

HJR028S01 compared with HJR028

~~{Omitted text}~~ shows text that was in HJR028 but was omitted in HJR028S01

inserted text shows text that was not in HJR028 but was inserted into HJR028S01

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1 **Joint Resolution Amending Court Rules Related to Capital Felony Cases**

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Candice B. Pierucci

Senate Sponsor:



2

3 **LONG TITLE**

4 **General Description:**

5 This resolution amends court rules related to capital felony cases.

6 **Highlighted Provisions:**

7 This resolution:

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

13 **Money Appropriated in this Bill:**

14 None

15 **Other Special Clauses:**

16 This resolution provides a special effective date.

17 **Utah Rules of Appellate Procedure Affected:**

18 AMENDS:

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19 **Rule 23B** , Utah Rules of Appellate Procedure

20 **Utah Rules of Criminal Procedure Affected:**

21 AMENDS:

22 **Rule 27** , Utah Rules of Criminal Procedure

23

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

26 As provided in Utah Constitution Article VIII, Section 4, the Legislature may amend rules of
27 procedure and evidence adopted by the Utah Supreme Court upon a two-thirds vote of all
28 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 ineffective assistance
of counsel claim.**

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

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

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

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to be addressed on remand.

[(c) Orders of the court; response; reply.] If a

motion under this rule is filed at the same time as appellant's principal brief, any response and reply must be filed within the time for the filing of the parties' respective briefs on the merits, unless otherwise specified by the court. If a motion is filed before appellant's brief, the court may elect to defer ruling on the motion or decide the motion prior to briefing.

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

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

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

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

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

[(e) Proceedings before the trial court.] Upon remand

the trial court will promptly conduct hearings and take evidence as necessary to enter the findings of fact necessary to determine the claim of ineffective assistance of counsel. Any claim of ineffectiveness not identified in the order of remand will not be considered by the trial

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court on remand, unless the trial court determines that the interests of justice or judicial efficiency require consideration of issues not specifically identified in the order of remand. Evidentiary hearings will be conducted without a jury and as soon as practicable after remand. The burden of proving a fact will be upon the proponent of the fact. The standard of proof will be a preponderance of the evidence. The trial court will enter written findings of fact concerning the claimed deficient performance by counsel and the claimed prejudice suffered by appellant as a result, in accordance with the order of remand. Proceedings on remand must be completed within 90 days of entry of the order of remand, unless the trial court finds good cause for a delay of reasonable length.

[(f) Preparation and transmittal of the record.]

At the conclusion of all proceedings before the trial court, the clerk of the trial court will immediately prepare the record of the supplemental proceedings as required by these rules. If the record of the original proceedings before the trial court has been transmitted to the appellate court, the clerk of the trial court will immediately transmit the record of the supplemental proceedings upon preparation of the supplemental record. If the record of the original proceedings before the trial court has not been transmitted to the appellate court, the clerk of the court will transmit the record of the supplemental proceedings upon the preparation of the entire record.

[(g) Appellate court determination.] Errors claimed to

have been made during the trial court proceedings conducted pursuant to this rule are reviewable under the same standards as the review of errors in other appeals. The findings of fact entered pursuant to this rule are reviewable under the same standards as the review of findings of fact in other appeals.

If a criminal case is a capital case with a sentence of death, the court may not remand the criminal case under this rule to the trial court for entry of 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 of record.**

(a)

~~[(a)(1) A sentence of death is stayed { } if a motion for a new trial, an appeal or a petition~~

~~}~~

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(1)

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

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

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

(ii) the judgment is appealed;

{for other relief} (iii) the judgment is {pending} automatically reviewed as {provided}

described in Utah Code {Title 77, Chapter 19, The Execution} section

76-3-207;

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

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

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

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

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

(C) (i) A court may only grant a temporary stay upon a petition to determine whether an individual sentenced to death is incompetent to be executed if there are circumstances beyond the court's control that prevent the court from ruling on the petition before the scheduled execution date.

(ii) If a court finds an individual sentenced to death is incompetent to be executed and the court has not issued a temporary stay under this rule, the court must issue a temporary {in} stay of the {custody} execution of the {warden} sentence of {the Utah State Prison until the appeal or} death.

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

(iv) If the court issues a stay under this paragraph (a)(1)(C), the stay is

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automatically lifted upon a finding that the individual is competent to be executed.

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

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

(ii) the claims are potentially meritorious; and

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

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

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

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

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

(I) [The] Upon any stay issued under this paragraph (a)(1), the defendant shall remain
petition for other relief
is resolved.

{ [(a)] prosecution, a stay of any order of judgment in }

[(a)](2) . When an appeal is taken by the

{ ~~court upon good cause pending disposition~~ } favor of the defendant may be granted by the
appeal.

{ [(a)] notice of appeal, and upon }

of fines, conditions of

[(a)](3) Upon the filing of a motion for a new trial or { ~~appeal,~~ } a

motion of the defendant, the court may stay any sentenced amount
probation (other than incarceration) pending disposition of the motion

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upon notice to the prosecution and a hearing if requested by the prosecution.

{ [(a)]petition }

[(a)](4) A party dissatisfied with the trial court's ruling on such a motion may

for relief in the court with appellate jurisdiction.

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

~~[(b)](1) Before a court may release a defendant after the filing of a motion for a new trial or notice of appeal, the court must:~~

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

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

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

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

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

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

~~[(b)(2)](B) A copy of the motion, the application for a certificate of probable cause and supporting memorandum shall be served on the prosecuting attorney. An opposing memorandum may be filed within 14 days after receipt of the application, or within a shorter time as the court deems necessary. A hearing on the application shall be held within 14 days~~

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after the court receives the opposing memorandum, or if no opposing memorandum is filed, within 14 days after the application is filed with the court.

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

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

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

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

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

~~[(b)](6) A party dissatisfied with the relief granted or denied under this [subsection]paragraph (b) may petition the court with appellate jurisdiction in which the appeal is pending.~~

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

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

(c) If the court determines that the defendant may be released defendant on the

~~{that}~~ pending motion for a new trial proceedings or an appeal, [it]the court may release the and the safety

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include, without

least restrictive reasonably available condition or combination of conditions determines will reasonably ensure the appearance of the defendant as required of any other individual, property, and the community. The conditions may limitation, that the defendant:

~~[(e)](1) is admitted to appropriate bail;~~

~~[(e)](2) not commit a federal, state or local crime during the period of release;~~

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

~~[(e)](4) maintain employment, or if unemployed, actively seek employment;~~

~~[(e)](5) maintain or commence an educational program;~~

~~[(e)](6) abide by specified restrictions on personal associations, place of abode or travel;~~

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

~~[(e)](8) report on a regular basis to a designated law enforcement agency, pretrial services agency or other agency;~~

~~[(e)](9) comply with a specified curfew;~~

~~[(e)](10) refrain from possessing a firearm, destructive device or other dangerous weapon;~~

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

~~[(e)](12) undergo available medical, psychological or psychiatric treatment, including treatment for drug or alcohol abuse or dependency;~~

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

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

~~[(e)](15) satisfy any other condition that is reasonably necessary to ensure the appearance of the defendant as required and the safety of any other individual, property, and the community.~~

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

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Section 3. **Effective date.**

Effective Date.

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

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