

Michael K. McKell proposes the following substitute bill:

Joint Resolution Amending Court Rules Regarding Jury Selection

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

House Sponsor: Casey Snider

LONG TITLE

General Description:

This resolution amends court rules regarding jury selection.

Highlighted Provisions:

This resolution:

- amends Rule 17.5 of the Utah Rules of Criminal Procedure to address an exception for jury selection in a felony case;
- amends Rule 18 of the Utah Rules of Criminal Procedure to address jury selection in a felony case; 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 Criminal Procedure Affected:

AMENDS:

Rule 17.5, Utah Rules of Criminal Procedure

Rule 18, 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:

Section 1. **Rule 17.5**, Utah Rules of Criminal Procedure is amended to read:

Rule 17.5 . In-person, remote, and hybrid hearings; request for different format.

(a) **Definitions.**

30 (1) "Participant" means a party, a participating victim, or an attorney for a party or
31 participating victim.

32 (2) "In-person" means a participant will be physically present in the courtroom.

33 (3) "In-person hearing" means a hearing where all participants appear in person.

34 (4) "Remote" or "remotely" means a participant will appear by video conference or other
35 electronic means approved by the court.

36 (5) "Remote hearing" means no participants will be physically present in the courtroom
37 and all participants will appear remotely.

38 (6) "Hybrid hearing" means a hearing at which some participants appear in person and
39 others appear remotely.

40 (b) **Setting hearing format; factors to consider.** [The] Except as provided in Rule 18(b), the
41 court has discretion to set a hearing as an in-person hearing, a remote hearing, or a hybrid
42 hearing. In determining which format to use for a hearing, the court will consider:

43 (1) the preference of the participants, if known;

44 (2) the anticipated hearing length;

45 (3) the number of participants;

46 (4) the burden on a participant of appearing in person compared to appearing remotely,
47 including time and economic impacts;

48 (5) the complexity of issues to be addressed;

49 (6) whether and to what extent documentary or testimonial evidence is likely to be
50 presented;

51 (7) the availability of adequate technology to accomplish the hearing's purpose;

52 (8) the availability of language interpretation or accommodations for communication
53 with individuals with disabilities;

54 (9) the possibility that the court may order a party, who is not already in custody, into
55 custody;

56 (10) the preference of the incarcerating custodian where a party is incarcerated, if the
57 hearing does not implicate significant constitutional rights; and

58 (11) any other factor, based on the specific facts and circumstances of the case or the
59 court's calendar, that the court deems relevant.

60 (c) **Request to appear by a different format.**

61 (1) **Manner of request.** A participant may request that the court allow the participant or a
62 witness to appear at a hearing by a different format than that set by the court. Any request must
63 be made verbally during a hearing, by email, by letter, or by written motion, and the

64 participant must state the reason for the request. If a participant is represented by an attorney,
65 all requests must be made by the attorney.

66 (A) **Email and letter requests.**

67 (i) An email or letter request must be copied on all parties;

68 (ii) An email or letter request must include in the subject line, "REQUEST TO
69 APPEAR IN PERSON, Case _____" or "REQUEST TO APPEAR REMOTELY, Case
70 _____;" and

71 (iii) An email request must be sent to the court's email address, which may be
72 obtained from the court clerk.

73 (B) **Request by written motion.** If making a request by written motion, the motion
74 must succinctly state the grounds for the request and be accompanied by a request to submit
75 for decision and a proposed order. The motion need not be accompanied by a supporting
76 memorandum.

77 (2) **Timing.** All requests, except those made verbally during a hearing, must be sent to
78 the court at least seven days before the hearing unless there are exigent circumstances or the
79 hearing was set less than seven days before the hearing date, in which cases the request must
80 be made as soon as reasonably possible.

81 (d) **Resolution of the request.**

82 (1) **Timing and manner of resolution.** The court may rule on a request under paragraph
83 (c) without awaiting a response. The court may rule on the request in open court, by email, by
84 minute entry, or by written order. If the request is made by email, the court will make a record
85 of the request if the request is denied.

86 (2) **Court's accommodation of participant's preference; factors to consider.** The court
87 will accommodate a timely request unless the court makes, on the record, a finding of good
88 cause to order the participant to appear in the format originally noticed. The court may find
89 good cause to deny a request based on:

90 (A) a constitutional or statutory right that requires a particular manner of appearance
91 or a significant possibility that such a right would be impermissibly diminished or infringed by
92 appearing remotely;

93 (B) a concern for a participant's or witness's safety, well-being, or specific situational
94 needs;

95 (C) a prior technological challenge in the case that unreasonably contributed to delay
96 or a compromised record;

97 (D) a prior failure to demonstrate appropriate court decorum, including attempting to

98 participate from a location that is not conducive to accomplishing the purpose of the hearing;

99 (E) a prior failure to appear for a hearing of which the participant had notice;

100 (F) the possibility that the court [~~m-ay~~] may order a party, who is not already in
101 custody, into custody;

102 (G) the preference of the incarcerating custodian where a party is incarcerated, if the
103 hearing does not implicate significant constitutional rights;

104 (H) a participant's involvement in a problem-solving court;

105 (I) an agreement or any objection of the parties;

106 (J) the court's determination that the consequential nature of a specific hearing
107 requires all participants to appear in person; or

108 (K) the capacity of the court, including but not limited to the required technology
109 equipment, staff, or security, to accommodate the request.

110 (3) **Effect on other participants.** The preference of one participant, and the court's
111 accommodation of that preference, does not:

112 (A) change the format of the hearing for any other participant unless otherwise
113 ordered by the court; or

114 (B) affect any other participant's opportunity to make a timely request to appear by a
115 different format or the court's consideration of that request.

116 Section 2. **Rule 18**, Utah Rules of Criminal Procedure is amended to read:

117 **Rule 18 . Selection of the jury.**

118 (a) **Method of selection.** The judge shall determine the method of selecting the jury and
119 notify the parties at a pretrial conference or otherwise prior to trial. The following procedures
120 for selection are not exclusive.

121 ~~[(a)]~~(1) **Strike and replace method.** The court shall summon the number of the jurors that
122 are to try the cause plus such an additional number as will allow for any alternates, for all
123 peremptory challenges permitted, and for all challenges for cause granted. At the direction of
124 the judge, the clerk shall call jurors in random order. The judge may hear and determine
125 challenges for cause during the course of questioning or at the end thereof. The judge may and,
126 at the request of any party, shall hear and determine challenges for cause outside the hearing of
127 the jurors. After each challenge for cause sustained, another juror shall be called to fill the
128 vacancy, and any such new juror may be challenged for cause. When the challenges for cause
129 are completed, the clerk shall provide a list of the jurors remaining, and each side, beginning
130 with the prosecution, shall indicate thereon its peremptory challenge to one juror at a time in
131 regular turn, as the court may direct, until all peremptory challenges are exhausted or waived.

132 The clerk shall then call the remaining jurors, or so many of them as shall be necessary to
133 constitute the jury, including any alternate jurors, and the persons whose names are so called
134 shall constitute the jury. If alternate jurors have been selected, the last jurors called shall be the
135 alternates, unless otherwise ordered by the court prior to voir dire.

136 ~~[(a)]~~(2) **Struck method.** The court shall summon the number of jurors that are to try the
137 cause plus such an additional number as will allow for any alternates, for all peremptory
138 challenges permitted and for all challenges for cause granted. At the direction of the judge, the
139 clerk shall call jurors in random order. The judge may hear and determine challenges for cause
140 during the course of questioning or at the end thereof. The judge may and, at the request of any
141 party, shall hear and determine challenges for cause outside the hearing of the jurors. When the
142 challenges for cause are completed, the clerk shall provide a list of the jurors remaining, and
143 each side, beginning with the prosecution, shall indicate thereon its peremptory challenge to
144 one juror at a time in regular turn until all peremptory challenges are exhausted or waived. The
145 clerk shall then call the remaining jurors, or so many of them as shall be necessary to
146 constitute the jury, including any alternate jurors, and the persons whose names are so called
147 shall constitute the jury. If alternate jurors have been selected, the last jurors called shall be the
148 alternates, unless otherwise ordered by the court prior to voir dire.

149 ~~[(a)]~~(3) In courts using lists of prospective jurors generated in random order by computer,
150 the clerk may call the jurors in that random order.

151 (b) **Examination of prospective jurors.**

152 _____ (1) (i) In a felony case, the court must conduct jury selection in person at the place of trial
153 unless both parties agree, on the record, that jury selection be conducted virtually.

154 _____ (ii) When jury selection is conducted as described in paragraph (b)(1)(i), all prospective
155 jurors must appear in person for examination.

156 _____ (2) The court may permit counsel or the defendant to conduct the examination of the
157 prospective jurors or may itself conduct the examination. In the latter event, the court may
158 permit counsel or the defendant to supplement the examination by such further inquiry as [it]
159 the court deems proper, or may itself submit to the prospective jurors additional questions
160 requested by counsel or the defendant.

161 _____ (3) Prior to examining the jurors, the court may make a preliminary statement of the case.
162 The court may permit the parties or their attorneys to make a preliminary statement of the case,
163 and notify the parties in advance of trial.

164 (c) **Challenges to panel or individuals.** A challenge may be made to the panel or to an
165 individual juror.

166 [(e)](1) The panel is a list of jurors called to serve at a particular court or for the trial of a
167 particular action. A challenge to the panel is an objection made to all jurors summoned and
168 may be taken by either party.

169 [(e)(1)](i) A challenge to the panel can be founded only on a material departure from the
170 procedure prescribed with respect to the selection, drawing, summoning and return of the
171 panel.

172 [(e)(1)](ii) The challenge to the panel shall be taken before the jury is sworn and shall be in
173 writing or made upon the record. It shall specifically set forth the facts constituting the grounds
174 of the challenge.

175 [(e)(1)](iii) If a challenge to the panel is opposed by the adverse party, a hearing may be
176 had to try any question of fact upon which the challenge is based. The jurors challenged, and
177 any other persons, may be called as witnesses at the hearing thereon.

178 [(e)(1)](iv) The court shall decide the challenge. If the challenge to the panel is allowed, the
179 court shall discharge the jury so far as the trial in question is concerned. If a challenge is
180 denied, the court shall direct the selection of jurors to proceed.

181 [(e)](2) A challenge to an individual juror may be either peremptory or for cause. A
182 challenge to an individual juror may be made only before the jury is sworn to try the action,
183 except the court may, for good cause, permit it to be made after the juror is sworn but before
184 any of the evidence is presented. In challenges for cause the rules relating to challenges to a
185 panel and hearings thereon shall apply. All challenges for cause shall be taken first by the
186 prosecution and then by the defense alternately. Challenges for cause shall be completed
187 before peremptory challenges are taken.

188 (d) **Peremptory challenges.** A peremptory challenge is an objection to a juror for which no
189 reason need be given. In capital cases, each side is entitled to 10 peremptory challenges. In
190 other felony cases each side is entitled to four peremptory challenges. In misdemeanor cases,
191 each side is entitled to three peremptory challenges. If there is more than one defendant the
192 court may allow the defendants additional peremptory challenges and permit them to be
193 exercised separately or jointly.

194 (e) **Challenges for cause.** A challenge for cause is an objection to a particular juror and shall
195 be heard and determined by the court. The juror challenged and any other person may be
196 examined as a witness on the hearing of such challenge. A challenge for cause may be taken
197 on one or more of the following grounds. On its own motion the court may remove a juror
198 upon the same grounds.

199 [(e)](1) Want of any of the qualifications prescribed by law.

200 [(e)](2) Any mental or physical infirmity which renders one incapable of performing the
201 duties of a juror.

202 [(e)](3) Consanguinity or affinity within the fourth degree to the person alleged to be
203 injured by the offense charged, or on whose complaint the prosecution was instituted.

204 [(e)](4) The existence of any social, legal, business, fiduciary or other relationship between
205 the prospective juror and any party, witness or person alleged to have been victimized or
206 injured by the defendant, which relationship when viewed objectively, would suggest to
207 reasonable minds that the prospective juror would be unable or unwilling to return a verdict
208 which would be free of favoritism. A prospective juror shall not be disqualified solely because
209 the juror is indebted to or employed by the state or a political subdivision thereof.

210 [(e)](5) Having been or being the party adverse to the defendant in a civil action, or having
211 complained against or having been accused by the defendant in a criminal prosecution.

212 [(e)](6) Having served on the grand jury which found the indictment.

213 [(e)](7) Having served on a trial jury which has tried another person for the particular
214 offense charged.

215 [(e)](8) Having been one of a jury formally sworn to try the same charge, and whose verdict
216 was set aside, or which was discharged without a verdict after the case was submitted to it.

217 [(e)](9) Having served as a juror in a civil action brought against the defendant for the act
218 charged as an offense.

219 [(e)](10) If the offense charged is punishable with death, the juror's views on capital
220 punishment would prevent or substantially impair the performance of the juror's duties as a
221 juror in accordance with the instructions of the court and the juror's oath in [~~subsection (h)~~]
222 paragraph (g).

223 [(e)](11) Because the juror is or, within one year preceding, has been engaged or interested
224 in carrying on any business, calling or employment, the carrying on of which is a violation of
225 law, where defendant is charged with a like offense.

226 [(e)](12) Because the juror has been a witness, either for or against the defendant on the
227 preliminary examination or before the grand jury.

228 [(e)](13) Having formed or expressed an unqualified opinion or belief as to whether the
229 defendant is guilty or not guilty of the offense charged.

230 [(e)](14) Conduct, responses, state of mind or other circumstances that reasonably lead the
231 court to conclude the juror is not likely to act impartially. No person may serve as a juror, if
232 challenged, unless the judge is convinced the juror can and will act impartially and fairly.

233 (f) **Alternate jurors.** The court may impanel alternate jurors to replace any jurors who are

234 unable to perform or who are disqualified from performing their duties. Alternate jurors must
235 have the same qualifications and be selected and sworn in the same manner as any other juror.
236 If one or two alternate jurors are called, the prosecution and defense shall each have one
237 additional peremptory challenge. If three or four alternate jurors are called, each side shall
238 have two additional peremptory challenges. Alternate jurors replace jurors in the same
239 sequence in which the alternates were selected. An alternate juror who replaces a juror has the
240 same authority as the other jurors. The court may retain alternate jurors after the jury retires to
241 deliberate. The court must ensure that a retained alternate does not discuss the case with
242 anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after
243 deliberations have begun, the court must instruct the jury to begin its deliberations anew.

244 (g) **Juror oath.** When the jury is selected an oath shall be administered to the jurors, in
245 substance, that they and each of them will well and truly try the matter in issue between the
246 parties, and render a true verdict according to the evidence and the instructions of the court.

247 Section 3. **Effective Date.**

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