

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

2026 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Candice B. Pierucci**

Senate Sponsor:

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2                   **LONG TITLE**

3                   **General Description:**

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

5                   **Highlighted Provisions:**

6                   This resolution:

7                   ▸ amends Utah Rules of Appellate Procedure, Rule 23B, to address remand of a capital  
8 felony case for findings on ineffective assistance of counsel;

9                   ▸ amends Utah Rules of Criminal Procedure, Rule 27, to address a stay of the execution of  
10 a sentence; and

11                   ▸ makes technical and conforming changes.

12                   **Money Appropriated in this Bill:**

13                   None

14                   **Other Special Clauses:**

15                   This resolution provides a special effective date.

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

17                   AMENDS:

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

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

20                   AMENDS:

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

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

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

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

28                   **Rule 23B . Motion to remand for findings necessary to determination of**  
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30

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  
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]~~ as provided in Utah Code Title 77, Chapter 19, The Execution. The  
113 defendant shall remain in the custody of the warden of the Utah State Prison until the appeal or  
114 petition for other relief is resolved.

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

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

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

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

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

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

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

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

132 ~~[(b)(1)(B)](ii)~~ does not pose a danger to the physical, psychological, or financial

133 and economic safety or well-being of any other individual or the community if released under  
134 any conditions as set forth in [~~subsection~~] paragraph (c).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

216 Section 3. **Effective Date.**

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