if a petition for postconviction relief is not filed before the statute of
155 limitations passes under Utah Code section 78B-9-107.

156 _____ (G) If a court issued a temporary stay under paragraph (a)(1)(B)(viii), the court must
157 vacate the stay when the court finds that the individual is no longer pregnant.

158 _____ (H) Except as provided in paragraph (a)(1)(F) or (G), a stay issued by a court under
159 this paragraph (a)(1) automatically expires upon the entry of a final order disposing of the
160 action that triggered the stay.

161 _____ (I) [The] Upon any stay issued under this paragraph (a)(1), the defendant shall remain
162 in the custody of the warden of the Utah State Prison until the appeal or petition for other relief
163 is resolved.

164 [(a)](2) **Stay upon an appeal by the prosecution.** When an appeal is taken by the

165 prosecution, a stay of any order of judgment in favor of the defendant may be granted by the
166 court upon good cause pending disposition of the appeal.

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

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

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

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

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

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

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

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

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

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

196 [(b)](2)(B) A copy of the motion, the application for a certificate of probable cause
197 and supporting memorandum shall be served on the prosecuting attorney. An opposing
198 memorandum may be filed within 14 days after receipt of the application, or within a shorter

199 time as the court deems necessary. A hearing on the application shall be held within 14 days
200 after the court receives the opposing memorandum, or if no opposing memorandum is filed,
201 within 14 days after the application is filed with the court.

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

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

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

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

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

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

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

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

227 (c) **Conditions of release.** If the court determines that the defendant may be released
228 pending motion for a new trial proceedings or an appeal, [it] the court may release the
229 defendant on the least restrictive reasonably available condition or combination of conditions
230 that the court determines will reasonably ensure the appearance of the defendant as required
231 and the safety of any other individual, property, and the community. The conditions may
232 include, without limitation, that the defendant:

- 233 [(e)](1) is admitted to appropriate bail;
- 234 [(e)](2) not commit a federal, state or local crime during the period of release;
- 235 [(e)](3) remain in the custody of a designated person who agrees to assume supervision
236 of the defendant and who agrees to report any violation of a release condition to the court, if
237 the designated person is reasonably able to assure the court that the defendant will appear as
238 required and will not pose a danger to the safety of any other person, property, or the
239 community;
- 240 [(e)](4) maintain employment, or if unemployed, actively seek employment;
- 241 [(e)](5) maintain or commence an educational program;
- 242 [(e)](6) abide by specified restrictions on personal associations, place of abode or travel;
- 243 [(e)](7) avoid all contact with the victim or victims of the crime(s), any witness or
244 witnesses who testified against the defendant and any potential witnesses who might testify
245 concerning the offenses if the appeal results in a reversal or an order for a new trial;
- 246 [(e)](8) report on a regular basis to a designated law enforcement agency, pretrial
247 services agency or other agency;
- 248 [(e)](9) comply with a specified curfew;
- 249 [(e)](10) refrain from possessing a firearm, destructive device or other dangerous
250 weapon;
- 251 [(e)](11) refrain from possessing or using alcohol, or any narcotic drug or other
252 controlled substance except as prescribed by a licensed medical practitioner;
- 253 [(e)](12) undergo available medical, psychological or psychiatric treatment, including
254 treatment for drug or alcohol abuse or dependency;
- 255 [(e)](13) execute an agreement to forfeit, upon failing to appear as required, such
256 designated property, including money, as is reasonably necessary to assure the appearance of
257 the defendant as required, and post with the court such indicia of ownership of the property or
258 such percentage of the money as the court may specify;
- 259 [(e)](14) return to custody for specified hours following release for employment,
260 schooling or other limited purposes; and
- 261 [(e)](15) satisfy any other condition that is reasonably necessary to ensure the
262 appearance of the defendant as required and the safety of any other individual, property, and
263 the community.
- 264 (d) **Amended conditions of release.** The court may at any time for good cause shown amend
265 the order granting release to impose additional or different conditions of release.

266 Section 3. **Effective Date.**

267 As provided in Utah Constitution, Article VIII, Section 4, this resolution takes effect
268 upon a two-thirds vote of all members elected to each house.