

Utah State Courts

Answers to
Common
Questions

to the Utah
State Courts

MEDIA GUIDE

Navigating the Court System

UTAH SUPREME COURT

Five Justices: 10-year terms

The Supreme Court is the “court of last resort” in Utah. It hears appeals from capital and first-degree felony cases and all district court civil cases other than domestic relations cases. The Supreme Court also has jurisdiction over judgments of the Court of Appeals, proceedings of the Judicial Conduct Commission, lawyer discipline, and constitutional and election questions.

COURT OF APPEALS

Seven Judges: 6-year terms

The Court of Appeals hears all appeals from the juvenile courts and those from the district courts involving domestic relations and criminal matters of less than a first-degree felony. It also may hear any cases transferred to it by the Supreme Court.

JUVENILE COURT

Thirty Judges: 6-year terms

1.5 Court Commissioners

Juvenile Court is the state court with jurisdiction over youth under 18 years of age, who violate a state or municipal law. The Juvenile Court also has jurisdiction in all cases involving a child who is abused, neglected, or dependent.

DISTRICT COURT

Seventy-one Judges: 6-year terms

10.5 Court Commissioners

District Court is the state trial court of general jurisdiction. Among the cases it hears are: civil cases, domestic relations cases, probate cases, criminal cases, appeals from justice courts.

JUSTICE COURT

Ninety-eight Judges: 4-year terms

Justice courts are locally funded and operated, but are part of the Judicial Branch and subject to state laws and court rules. Justice Court cases include: misdemeanor criminal cases, traffic and parking infractions, small claims cases.

MEDIA GUIDE TO THE UTAH STATE COURTS

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Note: This Media Guide references rules that can be found on the courts’ website at www.utcourts.gov/resources/rules

Letter from Chief Justice Durrant

Dear Journalist,

The Administrative Office of the Courts recently conducted a survey to determine the level of public trust and confidence in the Utah State Courts. Respondents ranked media as their number one source for information about Utah's judiciary.

Accurate reporting is essential to ensuring the public receives a clear picture of Utah's courts. This Media Guide is an effort to inform reporters covering the courts and to support their vital work.

The Utah State Courts are committed to working with journalists. My hope is that this Media Guide will assist journalists to navigate the court system as they report on cases and court programs.

Sincerely,

Honorable Matthew B. Durrant
Chief Justice, Utah Supreme Court

Introduction

The Administrative Office of the Utah State Courts is pleased to provide you with the Utah State Courts' Media Guide. We hope this booklet is a valuable resource in assisting you when reporting on cases in the state court system. Please note the information in this guide applies only to the Utah State Courts and not Utah's federal court, which is located in Salt Lake City. For information on the federal court, go to www.utd.uscourts.gov.

In addition to the Utah Media Guide, the state courts' Public Information Office is available to assist reporters in navigating the state court system. Please call the office at (801) 578-3994 for assistance as well as suggestions on improving this guide.



MEDIA TIPS

HOW DO I FIND INFORMATION ABOUT A COURT CASE?

XChange is an online resource of District Court and Justice Court case information. To track a case through the court system, a reporter enters the person's name or case number, which produces the case docket. The docket includes the case

name and number, type of case, violation or charge, the judge assigned to the case, and the case history, including arraignments, scheduled hearings, trials, dispositions, motions, and pleadings. Please note, there can be a delay between a court hearing and when the online docket is updated. If you need information that is not posted, either contact the judge's clerk directly or contact the Public Information Office at (801) 578-3994. Also, on page 41 of this guide, court executives in each district are listed as a resource.

To access XChange go to www.utcourts.gov/xchange and enter a user name and password. The monthly subscription fee is waived for Utah media outlets that access XChange for newsgathering purposes. For information on subscribing, contact the Public Information Office at (801) 578-3994.

Court Calendar

Court calendars are posted online at www.utcourts.gov/cal. Courthouses throughout the state are listed here. Each court calendar includes parties' names, case numbers, assigned judge, and type of hearing. The court calendar is usually updated each morning before 8:00 a.m.

Obtaining Court Documents

A crime has been committed and you need the District Court documents filed in the case. Where should you go and what should you ask for? It's important to know that the court will not have information on a case until the prosecutor files charges. When charges have been filed, the charging documents will be available on XChange. These documents provide information from the police or sheriff's office about why the charges have been filed, and sometimes include a probable cause statement. The cost per document is .50 cents.

Information about civil cases is available on page 13. Court documents in civil cases are available on XChange.

Media Contacts

The Public Information Office is available as a resource for information about the state courts at (801) 578-3994. For a list of contacts in each district throughout the state, go to page 41.

Cameras in the Courtroom

For complete information on cameras in the courtroom, go to page 35.

Search Warrants

A search warrant is an order issued by a magistrate/judge to a police officer allowing that officer to search for and seize evidence. The search warrant must be based on probable cause. Probable cause exists when there is a fair probability that evidence of the crime will be found. The search warrant must describe the thing, place, or person to be searched and the items to be seized. Evidence may also be seized without a warrant when the officer has probable cause to believe that the evidence establishes illegal conduct, and it is likely the evidence will disappear or be destroyed before a warrant can be obtained.

The warrant must be served in the daytime unless the magistrate/judge finds that a search at night is necessary to seize the property. A search warrant must be executed within 10 days after its issuance. The officer must return the search warrant promptly to the court after it has been served. A warrant becomes public 20 days after it is issued, unless the magistrate/judge seals the warrant. Public search warrants are available on XChange. Under “search type,” scroll down to eWarrants.

Why Can't a Judge Talk About a Case?

The Code of Judicial Conduct prohibits judges from talking about pending cases. This is in order to remain impartial and not prejudice a case. This rule extends to court personnel as well. If you need clarification about a legal process in a case, it is best to contact the trial court executive or public information office. To read the Code of Judicial Conduct, go to www.utcourts.gov/resources/ethadv/ or see page 39.

MEDIA IN THE COURTROOM

Rule 4-401.01 of the Rules of Judicial Administration establishes standards and procedures for conduct in the courtroom. In general, the rule asks media members to avoid calling attention to themselves; not to place equipment in or remove equipment from the courtroom while court is in session; not to make comments in the courtroom during the court proceedings; not to comment to or within the hearing of the jury at any time before the jury is dismissed; to present a neat appearance; not to conduct interviews in the courtroom; and to comply with the orders and directives of the court.

Rule 509 of the Rules of Evidence clarifies the legal standard to be applied in determining whether a news reporter may be compelled to disclose information gathered in the course of reporting the news.

To access all court rules, go to www.utcourts.gov/resources/rules/

HELPFUL HINTS

- Turn cell phones to silent while in the courtroom. Sometimes, judges will ask that cell phones be completely turned off or not brought into the courtroom at all.
- Use of a laptop is allowed unless a judge indicates otherwise. Wireless networks are available in state courthouses.
- Do not speak about the case around jurors and witnesses.
- While an audio recorder may be allowed in the courtroom, it should never be turned on while in the courtroom.

Use of Portable Electronic Devices

Rule 4-401.02 permits the use of portable electronic devices in courthouses and courtrooms, but is subject to local restrictions. In general, a portable electronic device may be silently used in the courtroom. The device can not be used to record or transmit images or sound of court proceedings, except in accordance with Rule 4-401.01. A judge can further restrict use of portable electronic devices in his or her courtroom.

DISTRICT COURT PROCEEDINGS

CRIMINAL PROCESS

NOTE: This section is not intended to be an exhaustive discourse on the criminal process, but rather a brief overview.

What is a criminal case?

A criminal case occurs when the government believes a person has committed an act prohibited by criminal law and the prosecutor brings a charge against the party alleged to have broken the law. There are three classifications of criminal activity: felony, misdemeanor, and infraction.

What is a felony? See chart page 46

A felony is a major crime for which the defendant may be sentenced to prison in a state correctional institution. The court may also impose probation and/or a fine. Felonies are classified into four categories. Some of the crimes in each category are listed below:

Capital offense: Aggravated murder. See chart page 47

First Degree: Murder, rape, child kidnapping, aggravated burglary (residential), aggravated robbery or arson, and possession with intent to distribute cocaine, heroin, methamphetamine, or LSD within 1,000 feet of any school.

Second Degree: Manslaughter, robbery, residential burglary, kidnapping, perjury, auto theft, forgery of checks \$5,000 or more, theft of property \$5,000 or more, forcible sexual abuse, and intentional child abuse (serious physical injury).

Third Degree: Burglary of non-dwelling, theft more than \$1,500 but less than \$5,000, aggravated assault, forgery of checks more than \$1,500 but under \$5,000, third DUI in 10 years, joyriding (for more than 24 hours), possession with intent to distribute marijuana, and possession of cocaine, methamphetamine, LSD or heroin, and false or forged prescriptions.

When is a criminal defendant required to be in court?

A defendant is not required to attend every hearing.

A defendant is required to attend such proceedings as a felony first appearance, arraignment, trial, and sentencing. A defendant can be removed from certain proceedings for causing a disruption. (In most civil cases, the parties don't appear in court, except at a trial.)

What is a Misdemeanor? See chart page 48

A misdemeanor is an offense lower than a felony that is punishable by a county jail term and/or a fine, but not prison. Many city and county ordinances and some state laws are misdemeanors. Misdemeanors are classified into three categories. All can be tried by a jury. Some of the crimes are listed in each category below:

Class A: Negligent homicide, DUI with injury, theft, assault on a police officer, criminal mischief, and possession of marijuana (more than 1 ounce, less than 16 ounces).

Class B: Assault, resisting arrest, DUI, reckless driving, possession of marijuana under 1 ounce, possession of drug paraphernalia, shoplifting (under \$500), trespass of a dwelling, public nuisance, concealed weapon, and many traffic offenses.

Class C: Public intoxication, no valid license, and driving on a suspended license.

What is an Infraction?

An infraction is a minor offense punishable by a fine only. There can be a trial, but not by a jury. Examples include city traffic violations and disorderly conduct.

HOW A FELONY COMES TO TRIAL

Pre-trial Procedures

A criminal case begins in the courts when a prosecuting attorney files an "information." The information will list the name of the defendant, the nature of the offense, and a description of the crime alleged to have occurred. In felony cases, the filing of an information will have been preceded by one of two events: 1) The defendant has already been arrested based on a law enforcement officer observing illegal conduct and making an arrest; the officer then refers the matter to a prosecuting attorney for screening and filing. 2) The case is a result of a criminal investigation from which an arrest has not yet been made. In this circumstance, the prosecutor will typically request an arrest warrant at the time the information is filed.

Arrest Warrant or Summons Issued

After a felony information is filed, a judge may issue a warrant for the alleged offender's arrest if the defendant has not yet been arrested. A summons to appear in court may be issued instead of an arrest warrant if the person is likely to respond to a summons.

Jail Incarceration (Pre-trial Detention)

When a defendant is arrested, the defendant is taken into custody, booked into jail, fingerprinted, and evaluated to see if release is possible pending resolution of the case. If the defendant was arrested before the information was filed, the defendant will already have been booked, fingerprinted, and evaluated for release.

Release from Jail

The defendant may be released from jail in one of the following ways:

- 1) Post bail
- 2) On their Own Recognizance (OR). Following an evaluation, a defendant may be released without posting bail if there is reasonable assurance that the defendant will appear for court hearings and the defendant is not a significant risk to the community. The release may include conditions such as refraining from using alcohol or drugs, no contact with the victim, and obtaining full-time employment.

Posting Bail—If the defendant is not released on his or her own recognizance, the defendant usually may post bail. The court sets a bail amount according to the severity of the crime and the criminal history of the defendant. Bail is money that the defendant deposits with the court to guarantee future appearances in court. Defendants unable to post cash bail may purchase a bail bond from a licensed company. The company posts the bail bond with the court and agrees to pay the bail if the defendant does not appear as required. If the defendant fails to appear, the defendant's bail is usually forfeited and a warrant is issued for the defendant's arrest. Cash bail or a bail bond is released when the defendant is sentenced and the defendant has made all required court appearances.

The right to bail is not absolute. Probationers, parolees, and repeat felons, who commit a crime while released on another case, may be denied bail. Capital felony defendants may be denied bail if there is substantial evidence that the defendant committed the offense. Risk to the community and flight risk are factors judges may consider in denying bail.



Initial Appearance

Initial appearance is sometimes referred to as an arraignment; however, these are two different legal processes in a felony case. The defendant is formally notified of the charges and advised of his/her rights. If the defendant cannot afford an attorney, the court will appoint one. If the defendant is still in custody, the defendant's attorney may ask for a bail-reduction hearing. A date is set for a preliminary hearing, although the defendant can waive this hearing. In felony cases, a plea is not entered at this time. After the preliminary hearing, if the case is bound over for trial, the defendant will enter a plea during an arraignment hearing.

Roll Call Hearing

Sometimes the judge will set a date for a roll call hearing. The roll call hearing is an opportunity to review the status of a case, schedule future hearings, and appoint counsel.

Preliminary Hearing

The purpose of the preliminary hearing is to determine the following: 1) whether probable cause exists to show a crime has been committed and 2) whether probable cause exists to show the defendant was the person who committed the crime. The judge listens to witness testimony and evidence presented at the hearing. If the judge finds probable cause, the defendant is bound over for trial. If the judge decides there isn't probable cause, the case will be dismissed.

Note:

The finding of probable cause at the preliminary hearing should not be confused with the ultimate finding of guilt. The fact that a judge binds a defendant over for trial does not necessarily mean that the judge thinks the defendant is guilty beyond a reasonable doubt. The judge has only made a finding that the prosecution's evidence justifies a trial.

Arraignment

During an arraignment, the judge reads the information to the defendant. The defendant may waive a formal reading of the charges. The defendant must enter a plea at this time. If the plea is guilty, the judge will engage in a colloquy with the defendant to determine that the guilty plea is knowingly and voluntarily made. The case is scheduled for sentencing. A defendant may also enter a plea of "guilty and mentally ill," in which case the judge will order a mental evaluation. A defendant may also plead "no contest," which is treated the same as a guilty plea. If the

plea is not guilty, a pretrial conference and trial dates are scheduled. A plea of “not guilty by reason of insanity” may also be entered.

Pretrial Motions

Before a felony trial begins, the prosecution and defense attorneys may file any number of motions with the court. A motion is a formal request for the judge to issue an order. Examples include motions to suppress evidence or motions to compel the prosecution to give certain information. Certain motions must be made at least five days before the trial and often require a hearing.

Change of venue: In a high-profile case, a motion for change of venue may be filed. Change of venue means the transfer of a case that began in one county or district, to another county or district for trial. In a criminal case, a change of venue will be permitted if the court determines that the defendant cannot receive a fair trial in a given venue.

Conduct order: The court may grant a pre-trial order (sometimes referred to by the media as a “gag” order) that prevents attorneys and parties from talking about a case. This is to ensure a fair jury can be selected.

Pre-trial Conference

At the discretion of the trial judge, the court may hold a pre-trial conference in which the prosecutor and defense attorney discuss a plea bargain. Any case that is not settled is set for trial.

Plea Bargains

A plea bargain takes place when the prosecutor and defense attorney negotiate a mutually satisfactory disposition of the case. The judge does not participate in plea bargain discussions, but must approve or reject any deal before it is final. The defendant also must approve the plea bargain. A plea bargain might involve a guilty plea exchanged for a lesser charge or a sentencing recommendation, or for dismissal of one or more charges in a multi-count information, or for dismissal of another case. Judges approve plea bargains because they realize the attorneys know far more about the case than the judge does. The prosecutor has considerable discretion over what charges to file. Victims of a crime have a right to be consulted on the plea bargain, but are not allowed to veto the prosecutor’s decision to enter into a plea bargain.

The first time a plea bargain becomes part of a public record is when it is entered in court. The court cannot provide information on a plea bargain in advance of the hearing, so reporters wanting to know more information should contact the attorneys, who may or may not provide the information.

There are three other types of pleas: “no contest,” “Sery” and the “Alford” plea. These pleas are available for both felonies and misdemeanors.

No contest plea: The court treats the no contest plea the same as a guilty plea, but the defendant, rather than admitting guilt, admits the prosecution would likely prevail at trial.

Sery plea: The defendant pleads guilty, but reserves the right to appeal an important issue, such as the constitutionality of a statute. If the appeal is successful, the plea is withdrawn.

Alford plea: An Alford plea may be used when the defendant wants the advantage of the plea bargain but cannot or will not admit guilt. The defendant pleads guilty to avoid the potential consequences of going to trial.

If all parties accept the plea bargain, and the defendant enters a guilty plea, the next step is sentencing of the defendant. If a settlement cannot be reached, the case is either set for trial or the trial date is confirmed.



HOW A MISDEMEANOR COMES TO TRIAL Pretrial Procedures

Many of the procedures in misdemeanor cases are similar

to the procedures in felonies. However, there are some differences at the beginning of misdemeanor cases. Most misdemeanor cases begin with the issuance of a citation. A law enforcement officer will often issue a citation instead of arresting a defendant. The citation directs an individual to appear at court within a certain period of time or on a specific date. The defendant can plead guilty on the basis of the citation, or plead not guilty and request that an information be filed. If a citation is not issued, a misdemeanor case begins with the filing of an information.

The court does not conduct preliminary hearings in misdemeanor cases. Defendants are arraigned at the first appearance. If the defendant enters any type of plea admitting guilt, the defendant may be sentenced at that time, but the defendant has the right to be sentenced at a later date. If the defendant pleads not guilty, the case will be set for trial. Prior to the time of trial, the court may conduct pretrial conferences and the parties may file motions and engage in plea bargaining, similar to felony cases.

CIVIL PROCESS *See chart page 49*

NOTE: This section is not intended to be an exhaustive discourse on the civil process, but rather a brief overview.

What is a Civil Case?

A civil case is a dispute between two or more individuals, or entities such as partnerships, corporations and governmental agencies. Most civil actions involve a plaintiff who is suing a defendant for monetary damages or other judicially-ordered relief. Examples of civil actions include claim for personal injury, request for an injunction, divorce, landlord-tenant cases, or breach of contract.

HOW A CIVIL CASE COMES TO TRIAL

Plaintiff's Complaint/Petitioner's Petition

A lawsuit commences when the plaintiff or petitioner files a complaint or petition with the court. The complaint or petition identifies all parties involved in the case and describes the nature of the grievance and the remedy that is sought.

Complaints/Petitions and Summons Served on Defendant/Respondent

A copy of the complaint/petition is served on each of the defendants/respondents. A complaint will include a summons, which states that the defendant must respond to the complaint within either 21 or 30 days, depending on residency status. Some petitions do not require that an answer be filed. Instead, the court will automatically conduct a hearing on the petition.

Defendant's Answer

The defendant must either admit or deny the allegations in the complaint, or state that the defendant has insufficient knowledge to admit or deny. The defendant also lists any defenses to the action, such as the running of a statute of limitation or lack of jurisdiction. If an answer or other appropriate response is not filed within the time allowed by law, the court may enter a default judgment.

Upon being sued, the defendant can bring a counterclaim against the plaintiff, which may or may not be related to the original claim by the plaintiff. If there are two or more defendants, one defendant can raise a cross-claim against another defendant. A defendant can also bring a claim against someone who is not in the lawsuit, called a third-party claim.

Discovery

The purpose of discovery is to allow all parties to become fully informed of the relevant facts in the lawsuit. Typical discovery includes parties asking written questions (interrogatories) or asking oral questions of parties and non-party witnesses (depositions) under oath. Discovery also includes reviewing documents obtained by subpoena or by a request for production of documents.

Interrogatories are written questions served upon one party by another. The party must answer the questions under oath within 28 days. Interrogatories are used to get information about the theories of the opponent's claims and/or defenses, and to uncover potential witnesses and documents.

Depositions are taken of individuals who are either parties or non-party witnesses. Depositions are taken under oath before a certified court reporter. The deposition constitutes the sworn testimony of the individual and may be used in court. If filed with the court, depositions become public records.

Depositions and answers to interrogatories are not typically filed with the court. A reporter must contact the parties directly to request this information.

Pre-trial Motions

After the plaintiff files a complaint, the defendant may, instead of filing an answer, file a motion that responds to the complaint but does not constitute an answer. The parties may also file motions after the answer is filed.

There are certain motions (called "dispositive"), which resolve claims in the case by disposing of either the plaintiff's complaint or the defendant's answer and defenses. For example, the defendant may choose to bring a motion to dismiss the complaint. The court either grants or denies the motion based solely on the complaint.

Either party may file a motion for summary judgment. These are usually filed after the discovery period, when the sides have had a chance to evaluate their positions. The judge may grant summary judgment if the pleadings, answers to interrogatories, depositions, and affidavits show there is no genuine dispute over the material facts and that the governing law dictates a ruling in favor of the party seeking judgment. A summary judgment can result in a judgment for the plaintiff, or a resolution in favor of the defendant. Summary judgments are not often granted because the parties usually dispute the material facts.

Settlement Conference

The plaintiff and defendant may reach a settlement without going to trial. The majority of civil cases do not go to trial. If all the issues in the lawsuit have not been disposed of either by settlement or by motion, those remaining issues will be resolved at trial.

RIGHT TO TRIAL BY JURY

The Utah Constitution and the U.S. Constitution provide for a trial by jury. However, few cases actually go to trial. Most civil cases are settled out of court and in most criminal cases, the defendant enters a negotiated plea to resolve the case.

COUNSEL

A defendant has a right to appointed counsel (an attorney) in criminal cases where the defendant is indigent and stands a substantial chance of being incarcerated. The defendant may also waive that right and proceed pro se (self representation). The defendant may be forced to proceed pro se if the defendant doesn't qualify for appointed counsel and the defendant does not hire counsel. There is no constitutional right to an attorney in a civil case.

PLAYERS IN THE COURTROOM

Judge

The judge presides over the trial making all the final decisions on issues of law and admissibility of evidence. In those trials where a jury is not used, the judge becomes the trier of fact.

Bailiff

The bailiff calls the court to order, announces the judge's entry into the courtroom, and helps keep order in the courtroom. Bailiffs are also responsible for courtroom and courthouse security.

Judicial Service Representative

Each judge has a judicial service representative who administers oaths, manages court files, manages exhibits during a trial, and is responsible for all case documents.

Defendant

In a criminal case, the defendant is the person accused of a crime. In a civil case, the defendant is the person from whom money or other relief is sought.

Defense Attorney

In a criminal case, a defense attorney represents the defendant and is responsible for seeing that the defendant's rights are protected and for providing vigorous representation of the defendant.

Prosecutor/Plaintiff

The prosecutor is the attorney for the state, county, or city and has the duty to see that the laws are upheld and justice is done on behalf of the public. In a criminal case, the prosecutor has the burden of showing beyond a reasonable doubt that the defendant committed the crime. In a civil case, the plaintiff sets forth the allegations against the defendant and must prove the allegations. In most civil cases, the plaintiff must show that the preponderance of the evidence supports the plaintiff's claim.

STAGES OF A TRIAL

Depending on the type of action, a case may be tried before a judge (bench trial), or before a jury with a judge presiding. Whether the case is civil or criminal, or is tried by a judge or jury, the procedure is essentially the same. The following are the steps in a trial.

Jury Selection or Voir Dire

Jurors are selected from a random cross-section of the population in the area served by the court. Names of jurors are compiled from both voter registration and drivers' license lists. Potential jurors fill out a qualification questionnaire prior to coming to the court. Names are then pulled from the potential juror list and put on a qualified juror list. Depending on the court where they are called to serve, jurors are asked to be available from one to six months.

At the beginning of the trial, the clerk calls a panel of prospective jurors and summons them to court. The judge, and in some cases the lawyers, ask the potential jurors

questions about their background and general beliefs to determine any biases or prejudices. This process is called voir dire (vwarh deer). An attorney or the judge can ask that a juror be dismissed “for cause.” There is no limit to the number of challenges for cause a party may present to the judge. Both sides are entitled to a certain number of peremptory challenges, which means they may excuse some prospective jurors without stating any reasons. (The court will reject the challenge if the motive appears to be racially or gender motivated.)

Juror Numbers: In District Court, eight jurors are selected for most civil and criminal jury trials. In capital homicide cases, there are 12 jurors, plus one or two alternates. There are six jurors in class A misdemeanor cases. In justice courts, there are four jurors in criminal (class B & C misdemeanor) cases.

During a trial, identifying jurors is prohibited. A juror’s identity should not be reported nor should his/her identity be revealed through photographs. Contact with jurors outside of the courtroom is prohibited until after the trial is concluded.

Opening Statement

Attorneys for each side make opening statements to inform the court and jurors of the nature of the case, the evidence they will present, and the facts they expect to prove. The defense attorney may wait to make an opening statement until after the prosecution has rested or may choose not to make one at all.

Prosecution Evidence/Witnesses

Each side makes its case based on testimony from witnesses and physical evidence, such as documents, pictures, and other exhibits.

The prosecutor/plaintiff calls witnesses for direct examination (questioning) to state what they know about the alleged crime. The defense attorney may ask questions of the same witnesses (cross examination). Then, the prosecutor/plaintiff may re-examine witnesses (re-direct). Physical evidence, such as documents, pictures, and other exhibits, may also be introduced.

Defense Evidence/Witnesses

Once the prosecutor/plaintiff has presented the case, the defense may call witnesses to give testimony to disprove the prosecutor/plaintiffs' case and to establish the defendant's case. The prosecutor/plaintiff may cross-examine the witnesses. Then the defense may re-examine its witnesses.

Rebuttal

When the defense has presented its witnesses, the prosecutor/plaintiff may again call witnesses to rebut new information introduced by the defense witnesses. The judge may allow sur-rebuttal by the defense (a rebuttal to the rebuttal).

Jury Instructions

Before closing arguments, the judge will instruct the jury about the laws to follow. The jury instructions tell the jury what law to apply to the facts and the different verdicts the jury may return. In civil cases, a preponderance of the evidence favoring one side must usually be determined. In some cases a plaintiff must prove a case by clear and convincing evidence. In criminal cases, if the defendant is not found guilty beyond a reasonable doubt, the defendant is acquitted.

Closing Argument

After the jury instructions are given, both attorneys summarize the evidence and testimony in an effort to persuade the judge or jury to decide the case in favor of their client. The prosecutor/plaintiff offers closing argument first, then the defense, and then the prosecutor/plaintiff responds to the defense's closing argument. Either side may waive closing arguments.

Jury Deliberations

After closing arguments, the court orders the jury to retire to the jury room for deliberation. The jury is isolated in the jury room and jurors are not allowed to communicate with anyone outside of the jury. Discussion with the bailiff may be appropriate but only with regard to meals or scheduling of deliberations. Jurors are asked to decide the case on the information they heard in court; however, they may ask for clarification on certain issues. Sometimes the foreperson will inform the court that the jury is making no progress in

reaching a majority or unanimous decision. At this point, the court must decide what to do. The court may order the jurors to continue the deliberation or declare a mistrial. Declaring a mistrial is a severe decision and the court will encourage the jurors to deliberate unless there is very little chance of reaching a verdict. If a verdict cannot be reached, the case may be set for a new trial.

Verdict

In criminal cases, a verdict must be unanimous and must be given in open court with the defendant present unless he/she chooses not to be present. There are four possible verdicts:

Guilty—The jury or judge finds the following beyond a reasonable doubt: a) the state has proved the elements of the offense; and b) the defendant committed the offense.

Not Guilty—The jury or judge finds the state has not convinced them beyond a reasonable doubt the defendant committed the offense.

Not Guilty by Reason of Insanity—The jury or the judge must determine that the defendant, because of mental disease or defect, could not form the intent required to commit the offense.

Guilty and Mentally Ill—The jury or judge finds the defendant was mentally ill (at the time of the offense) but was still able to form the intent to commit the offense.

If the jury cannot agree on a verdict, the judge may declare a “hung” jury and declare a mistrial and order a new trial.

In civil cases, the verdict does not have to be unanimous; at least three-fourths of the jurors must agree to the verdict.

It is not appropriate for anyone to communicate with the jurors during deliberations. It is possible for attorneys, parties, or the media to ask questions of the jurors after the trial is fully at its end. In highly confidential and sensitive trials, the court may instruct the jurors not to grant interviews. Jurors do not have to respond to questions, and their privacy should be respected.

SENTENCING/JUDGMENT

Judges are responsible for determining the sentence of a defendant.

Criminal Case: In a criminal case, the defendant has the right to be sentenced in no fewer than two and no more than 45 days following conviction. The defendant may choose to waive that timeframe and be sentenced the day of conviction. In most felony cases, judges order a pre-sentence report to be prepared by the Department of Corrections' Division of Adult Probation and Parole, more commonly referred to as AP&P. AP&P prepares a confidential report, which includes the police report, the defendant's prior adult and juvenile record, the defendant's statement, drug and alcohol history, family history, probation history, and the impact of the crime on the victim. AP&P makes a sentencing recommendation that the judge considers when sentencing the defendant. Victims have the right to have their views heard at a sentencing hearing. Their views are considered in conjunction with the pre-sentence report and other evidence. The judge imposes a sentence that may include a jail or prison term, probation, fine, restitution, or a combination of all penalties.

Sentencing Guidelines:

First-Degree Felony: 5 years to life

Second-Degree Felony: 1 to 15 years

Third-Degree Felony: 0 to 5 years

Class A misdemeanor: not to exceed 1 year

Class B misdemeanor: not to exceed 6 months

Class C misdemeanor: not to exceed 90 days

Infraction: no jail may be imposed

Capital Case: In capital cases, a sentencing hearing is held at which defense counsel introduces evidence to show mitigating circumstances, and the state may introduce evidence to show aggravating circumstances. The jury or judge then deliberates to determine whether the person should be given the death penalty or a life sentence.

Civil Case: In a civil case, after the verdict (if there is a jury) or after the court has decided the facts in a bench trial, a judgment will be rendered. As part of the judgment, the jury or court may award money damages or injunctive relief (which means the losing party is ordered to do

something or to stop doing something). The court may also award attorneys' fees to the winning party if there are circumstances that justify such an award. The court may also award the winning party "costs," which means the losing party must pay for certain litigation costs, such as the cost of depositions, expert witness fees, or court filing fees.



Post-trial Motions: A number of post-trial motions can be filed, such as a motion for a new trial, motion for judgment notwithstanding the verdict (asking the judge to override the jury's verdict), or a motion for remittitur or additur. Remittitur essentially asks the court to reduce the amount of money damages awarded to the winning party. Additur asks the court to increase the awarded money damages. Judges have great discretion in these matters.

High-profile Hearings

When the court expects a case will generate substantial media attention, the judge may issue a Decorum Order for courtroom protocol. The order designates seating, conduct, media interview areas, use of electronic equipment, and other issues as deemed necessary. In addition, the Public Information Office may issue courtroom credentials. If a courtroom cannot accommodate the number of reporters interested in covering the hearing, pool reporters from each medium may be designated. Information may be posted on the court's website that lists details about a pressroom, access to court documents and exhibits, access to witness lists, jury selection, and other information pertaining to the case.

Voir Dire in High-profile Trials

Upon request by the media, the judge may rotate reporters during voir dire when it is conducted in a judge's chambers.

UTAH STATE COURT STRUCTURE

UTAH'S APPELLATE COURTS

Appeals chart see page 52

The Utah State Court system has two appellate courts: the Utah Supreme Court and the Utah Court of Appeals. There is a separate federal court system, which has a number of district courts and Circuit Courts of Appeal, several specialized courts, and, of course, the United States' Supreme Court.

Appellate courts are courts of review. Their primary function is to review the decisions of the trial courts and administrative agencies and decide if their decisions are correct. If a party is unhappy with the results of a trial, that party has a right to appeal the trial court's decision in most cases. A notice of appeal must be filed in the trial court within 30 days of the entry of judgment. If the case is not fully resolved but a party wants review of a decision made along the way, such as an order dismissing part of the complaint, it is up to the appellate court to decide if the losing party will be allowed to appeal the trial court's decision immediately.

The party that brings an appeal, claiming the trial court erred, is called the appellant. The party that resists the appeal, contending the trial court's decision was correct, is called the appellee. Both the appellant and the appellee submit to the appellate court a written statement explaining their positions, which is called a brief. The appellate court may grant each side an opportunity to present oral argument. Each side is allowed 15 minutes in the Court of Appeals and 20 minutes in the Supreme Court to explain why the court should rule in its favor. An appellate court does not hear evidence. No witnesses or parties testify before the court.

After reading the briefs, reviewing the record from the trial court or administrative agency, and hearing oral arguments, the judges confer and vote, and one of the judges writes an opinion explaining either why the trial court was correct or why the trial court erred. The opinion is important not only to the parties whose case it resolves, but also to those who may have similar legal questions in the future. Because the opinion becomes part of the law, lawyers rely on the published opinions in advising their clients, and judges use the opinions for guidance in deciding similar disputes. In some cases, one or more of the judges might write a dissenting opinion, in which the judge disagrees with all or

a portion of the majority's opinion. Any person not satisfied with a judgment rendered in a Justice Court is entitled to a trial de novo (new trial) in the District Court. The decision of the District Court following the trial de novo may not be appealed to an Appellate Court unless the District Court rules on the constitutionality of a statute or ordinance.

Utah's Supreme Court *see chart on page 52*

The Supreme Court is the "court of last resort" in Utah. The court consists of five justices who serve ten-year terms. The Utah Supreme Court has jurisdiction to hear capital and first-degree felony convictions and civil judgments other than those in domestic cases. The court also reviews formal administrative proceedings of the Public Service Commission, the Tax Commission, the School and Institutional Trust Lands Board of Trustees, the Board of Oil, Gas and Mining, and the State Engineer. The Supreme Court has jurisdiction to answer questions relating to state law certified to it from federal courts. The court decides appeals of election and voting contests. It also has jurisdiction over judgments of the Utah Court of Appeals by writ of certiorari (a procedure requesting an appellate review), and proceedings of the Judicial Conduct Commission. If a district or juvenile court holds a statute unconstitutional on its face, the appeal is directed to the Supreme Court, even if it would otherwise have gone to the Court of Appeals.

The Utah Supreme Court 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 governs the practice of law in Utah, including admission to the practice of law, as well as the conduct and discipline of lawyers.

Utah's Court of Appeals *see chart on page 53*

The Utah Court of Appeals, created in 1987, consists of seven judges who serve six-year terms. It sits and renders judgment in rotating panels of three judges. The Court of Appeals hears all appeals from the Juvenile Court, all appeals from the District Court that involve domestic relations, including divorce, annulment, property division, child custody, support, visitation, adoption and paternity, and criminal matters of less than a first degree. It reviews appeals of formal administrative proceedings by state agencies, other than those agencies where jurisdiction has been assigned to the Utah Supreme Court. The Court of Appeals also hears cases transferred to it by the Utah Supreme Court.

INFORMATION ABOUT APPEALS

Oral Argument

Oral arguments are generally held in the Utah Supreme Court in the Matheson Courthouse in Salt Lake City during the first week of the month usually on Tuesday, Wednesday, and Thursday. To listen to oral arguments live, go to www.utcourts.gov/courts/sup/streams.

Each year, the Supreme Court holds oral argument sessions at the law schools of the University of Utah and Brigham Young University. In the Utah Court of Appeals, oral arguments are generally scheduled the third and fourth weeks of the month and are generally held at the Matheson Courthouse. Several times a year, the Court of Appeals travels to various regions of the state to conduct oral arguments. Monthly oral argument calendars for both courts are available online at www.utcourts.gov/opinions.

Release of Appellate Court Decisions

The Utah Supreme Court and Appeals Court have an e-mail notification service that notifies subscribers when a decision has been issued. To subscribe to the service, go to www.utcourts.gov/opinions/subscribe. There is no charge for this service.

Supreme Court: Opinions are issued as quickly as possible. Opinions are typically posted on the web page at 10 a.m., Monday through Friday.

Court of Appeals: Except in emergencies and during holiday weeks, decisions issued by the Court of Appeals are released on Thursdays at 10:00 a.m. The court announces on Wednesdays by 2:00 p.m. decisions that will issue the following day at www.utcourt.gov/opinions/pending.php. Decisions are typically posted on the web page within 24 hours of release.

Explanation of Opinions

No Supreme Court justice, Court of Appeals judge, or appellate staff person will explain or comment on the legal meaning or implications of a decision released from either appellate court. Reporters seeking interpretation of a decision should direct their questions to the attorneys representing the parties.

Rulings

The appellate courts generally issue one of four types of rulings: affirmed; reversed; affirmed in part and reversed in part; and reversed and remanded. A definition of each follows:

Affirmed: upholds the decision of the lower court.

Reversed: overturns the decision of the lower court and replaces it with the appellate court's decision.

Affirmed in Part and Reversed in Part: approves certain of the lower court's decisions and overturns others.

Reversed and Remanded: overturns the decision of the lower court and sends the case back for further proceedings, ranging from a new trial to entry of judgment as directed.

DISTRICT COURT STRUCTURE

The District Court is the state trial court of general jurisdiction. The District Court has original jurisdiction to try all civil cases, criminal felonies, and class A misdemeanors. These offenses, for example, include but are not limited to capital homicide, other homicide offenses, rape and other sex offenses, child and sexual child abuse, aggravated assaults, theft, forgery, driving under the influence of drugs or alcohol, and most drug offenses. An important component of the District Court caseload is domestic relations cases. These cases include contested and uncontested divorces, child custody, parent-time, child support, adoption, paternity, and probate. In the larger districts, court commissioners have been appointed to assist the district judges in the handling and resolving of most domestic relations cases by conducting pretrial hearings, pursuing settlements, and making recommendations to the judges. If a party disagrees with the court commissioner's recommendation, a party may object and the district judge will review the recommendation. District judges also have the power to issue extraordinary writs, subpoenas and warrants. In addition, the court serves as an appellate court to review informal adjudicative proceedings from administrative agencies.

Each District Court judge is assigned a judicial assistant and bailiff is provided for all District Court hearings. An electronic recording device is used to maintain a verbatim record of all court proceedings.

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, which are heard in the Utah Supreme Court. All civil appeals from the District Court are heard in the Utah Supreme Court, except for domestic relations cases, which are heard in the Court of Appeals.

JUSTICE COURT STRUCTURE

Cities and counties may establish their own Justice Court, which have jurisdiction over class B and C misdemeanors and infractions committed within the city or county in which the Justice Court is located. Justice courts also have jurisdiction over small claims cases that arise within the city or county. Justice Court judges may also issue search warrants and arrest warrants statewide.

While operated and funded by the city or county, justice courts are a part of the Judicial Branch of government and follow state law and court rules like other court levels. The Utah State Constitution provides for justice courts and indicates that these courts are courts not of record. This means that appeals from justice courts result in new trials and the high courts do not rely on a record of the prior proceedings. However, all proceedings in justice courts are recorded.

Justice courts also have jurisdiction over cases involving 16- or 17-year olds, who are charged with traffic offenses, except for alcohol or drug related traffic offenses, reckless driving, fleeing an officer, and driving on a suspended license.

Four person juries hear jury trials in the justice courts. City attorneys prosecute cases in municipal courts; county attorneys prosecute in the county courts. Litigants and defendants often act without an attorney (pro se) in justice courts. Parties do have the right to be represented by an attorney and the Justice Court may appoint a public defender under certain circumstances.

Parties have the right to appeal judgments entered in the Justice Court. Appeals result in a new trial (trial de novo) scheduled in the District Court.

Small Claims *see chart on page 49*

Small claims cases are under the jurisdiction of the justice courts and involve claims that do not exceed \$10,000. These cases may be heard by the Justice Court judge appointed in the jurisdiction or by a judge pro tempore.

Judges pro tempore are licensed and qualified attorneys who volunteer to judge small claims cases. Any individual or business may use small claims court. Small claims trials are conducted pursuant to the Utah Rules of Small Claims Procedure. The plaintiff tells his or her side of the story to the judge and presents witnesses or documents supporting the claim. The defendant then presents his or her case. The judge generally questions the witnesses, but may allow the parties to question the witnesses. The judge usually will make a ruling at the close of the trial.

In small claims cases, either party may appeal the court's judgment. Appeals result in a new trial (trial de novo) that is heard by the District Court. All proceedings in small claims court are recorded. Because the appeal is a trial de novo, the District Court does not review the recording of the Justice Court proceedings, but makes its own determination.

STATE GRAND JURY

Utah's Grand Jury statute requires a panel of five District Court judges selected from throughout the state to hold hearings in each judicial district every three years. The purpose of the Grand Jury Panel hearings is to determine if sufficient evidence exists to warrant the cost, time, and resources to go through the process of empanelling a Grand Jury based on evidence of criminal activity.

The Attorney General, a county attorney, district attorney, or special prosecutor appointed under UCA 77-10a-2 et seq. can also present evidence based on criminal activity. The panel of judges will hear, in secret, all persons claiming information that justifies calling a Grand Jury. All individuals appearing before the panel of judges will be placed under oath.

If a Grand Jury is summoned, the jurors will be called from the state at large or any judicial district within the state. The supervising judge of the Grand Jury Panel will select a supervisory judge.

For additional information on state grand juries, go to www.utcourts.gov/resources/rules/ucja and click on Rule 6-304.

Grand juries exist in the federal system as well. For information on the Federal Court System, go to www.uscourts.gov/News/JournalistsGuide.aspx or <http://www.utd.uscourts.gov/>

JUVENILE COURT STRUCTURE See page 50

The Juvenile Court is a court of special jurisdiction and is of equal status with District Court. Utah's Juvenile Court serves many purposes. The court has jurisdiction over delinquency, dependency, neglect, and abuse matters. The Juvenile Court promotes public safety and accountability while acting in the best interest of minors.

JUVENILE COURT PROCEEDINGS

Children Who Violate the Law

Police typically report alleged offenses directly to the Juvenile Court. At the court, cases are assigned to an intake officer who screens the case for further action. The intake officer might meet with both the juvenile and his or her parents to determine what action is necessary. If the juvenile denies the charge, the intake officer will set a time for a hearing with a judge.

If the juvenile admits to the charge, the intake officer has two options—depending on a number of factors—including the severity of the offense, the family situation, and the juvenile's age and past record. The intake officer may set a time for the juvenile and the parents to have a court hearing with a judge, or the officer may develop a non-judicial contract that outlines how the juvenile will be held accountable for the offense that was committed. If the contract is fulfilled, the juvenile's case will not go to court.

Juvenile courts are similar to adult courts in that the courts are required to meet constitutional requirements of due process. Juveniles must be notified of all the charges against them and must be given the chance to call and cross-examine witnesses. They have the right to an attorney and the right against self-incrimination.

What are the most common types of offenses committed by juveniles?

Common offenses committed by juveniles in Utah are shoplifting, alcohol possession, criminal mischief, marijuana possession, habitual truancy, tobacco possession, and possession of drug paraphernalia.



What kinds of dispositions do juveniles receive?

In 1997, juvenile sentencing guidelines were adopted that recommend dispositions based on delinquency history and the seriousness of the offense. The disposition that a juvenile receives depends on many factors, such as the type of offense that has been committed, as well as the juvenile's past record. Restitution, fines, and community service are the most common penalties. Sometimes dispositions are a combination of the three.

What hearings are opened to the public?

Child Welfare Hearings: As of July 1, 2004, access to abuse, neglect, and dependency matters in Juvenile Court became more open as a result of H.B. 90. This bill allows the public to attend child abuse, neglect, or dependency hearing in Juvenile Court. However, Juvenile Court judges maintain authority to close the proceedings if grounds exist to close the hearing. For example, a hearing might be closed if it is in the best interest of the child, or if having others in the courtroom would impair the fact-finding process, or if allowing access is contrary to the interest of justice.

Delinquency Hearings: If the minor is 14 years of age or older and is charged with a felony, or is a repeat offender, the court can admit anyone, unless the hearing is closed for good cause.

Can a juvenile be tried in an adult court?

A juvenile can be tried as an adult in the following conditions:

1. Any 16- or 17-year-old juvenile accused of murder is tried in the District Court. (Also referred to as "direct file" UCA 78A-6-701.)
2. Any 16- or 17-year-old juvenile who has previously been sentenced to a secure facility and is then charged with another felony, if committed after release, is tried in District Court.
3. Any 16- or 17-year-old juvenile charged with one of 10 designated felonies under the Serious Youth Offender statute (UCA 78A-6-702) against a person is charged by criminal information in Juvenile Court. The Juvenile Court then conducts a hearing. If the state shows probable cause that the offense was committed, the juvenile is then bound over to District Court unless the juvenile convinces the Juvenile Court judge in a hearing that it would be contrary to the best interest of the minor and the best interests of the public to bind the juvenile over to the jurisdiction of the district court.

4. Any juvenile 14 or older charged with a felony can be transferred to District Court if the prosecutor convinces the Juvenile Court judge that it is in the state's best interest to hear the matter in District Court (Also referred to as a certification hearing UCA 78A-6-703).

What happens to a juvenile's record?

Generally, only the juvenile, the parents or guardian, and the attorney representing the juvenile have access to a juvenile's record. If a youth is 14 or older and commits an offense that would be considered a felony in District Court, certain parts of his/her record are considered public after the petition is filed. The Juvenile Court may consider the youth's past record to determine dispositions for new offenses. If a youth is later convicted in an adult court, his or her record may be made available to adult probation and parole for use in preparing a pre-sentence report.

To expunge a Juvenile Court record, the juvenile must file a petition and request an expungement hearing. The judge may expunge the record if the juvenile has reached the age of 18 and has been out of the court's jurisdiction for at least a year.

The Juvenile Court, unlike other state courts of record, administers a probation department. Probation officers supervise youth who have been placed on probation by the court, conduct evaluations, and submit reports on the progress of each juvenile.

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

Children Who Are Victims

What constitutes abuse, neglect, or dependency?

An abused child is one who has suffered or been threatened with non-accidental physical or mental harm, sexual exploitation, or has been the victim of sexual abuse. A neglected child is one who has been abandoned, neglected, or abused by a parent, guardian, or custodian or who is at risk of such harm, or one whose parent, guardian, or custodian fails to provide proper care, subsistence, or education. A dependent child is one who is homeless or without proper care through no fault of the parent or guardian.

How does the court become involved in child victim cases? In Utah, anyone can file a petition alleging that a child is abused or neglected. The Attorney General's Office files most petitions after an investigation by the Division of Child and Family Services (DCFS). The state may place children who are perceived to be in immediate danger into protective custody even before a petition is filed. If a child has been physically harmed, the court may order emergency medical treatment.

A pre-trial hearing, or shelter hearing, is held after the petition is filed. The parents are notified of the date and time of the hearing and reminded that they have the right to an attorney. If the parents do not attend, the court proceeds to decide the case. If the parents do appear and admit that the allegations are true, the judge will determine how best to guarantee the welfare of the child. If the parents appear and deny the allegations, a trial date is set.

At trial, whoever filed the petition has the responsibility to prove that the charges are true. The following parties should be present with their attorneys: the petitioner, the parents, the state-appointed Guardian ad Litem, and an assistant Attorney General, who represents DCFS.

What can the Juvenile Court do if abuse has occurred?

The driving principle in Juvenile Court is "the best interest of the child." Children remain with their parents or guardians whenever it is safe and appropriate for the child. When a child must be removed from the home, due to a finding of abuse or neglect, the child may be promptly returned to the parents, subject to certain conditions. In other cases, the child will be temporarily removed from the home while the parents comply with the court's order to attend counseling or to receive other social services. If a parent is found to be unfit or has abandoned the child, the court may order that either one or both parents lose their parental rights to the child.

If both parents lose their parental rights, the Juvenile Court may place the child in the care of a relative, or nonrelative guardian, or the child may remain in the custody of the state. The court also has the authority to proceed with adoption proceedings if it decides that adoption is in the best interest of the child and an adoptive family is available.

Juvenile Court case information

Access to case information in Juvenile Court depends on the case type.

Child welfare case: If the child is in custody, the court can let a reporter know the date and time of the hearing. The reporter must know the child's name in order for the court to release this information. The court cannot release any records on the case without an order signed by the judge.

Delinquency case: The court can acknowledge a case exists only if a petition has been filed, the offender is 14 years of age or older and is charged with a crime that is considered a felony in District Court. Otherwise, no information can be released. If the petition is filed as a felony and the youth is 14 years of age or older, the hearing and previous adjudication history becomes open. If the youth is under 14 years of age, the court cannot acknowledge a case exists.

Other: The court cannot provide any information or records on cases involving adoption or abortion, or on cases that have been expunged.

ACCESS TO COURT RECORDS

Certain provisions of GRAMA apply to the judiciary, but the Legislature has also recognized the right of the judiciary to maintain and classify its own records. The Judicial Council has adopted rules governing access.

RIGHT OF ACCESS TO COURT RECORDS

Generally speaking, documents in appellate, district, and justice courts are public records, unless a document is sealed by the court or is classified as protected or private by statute or by Judicial Council rule. In Juvenile Court, most records are not public.

Parties may request that information be made private or protected. The court determines whether the interest in closing the record outweighs the interest in keeping the record public.

Rules 4-202 through 4-202.10 of the Code of Judicial Administration govern access to court records. Currently, court records are classified into six categories: public, private, protected, juvenile, sealed, and safeguarded.

Public judicial records include the following examples:

- 1- Case files
- 2- Copies of the official court record or official minutes of an open court hearing or any transcript of the hearing.
- 3- Exhibits

- 4- The petition, indictment or information, the adjudication order and the delinquency history of a juvenile if the person is 14 years of age or older, and charged with a felony or an offense that would be a felony if committed by an adult.

Private judicial records include the following examples:

- 1- Records that include medical, psychiatric, or psychological data about an individual.
- 2- Custodial evaluations, home studies, and pre-sentence reports.
- 3- The official court record or official minutes of court sessions closed to the public and any transcript of the hearing.

Protected judicial records include the following examples:

- 1- Records that the disclosure of which would jeopardize life, safety, or property.
- 2- Search warrants and search warrant affidavits become public 20 days after the date of issuance.

Juvenile records are divided into two categories: legal and social. Most juvenile records have restricted access. However, certain delinquency records become public if a juvenile is 14 years or older and is charged with a crime that is considered a felony in District Court.

Sealed judicial record means data has been ordered sealed by the court pursuant to statute or court rule. Examples of sealed records include adoptions, expunged records, and records identifying a confidential informant.

Safeguarded records are those that include identifying information about victims, witnesses, jurors, and children in certain case types, such as paternity.

Most administrative records are public, but personnel files are not. There are some restrictions on records from which a person can be identified or contacted. Financial information and medical information generally are not public.

Evaluations of a person, even non-medical evaluations—such as pre-sentence investigation reports, home studies, and custody evaluations—generally are not public.

Closed Hearings

On rare occasions, a judge might close a proceeding, or a portion of the proceeding, to the public. In deciding whether to close a proceeding, a judge evaluates whether the public's right to attend court is outweighed by the defendant's right to receive a fair trial or an individual's

right to privacy. If a judge receives a request to close a hearing, representatives of the media will receive notice of the proposed closure and have an opportunity to represent the public's interest in the discussion.

RETENTION OF FILES—There are different retention periods of court records depending on case type.

- Capital, first-degree, and second-degree felonies are retained permanently.
- Third-degree felonies and alcohol-related misdemeanors are retained for 10 years.
- Other misdemeanors, infractions, and civil and small claims cases are retained from six months to five years (from the end of the case), depending on the circumstances of the case.

Most civil and misdemeanor files are destroyed after certain periods of time, which is determined according to use of the files.

COURT RECORDS

(Record of Judicial Proceedings)

The official judicial record of a District Court proceeding is a public record. The official record may be an audio recording or transcript. An audio

recording is considered the official court record unless a court reporter is present. If a court reporter is present, the court reporter's transcript of the proceedings is the official court record.



The cost of an audio recording of a court proceeding is \$10, while a video recording is \$15. Most courtrooms are equipped with audio recorders while very few courtrooms are equipped with video recorders. Whichever equipment the courtroom has will dictate the type of record kept. To order a copy of a transcript, go to www.utcourts.gov. To order a CD or DVD contact the judge's clerk.

How to Request a Court Record

Rule 4-202.04 governs procedures for requesting a record. The rule states that a request for a court record be in writing to the clerk of court; however, the court clerk can waive the written request requirement, except in Juvenile Court matters. In general, most districts require only a verbal request for District Court records.

Record Fees

Rule 4-202.08 governs record fees. Following is a fee schedule for frequently requested records:

- Transcripts: \$4.50 per page for initial preparation; \$.50 per page for subsequent certified copies.
- Copies: \$.25 per page.
- Fax or email: \$5.00 for 10 pages or less, \$.50 per additional page.
- Audio CD: \$10 per tape.
- Video DVD: \$15 per tape.

In addition, costs can be charged for a clerk's time in preparing the record. Fees may change; go to www.utcourts.gov/ for a current fee structure. Judicial Council Rule 4-202.08 outlines the process to request a fee waiver.

COURTROOM PHOTOGRAPHY/ RECORDING

Courtroom Photography

Rule 4-401.01 establishes standards and procedures for electronic media coverage of court proceedings. The intent of the rule is to permit media access to the courtroom, while preserving the participant's rights to privacy and a fair trial. The judge has the authority to control the conduct of the proceedings in the courtroom and may impose conditions, such as position of the photographer.

District and Juvenile Court: In general, media should submit a request to be the pool still or video photographer or radio recorder 24 hours prior to the hearing. The request should be submitted to the court public information officer. The media form is available at www.utcourts.gov/media/respol.htm. The court may list exclusions of what cannot be photographed in the courthouse such as victims, witnesses, victims' families, and the judge. Jurors are never to be photographed. Flash photography is not permitted in the courtroom. Cameras are restricted from filming outside of juvenile courtrooms to protect the privacy of youth.

Appellate Courts: Utah's Appellate Courts allow one pool still photographer and one pool video photographer. A request to photograph in Appellate Courts must be submitted 24 hours prior to oral arguments.

For a complete listing of Rule 4-401.01, go to www.utcourts.gov/media

COURTHOUSE SECURITY

Rule 3-414 governs court security.

The local sheriff's office provides building and perimeter security. Bailiffs are law enforcement officers who are responsible for courtroom security.

A courthouse is free of weapons and firearms unless a local security plan permits law enforcement officers or other certified individuals to possess a firearm. Persons entering the building are subject to search for weapons, potential weapons, or objects that may cause injury to others or that may disrupt the ordinary conduct of business within the courthouse. The sheriff, deputies, and other peace officers are authorized to conduct the searches and to confiscate potential weapons. Searches are conducted by metal detection, x-ray screening, or similar devices. Law enforcement officers are also authorized to conduct pat down and other searches they determine necessary to ensure the safety of the public. Any items seized may be forfeited and destroyed. Anyone who brings a weapon into the courthouse may be subject to a citation for contempt.

Access to the courthouse after hours: check with the district trial court executive to determine after-hours access to the courthouse. Trial court executives' phone numbers are listed on page 41.

UTAH JUDGES

Utah judges stand for retention election at the end of each term of office. In a retention election, the public has an opportunity to vote to retain the judge for another term. Background on judges up for retention election is available in the Voter Information Pamphlet, or online at vote.utah.gov.

Judge's Nomination and Appointment

The Commission on Criminal and Juvenile Justice advertises judicial vacancies for appellate, district, and juvenile court judges. A nominating commission screens the applicants and makes recommendations to the Governor. (The Governor appoints members of a nominating commission, which is comprised of lawyer and non-lawyer members from the judicial district in which the appointment will be made.) With a few exceptions, the commission must nominate at least five applicants for each vacancy. The commission must make the nominations within 45 days of its first meeting.

The Governor has 30 days to make an appointment from the list of nominees. If the deadline passes, the Chief Justice has 20 days to make the appointment. The Senate has 60 days to confirm or reject the appointment. If the Senate rejects the appointment or fails to act within 60 days, the appointment lapses, the position remains vacant, and the nominating commission begins anew.

The initial term of office is until the first general election held more than three years after the appointment. Subsequent terms are ten years for the Supreme Court and six years for other courts .

Judicial Performance Evaluations

In 2008, the legislature established the Judicial Performance Evaluation Commission (JPEC) to periodically evaluate the performance of Utah’s judges. A mid-term evaluation of each judge is aimed at self-improvement, while an end-of-term evaluation generates information for voters to use in deciding whether to retain the judge in office at election time. Well before each general election, a full retention evaluation report on each judge whose name will appear on the ballot is posted at judges.utah.gov and at vote.utah.gov. A summary of the report is also published in the Voter Information Pamphlet.

The commission evaluates judges by analyzing data from a variety of sources. The commission surveys attorneys who have appeared before the judge, court staff who work regularly with the judge, and jurors. In addition, courtroom observers—trained citizen volunteers—visit each courtroom and prepare narrative reports about their experience. Each judge must also comply with ethical standards and with internal performance standards established by the judiciary. Finally, the commission considers public comments submitted through its website by persons with first-hand experience with a judge.

For further information, go to judges.utah.gov or contact the commission directly at judicialperformance@utah.gov.

Court Commissioners—Court Commissioners are quasi-judicial officers who hear primarily domestic-related cases, including protective orders and divorces. The District Court commissioners make recommendations to a judge for a final ruling. There is one Juvenile Court commissioner in the Third Judicial District and one in

the Fourth Judicial District who hears misdemeanor and status cases—such as smoking and truancy violations—and makes recommendations to judges for final rulings. Court commissioners are appointed for a four-year term. At the conclusion of each term of office, the court commissioner is retained for a subsequent term of four years unless they are removed by the Utah Judicial Council or the judges of the district in which the commissioner serves.

Judicial pay scale

The Commission on Compensation makes recommendations on judicial salaries to the legislature. State legislators set judicial pay.

- Utah Supreme Court Justices' salary - \$168,150
- Court of Appeals Judges' salary - \$160,500
- District and Juvenile Court Judges' salary - \$152,850
- Justice Court Judges' salaries vary according to location, but can not exceed 90 percent of a district court judge's salary.
- Court Commissioner salary - \$129,831

Justice Court Judges

Justice Courts are funded and operated by local government—either a county or a municipality. As of Jan. 2009, Senate Bill 72 requires the Justice Court judges to be selected through a nominating commission process. Justice Court judges stand for unopposed retention election every six years.

The Administrative Office of the Courts advertises vacancies for Justice Court judges. A nominating commission from the county where the court is located screens applicants and makes a recommendation to the local government executive. The city or county council affirms or rejects the appointment and the Judicial Council confirms the appointment.

Biographies

Biographies for all justices and judges are available on the courts' website at www.utcourts.gov/judgesbios.

JUDICIAL CONDUCT

Judicial Conduct Commission

The Judicial Conduct Commission (JCC) is an independent fact-finding body established by the Utah Constitution. The JCC investigates allegations of unethical conduct by state, county, and municipal judges. The JCC cannot impose discipline—it can only recommend that the Utah Supreme Court impose discipline.



The JCC can investigate and act upon complaints against state, county, and municipal judges, and can recommend the reprimand, censure, suspension, removal, or involuntary retirement of a judge for any of the following reasons: action which constitutes willful misconduct in office; final conviction of a crime punishable as a felony under state or federal law; willful and persistent failure to perform judicial duties; disability that seriously interferes with the performance of judicial duties; or conduct prejudicial to the administration of justice which brings a judicial office into disrepute.

The JCC cannot do the following: assist a person in removing a judge from a particular court case; direct a judge to take a particular action in a court case; overturn a judge's legal decision(s); recommend discipline based on a judge's decision(s) in a particular court case; recommend or require that a particular court case be stayed pending the outcome of JCC proceedings; investigate federal judges, attorneys, court commissioners, court employees or other government employees; or provide legal assistance.

The JCC can commence an investigation upon receipt of a written complaint. Most preliminary investigations are completed within 60 days from the date the complaint is received. Complaints that go beyond the preliminary investigation stage take longer to resolve. JCC proceedings are not open to the public. Except in certain limited circumstances, all complaints, papers, and testimony received or maintained by the JCC, and the record of any hearings conducted by the JCC, are confidential, and cannot be publicly disclosed. For more information, go to jcc.utah.gov.

Code of Judicial Conduct*

The Code of Judicial Conduct, adopted by the Utah Supreme Court, consists of four principles—called “canons”—of ethical behavior. All state, county, and municipal judges are obligated to comply with the Code of Judicial Conduct. Each canon addresses a general topic and includes specific directives. The full text of the Code of Judicial Conduct is available at www.utcourts.gov/resources/ethadv.

- Canon 1 Integrity and Independence of the Judiciary and Impropriety and the Appearance of Impropriety
- Canon 2 Impartial and Diligent Performance of Judicial Duties
- Canon 3 Participation in Non-judicial Activities
- Canon 4 Political Activity

* Check the court website for current information.

ADMINISTRATIVE STRUCTURE OF THE COURTS

Judicial Council

The Utah Judicial Council directs the activities of all Utah courts. The Judicial Council is responsible for adopting uniform rules for the administration of all courts in the state and setting standards for judicial performance, as well as overseeing court facilities, support services, and judicial and nonjudicial personnel. The Judicial Council holds monthly meetings, typically at the Scott M. Matheson Courthouse in Salt Lake City. These meetings are open to the public. For dates and locations of Judicial Council meetings, go to www.utcourts.gov/knowcts/adm/

Boards of Judges

The Utah State Judiciary has four boards of judges representing each court level. The boards adopt and propose court rules, serve as a liaison between local courts and the Judicial Council, and plan budget and legislative priorities.

Administrative Office of the Courts

The Court Administrator Act provides for the appointment of a state court administrator, with duties and responsibilities as outlined in Section 78A-2-107 of the Utah Code. Appellate, district, juvenile, and justice court administrators and local court executives assist the state court administrator in performing these duties and responsibilities. Also assisting the court administrator are personnel who work in finance, human resources, internal audit, judicial education, law, planning, public information, rules, security, and technology. Mediators, Office of

Guardian ad Litem, a capital case staff attorney, Juvenile Court law clerk, an interpreter coordinator, and Court Visitor Program administrator are also based at the Administrative Office of the Courts' office.

Local Court Administration

The presiding judge is elected by a majority vote of judges from the court or district and is responsible for effective court operation. The presiding judge implements and enforces rules, policies, and directions of the Judicial Council as well as schedules calendars and case assignments. A trial court executive assists the presiding judge in each judicial district.

Trial Court Executives

The following is a list of trial court executives in each judicial district who can assist with media requests. The court executive can explain local procedure and practice and handle complaints and concerns expressed by the media and the public.

1st District and Juvenile Court-Corrie Keller
(435) 734-4602, corriek@utcourts.gov

2nd District Court-Sylvester Daniels
(801) 395-1050, syd@utcourts.gov

2nd District Juvenile Court-Travis Erickson
(801) 626-3823, travise@utcourts.gov

3rd District Court - Peyton Smith
(801) 238-7315, peytons@utcourts.gov

3rd District Juvenile Court-Neira Siaperas
(801) 238-7899, neiras@utcourts.gov

4th District Court-Shane Bahr
(801) 429-1038, shaneb@utcourts.gov

4th District Juvenile Court-Jim Peters
(801) 354-7216, jamesp@utcourts.gov

5th District Court-Rick Davis
(435) 867-3220, rickd@utcourts.gov

6th District and Juvenile Court-Wendell Roberts
(435) 896-2710, wendellr@utcourts.gov

7th District and Juvenile Court-Terri Yelonek
(435) 636-3401, terriy@utcourts.gov

8th District and Juvenile Court-Russell Pearson
(435) 781-9301, russellp@utcourts.gov

Appellate Courts-Tim Shea
(801) 578-3834, tims@utcourts.gov

Common Legal Terms

Adjudicate-Giving or pronouncing a judgment or decree, or rendering a decision on a matter before the court.

Adjudicatory Hearing-This is a Juvenile Court term that is referred to in District Court as the trial.

Affidavit-A written and sworn statement witnessed by a notary public or another official possessing the authority to administer oaths.

Aftercare-This is a Juvenile Court term that is referred to in District Court as parole.

Alienist-Person qualified by experience, knowledge, and previous opportunities to express opinion as to a defendant's mental condition at a particular time.

Arraignment-In a felony case, the proceeding after the indictment or bind over at which the defendant comes before a judge in District Court, is informed of the charges, and enters a plea. In a misdemeanor case, the initial appearance before a judge at which the criminal defendant enters a plea. In Juvenile Court, the first hearing after a petition has been filed.

Bind Over-A judge's decision to hold a criminal defendant for trial or "bind them over" for trial.

Brief-A lawyer's written statement of a client's case filed in court. It usually contains a summary of the facts in the case, the pertinent laws, and an argument of how the law applies to the facts supporting the client's position.

Competency-Criminal defendants must be competent to stand trial; they must understand the nature of the proceedings and have the ability to assist their lawyers.

Denial-This is a Juvenile Court term that in District Court is referred to as a not guilty plea.

Detention-This is a Juvenile Court term that in District Court is referred to as jail.

Disposition-What is referred to as sentencing in District Court is referred to as a disposition in Juvenile Court.

Ex parte Order-By or for one party only. Ordinarily courts are not allowed to engage in communications with one party only (ex parte communications). Both parties must be heard.

Fiduciary-A person who has assumed a special relationship to another person or another person's property, such as a trustee, administrator, executor, lawyer, or guardian. The fiduciary must exercise the highest degree of care to maintain and preserve the person's right and/or property that are within his/her charge.

First Appearance-In a felony case, the initial court hearing at which the defendant is read the charges against him/her.

Found Delinquent-This is a Juvenile Court term that in District Court is referred to as found guilty.

Guardian ad Litem-In Utah State Court proceedings, a lawyer appointed by a court to look after the interests of an infant, child, or incompetent person during court proceedings.

Impanel-To seat a jury.

In Camera-In the judge's chambers; in private.

Indictment-An accusation of a criminal offense made by a grand jury.

Information-The first paper filed in a criminal prosecution that states the crime of which the defendant is accused.

Interlocutory Appeal-An appeal to an appellate court of a temporary or provisional order of a trial court. The appellate court is not required to hear the appeal.

Judgment-The official decision of a court disposing of a case.

Mediation-A form of alternative dispute resolution in which the parties bring their disputes to a neutral third party who helps them agree on a settlement.

No Contest-A plea of no contest has the same legal effect as a plea of guilty for purposes of the action before the court; however, the plea may not be used against the defendant as an admission of guilt in a civil suit brought on the same facts.

Offense-This is a Juvenile Court law term that in District Court is referred to as a crime.

Petition (Juvenile Court)-The document filed by the state charging a juvenile with a crime or alleging that a child is abused, neglected, or dependent. (A private petition means an interested party is bringing the petition to court versus the state.) The petition alleges either delinquent conduct or that a child has been abused, neglected, or is dependent.

Plaintiff-A person who files a lawsuit.

Preliminary Hearing (Prelim)-A hearing to screen a felony criminal case to decide whether there is enough evidence to warrant a trial. If the judge determines there is sufficient evidence, the defendant is “bound over” for trial. The defendant may waive this hearing.

Probable Cause (PC) Statement-A judicial finding that there were reasonable grounds for law enforcement officers to arrest or search someone.

Pro Se-In one’s own behalf. Refers to a party representing himself or herself in a court action without an attorney.

Roll Call Hearing-A hearing that addresses one of a number of actions such as scheduling, review status of the case, appoint counsel, set a preliminary hearing date.

Sentencing-A court’s determination of punishment to be inflicted on person convicted of a crime.

Concurrent-sentences for more than one violation that are to be served at the same time.

Consecutive-sentences for more than one violation that are to be served one after the other.

Suspended-A sentence ordered by the court but not executed, which gives the defendant an opportunity to complete probation.

Show Cause-An order requiring a person to appear in court and state why certain action should not be taken.

Stipulation-An agreement by attorneys on opposite sides of a case on a matter pertaining to the proceedings. It is not binding unless agreed to by the parties. Most stipulations must be in writing.

Suppression Hearing-A hearing on a criminal defendant's motion to prohibit the prosecutor's use of evidence alleged to have been obtained in violation of the defendant's rights.

Summary Judgment-A judgment for one party in a lawsuit before the conclusion of a full trial.

Summons-A notice to the named person that an action had been commenced against him/her in court and he/she is required to appear and answer the complaint.

Take into Custody-This is a Juvenile Court term that in District Court is referred to as the arrest.

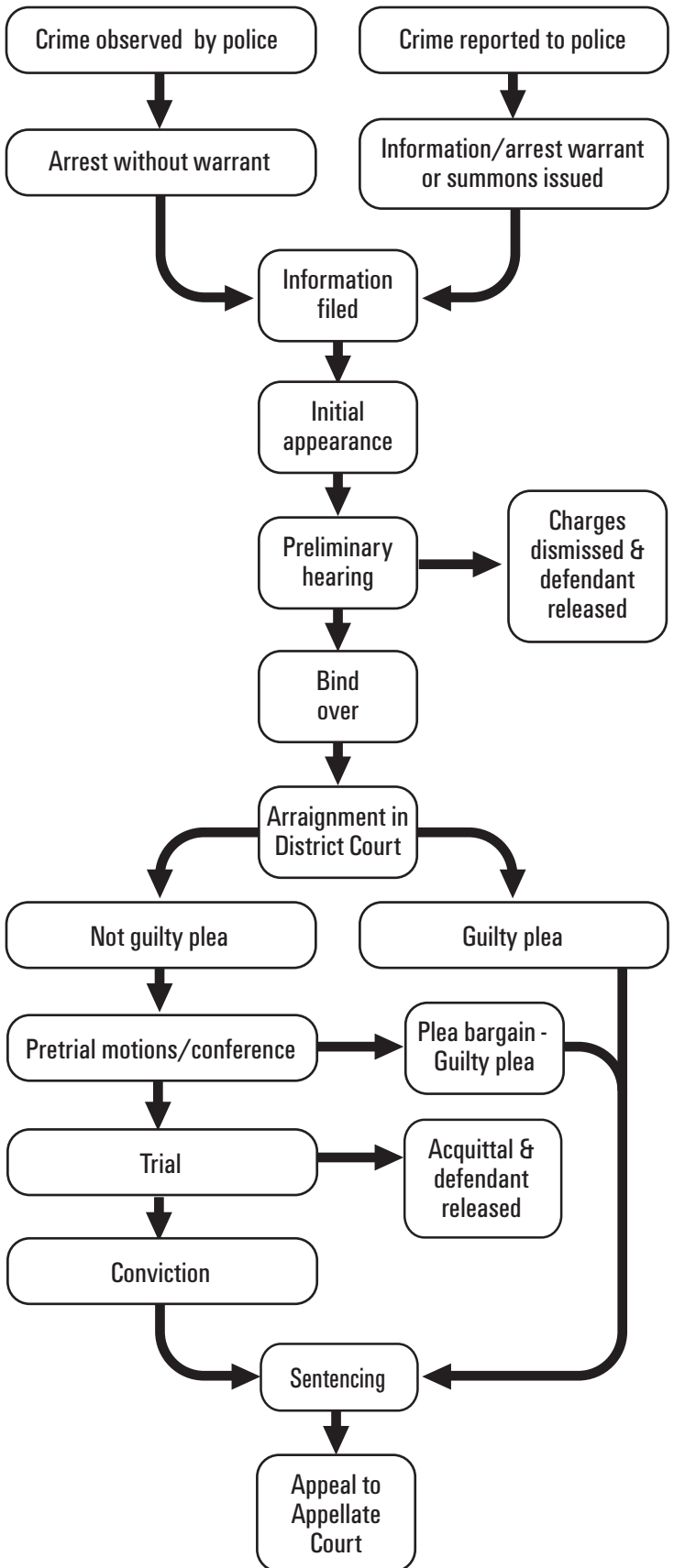
Verdict-The formal and unanimous decision or finding made by a jury or the court as to the guilt or innocence of a defendant.

Voir Dire-The questioning of potential jurors by the judge and the lawyers to determine any biases, prejudices, or other reasons for disqualification.

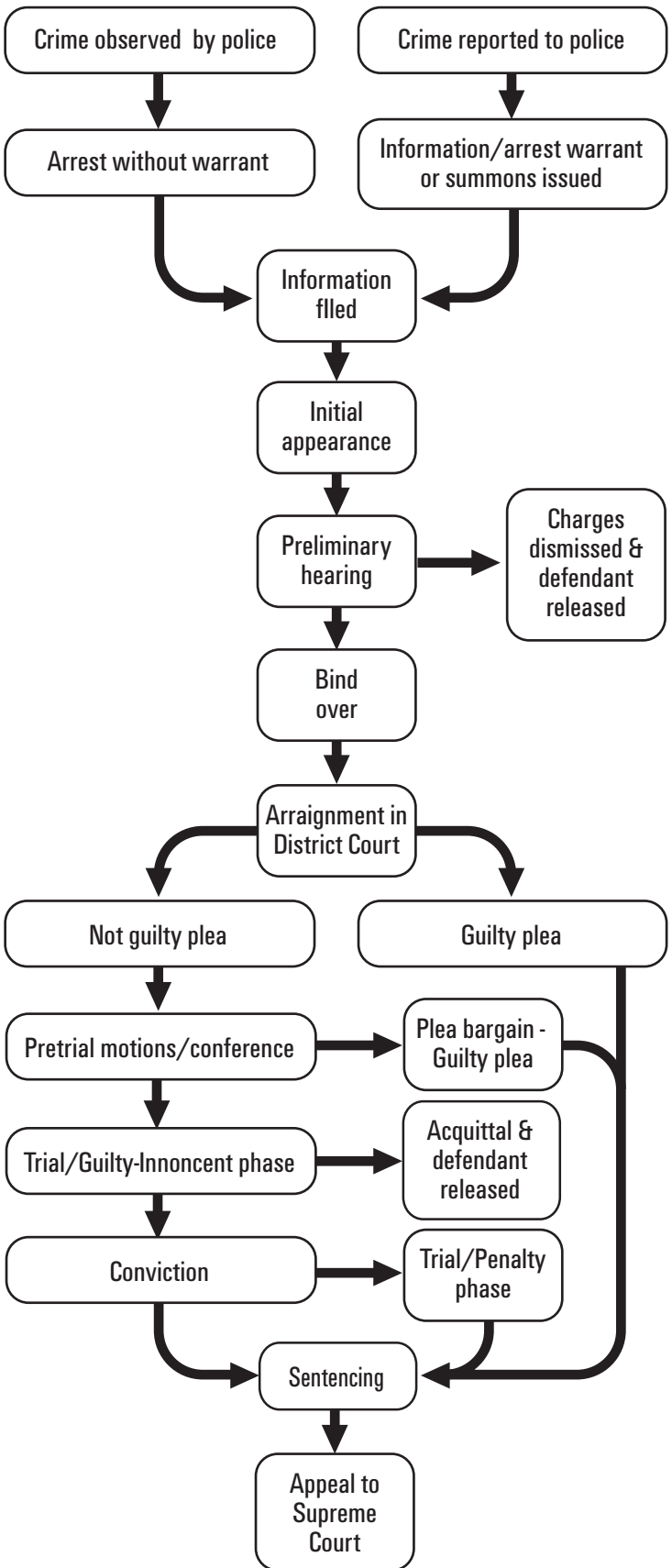
Writ of Certiorari-A procedure requesting appellate review. If the writ is denied, the higher court refuses to hear the appeal and the judgment in the lower court stands unchanged. If the writ is granted, the higher court hears the appeal.

For a complete list of legal terms, go to www.utcourts.gov/resources/glossary.htm

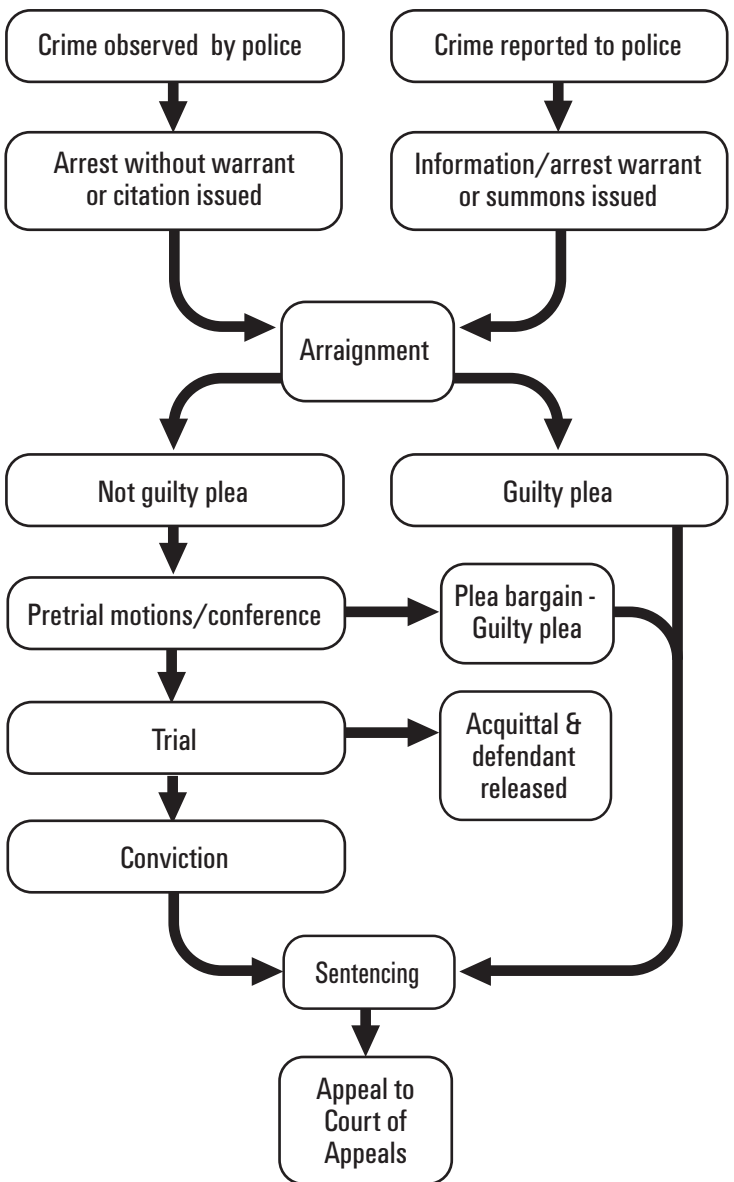
District Court Felony Case Process (Criminal Case)



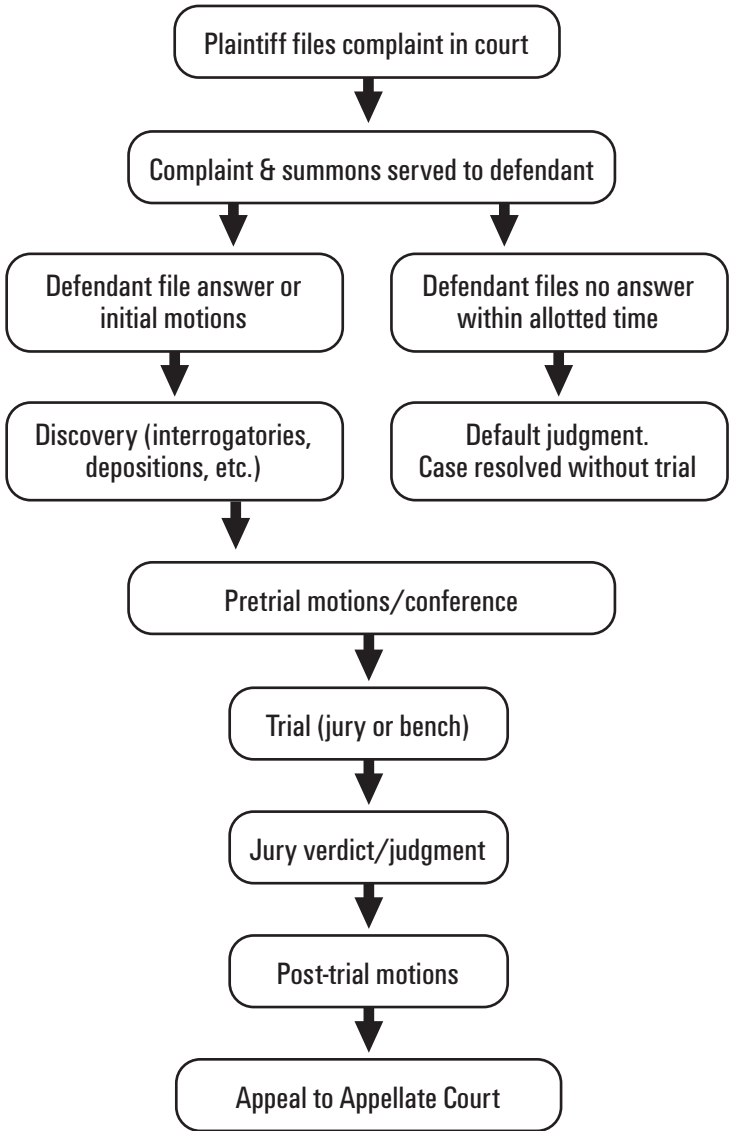
District Court Capital Case Process (Criminal Case)



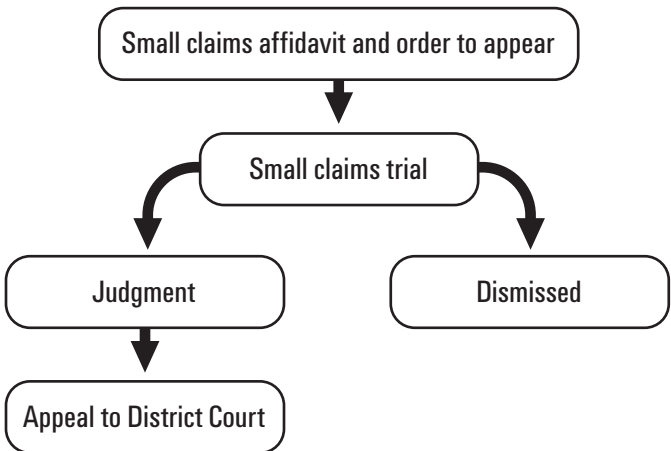
Misdemeanor Case Process (Criminal Case)



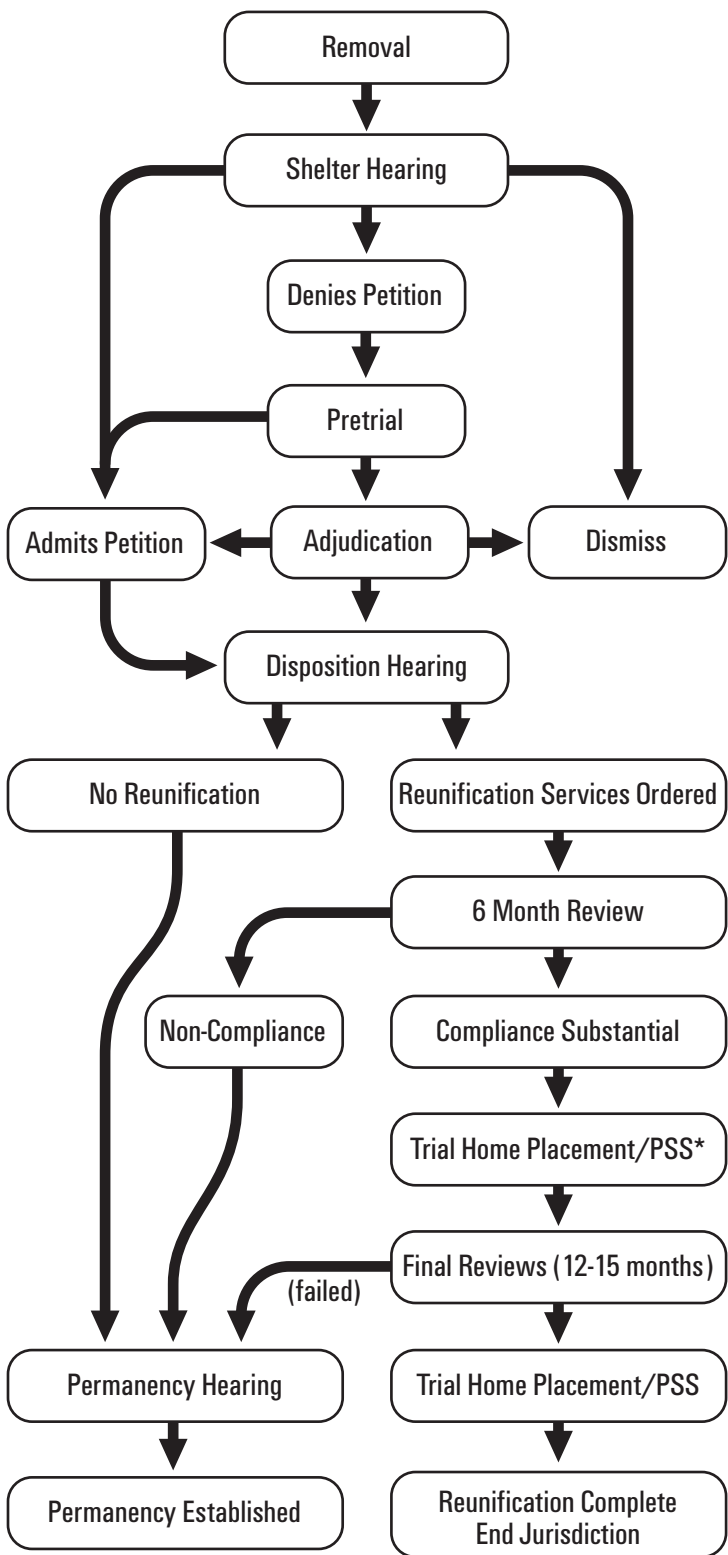
District Court Civil Case Process



Small Claims Process



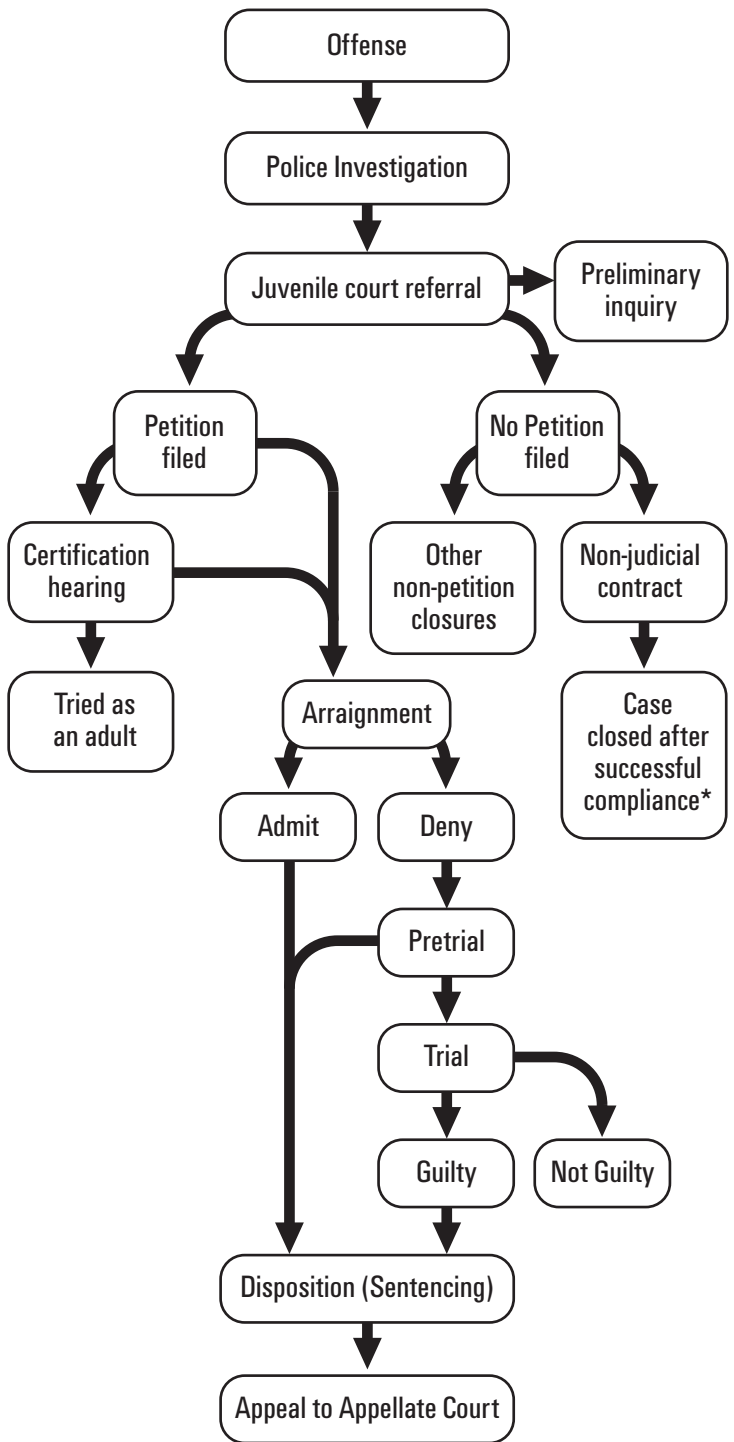
Juvenile Court Time Requirements for Dependency, Neglect and Abuse Cases



* Protective Supervision Services

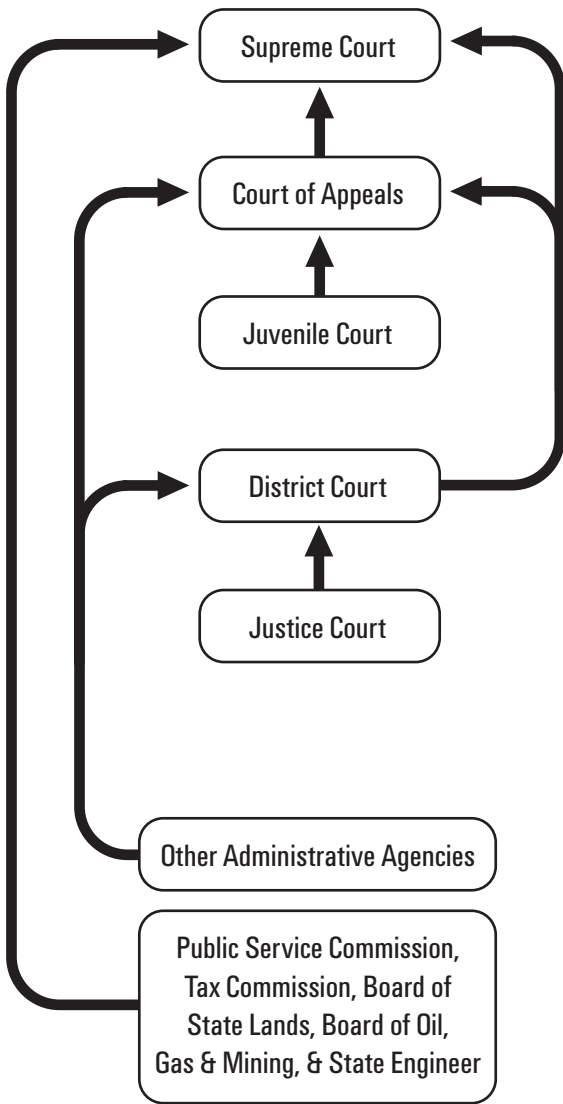
Juvenile Court

Juvenile Case Process - Offenders Only

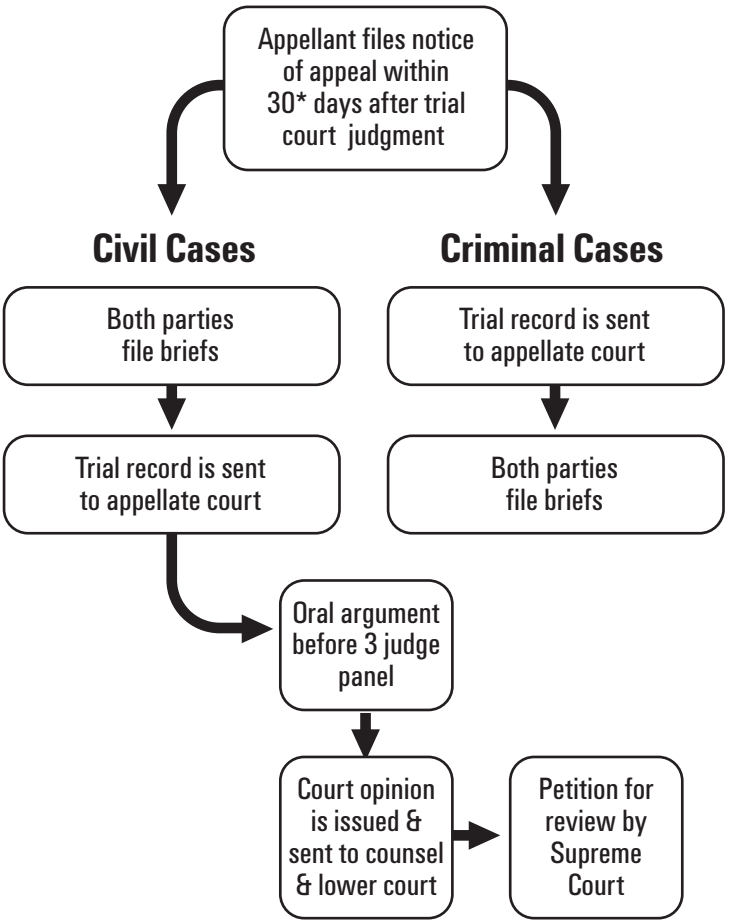


*If unsuccessful, a petition is filed.

Appeals Route

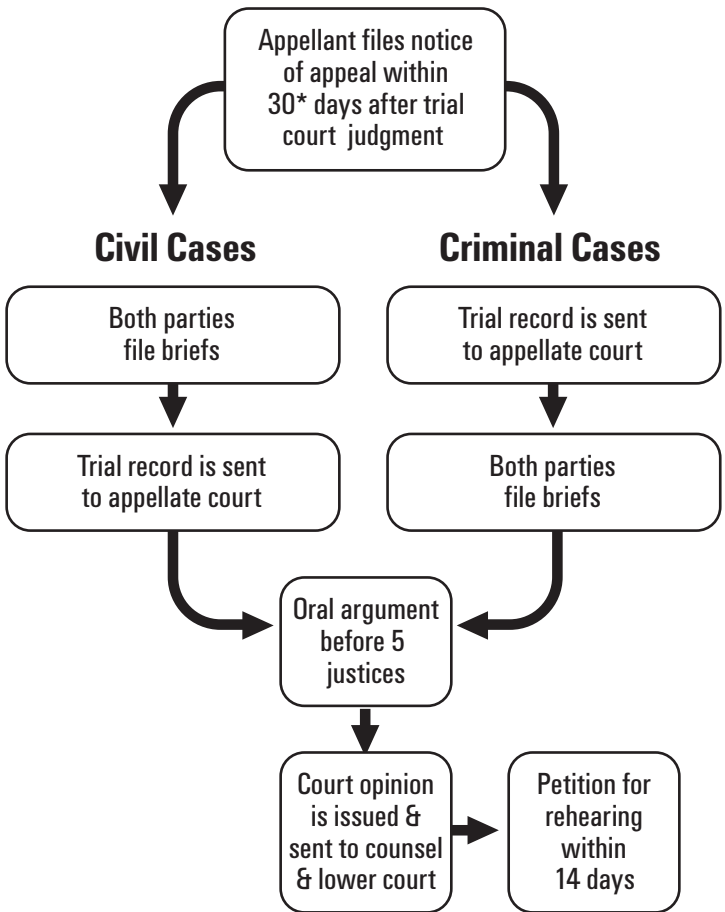


Court of Appeals Appellate Process



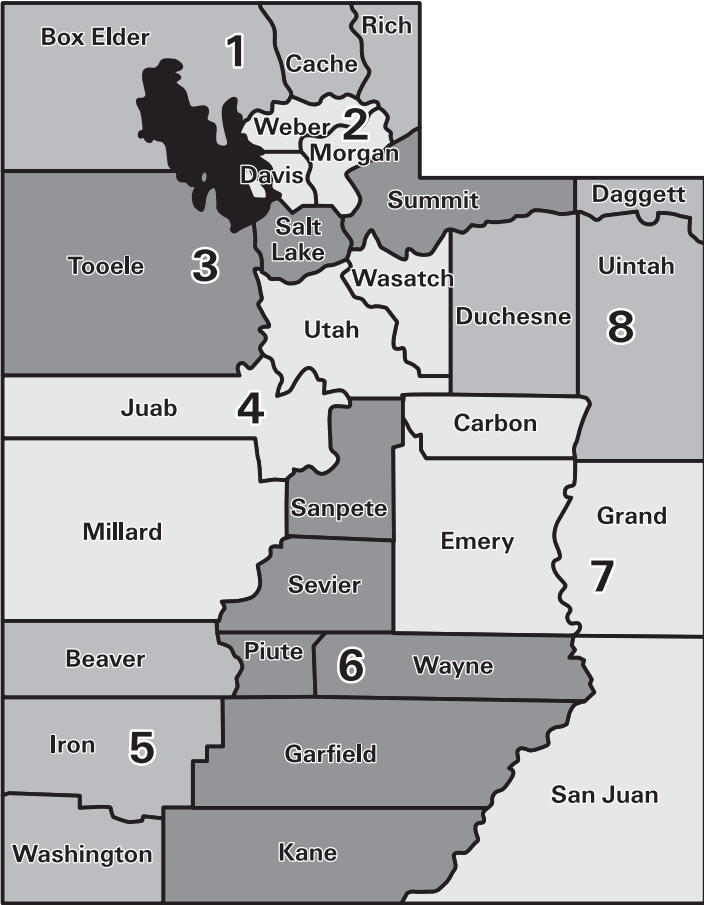
*Some cases have a shorter appeal deadline.

Supreme Court Appellate Process



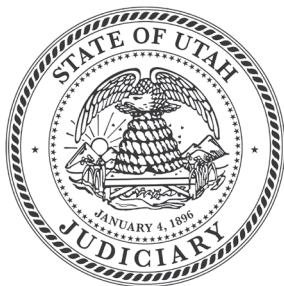
*Some cases have a shorter appeal deadline.

Judicial District Locator Map



Legal Resources

- Utah State Courts:
www.utcourts.gov
- Legal terms and definitions:
www.utcourts.gov/resources/glossary
- Link to rules:
www.utcourts.gov/resources/rules
- Utah State Bar website:
www.utahbar.org (to locate an attorney's contact information)



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