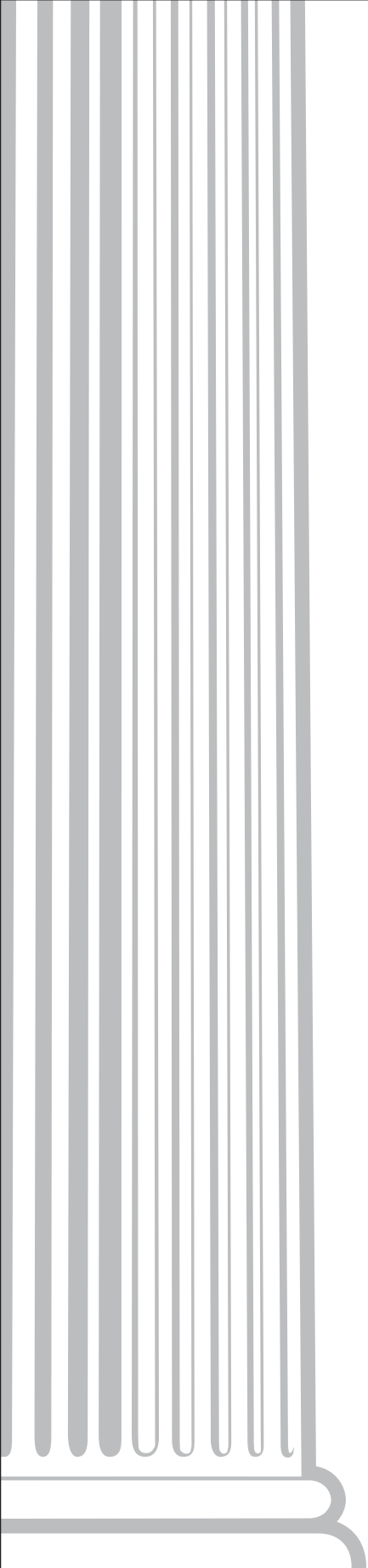


Utah State Courts



# GUIDE to the COURTS

[www.utcourts.gov](http://www.utcourts.gov)

# 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

*Twenty-eight Judges: 6-year terms  
One Court Commissioner*

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  
Nine 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, small claims cases, appeals from justice courts.

## JUSTICE COURT

*One hundred and eight Judges: 6-year terms*

Located throughout Utah, justice courts are locally funded and operated courts. Justice Court cases include: misdemeanor criminal cases, traffic and parking infractions, small claims cases.

# Guide to the Utah State Courts

The Administrative Office of the Utah State Courts is pleased to provide you with a Guide to the Utah State Courts. We hope this booklet is a valuable resource in assisting you when navigating 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 the Frank E. Moss Courthouse in Salt Lake City. For more information on the federal court, go to [www.utd.uscourts.gov](http://www.utd.uscourts.gov).

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*For additional assistance or for suggestions on improving this guide, please call (801) 578-3800.*



# Utah State Court Structure

## Justice Court Structure

Justice courts are limited jurisdiction courts not-of-record, which means that the court proceedings are not recorded by any means. The authority of the courts is limited to the boundaries of the city or county in which the court is located. Individuals are more likely to have contact with a Justice court than any other court because justice courts handle the tens of thousands of citations that are issued every year for such things as traffic violations, and minor shoplifting incidents. The courts must follow the same processes as in other courts and individuals have all the same rights.

Justice courts have exclusive jurisdiction over class B and C misdemeanors and infractions committed within their territorial jurisdiction. Justice court judges have authority to issue search and arrest warrants, and other orders and directives that are necessary in criminal cases.

Four person juries hear trials in the justice courts. Litigants and defendants often act without an attorney (pro se) in justice courts.

Any person not satisfied with a judgment rendered in a justice court can appeal to a district court and receive a new trial.

## Juvenile Court Structure

The main types of cases that the juvenile courts hear are delinquency cases and child welfare cases. The juvenile courts have jurisdiction over individuals who are under 18 years old. The justice courts will have jurisdiction over minors who are 16 or 17 years old and who commit minor traffic offenses. Minors who commit serious offenses may be referred to district court for criminal proceedings. The proceedings in juvenile court are not considered criminal and minors are not considered to have been convicted of crimes.

Child welfare cases involve accusations of adults abusing or neglecting a minor. The focus in these cases is to protect minors. The court will attempt to work with the adults who are alleged to have committed the abuse or neglect. If the individuals should no longer have contact with the particular minor, the juvenile court can terminate all of the rights that the individual has with the minor.

### **District Court Structure**

The district court is the trial court of general jurisdiction. The district court has jurisdiction over all civil cases, felonies, and class A misdemeanors. An important component of the district court caseload is domestic relations cases. These cases include contested and uncontested divorces, child custody, child support, adoption, and paternity. In the larger districts, court commissioners assist the district court judges in handling these by conducting hearings and making recommendations to the judges. If a party disagrees with a court commissioner's order, the party may file an objection and have the issue resolved by the judge assigned to the case.

### **Utah's Appellate Courts**

The Utah system has two appellate courts: the Utah Supreme Court and the Utah Court of Appeals.

The primary function of appellate courts is to review the decisions of the trial courts and administrative agencies. If a party is unhappy with the final decision in a case, that party has a right to appeal the trial court's decision.

The party that brings an appeal 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 - called a brief - explaining their positions. The appellate court may grant each side an opportunity to present oral argument. An appellate court does not hear evidence.

After reviewing the case, the judges confer and vote. One of the judges writes an opinion explaining why the trial court was correct or why the trial court erred. The opinion is also important to those who may have similar legal questions in the future.

## Rulings

The appellate courts issue one of four types of rulings:

- *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 lower court's decision and sends the case back for further proceedings.

## General Information About Court Proceedings

**The following are some of the topics about which the court regularly receives questions.**

### Search Warrants

A search warrant is an order issued by a judge to a police officer allowing that officer to search for and seize evidence of criminal activity. The search warrant must be based on probable cause and must describe the thing, place, or person to be searched and the items to be seized. Evidence may also be seized when the officer has probable cause to believe that the evidence establishes illegal conduct and there isn't enough time to get a search warrant before the evidence might be moved or destroyed. Probable cause means that, based on the information provided by the officer, the officer is likely to find evidence of illegal conduct at the place to be searched.

The search warrant documents become public 20 days after the warrant was issued, unless the judge seals the documents.

## **Interpreters**

For those who do not speak English, the courts will provide an interpreter. A list of interpreters is available on the court's web site at [www.utcourts.gov](http://www.utcourts.gov). The Administrative Office of the Courts certifies interpreters in various languages, including Spanish and Vietnamese and maintains a list of certified interpreters. Interpreters are provided for all parties in a case, including witnesses, victims, and parents for Juvenile Court matters. Spectators do not have a right to a government-paid interpreter.

Interpreters cannot give legal counsel or any other type of advice related to a litigant's case. The interpreter must remain neutral and their only role is to interpret from English into the litigant's native language.

## **Right to Counsel**

The United States and Utah Constitutions guarantee every criminal defendant the right to counsel in criminal proceedings. For those who cannot afford an attorney, the prosecuting government will pay for an attorney if the defendant faces a substantial probability of receiving jail time. A criminal defendant who believes that he or she is entitled to counsel at government expense should raise the issue with the court when the defendant first appears before a judge. The court will ask the defendant to complete an affidavit of indigency. In the affidavit, the person will list income, assets, and liabilities. If the person's income is less than 150% of the poverty guidelines established by the United States government, then the person will qualify for counsel. For those who make over 150% of the poverty guidelines, counsel might still be available if the person is otherwise able to show that the person cannot afford to hire an attorney at his or her own expense. The court has discretion to appoint counsel in those circumstances.

## **Filing fees in Civil Cases**

A litigant who cannot afford to pay the filing fee in a civil case may complete an affidavit of impecuniosity to have the filing fee waived. The affidavit of impecuniosity will be reviewed by a judge at some point in the case. The standard for waiving filing fees is different from the standard for appointing counsel in a criminal case. In civil cases,



the court will determine whether the litigant has the amount of the filing fee available from some resource. If an individual has uncommitted income available from a job, a bank account, or other resource, the judge can require that the filing fee be paid.

## **Forms**

The AOC provides forms for litigants in certain types of cases. The forms are available on the judiciary's website at [www.utcourts.gov](http://www.utcourts.gov). The most commonly used forms are for divorces, protective orders, small claims, name changes, expungement, and probate. The courts do not provide any forms other than those on the website or at each court site. All other pleadings must be prepared by the litigant's attorney, or the litigant if not represented.

## **Online Court Assistance Program**

In addition to providing forms, the court has created an online assistance program, which allows litigants to complete some of the forms on the internet. The program provides assistance in the following types of cases: divorce, paternity, child-support, custody, protective orders, civil stalking, guardianship of a minor, and eviction cases. A fee will not be charged at the time the program is used. If a litigant completes the forms on the Internet, the litigant must print the forms and file those with the court. A filing fee and a fee for using the online program will be assessed at that time. To access the website, go to [www.utcourts.gov/selfhelp](http://www.utcourts.gov/selfhelp).

# **Criminal Process**

NOTE: This section is a brief overview of the criminal process.

## **Criminal cases**

A criminal case occurs when the government has evidence that a person has committed an act prohibited by criminal law. A prosecutor files an "information" against the individual alleged to have broken the law. The information includes the charge and a brief statement of the facts supporting the charge. There are three classifications of criminal activity: felony, misdemeanor, and infraction.

## Felonies

A felony is a crime for which a defendant may be sentenced to prison. The court has the option of putting a defendant on probation instead of sending the defendant to prison. The court can also impose a fine as part of the sentence. Felonies are classified into four categories. Some of the crimes and maximum punishments in each category are listed below:

- **Capital offense:** Aggravated murder.  
—Death, Life in Prison.
- **First Degree:** Murder, rape, child kidnapping, aggravated burglary, and aggravated robbery.  
—5 Years to life in prison.  
—\$10,000 fine.
- **Second Degree:** Manslaughter, robbery, kidnapping, forcible sexual abuse, and intentional child abuse.  
—1 to 15 years in prison.  
—\$10,000 fine.
- **Third Degree:** Burglary of nondwelling, theft of property valued at more than \$1,000 but less than \$5,000, aggravated assault, third DUI in 10 years, and possession of cocaine, methamphetamine, LSD or heroin.  
—0 to 5 years in prison.  
—\$5,000 fine.

## Misdemeanors

A misdemeanor is an offense punishable by a jail term but not prison. Misdemeanors are classified into three categories. All can be tried by a jury. Some of the crimes and maximum punishments are listed in each category below:

- **Class A:** Negligent homicide, DUI with injury, theft, and possession of marijuana (more than 1 ounce, but less than 16 ounces).  
—1 Year in jail.  
—\$2,500 fine.
- **Class B:** Assault, DUI, reckless driving, possession of marijuana (1 ounce or less), shoplifting (under \$300), and many traffic offenses.  
—6 Months in jail.  
—\$1,000 fine.

- **Class C:** Public intoxication, no valid drivers license, and driving on a suspended license.
  - 30 days in jail.
  - \$750 fine.

## **Infractions**

An infraction is a minor offense punishable only by a fine of up to \$750. There can be a trial, but not by a jury. Examples include city traffic violations and certain types of disorderly conduct.

## **How A Felony Comes To Trial**

### **Pretrial Procedures**

A criminal case begins when a prosecuting attorney files an “information.” The information lists the name of the defendant 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 was arrested after a law enforcement officer observed illegal conduct, or 2) the case is a result of a criminal investigation from which arrests have not yet been made. In the latter circumstance, the prosecutor will typically request an arrest warrant at the time the information is filed.

### **Jail Incarceration**

When a defendant is arrested, the defendant is booked into jail, 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 through this process.

### **Release from Jail**

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

- 1) post bail, or
- 2) on the defendant’s Own Recognizance (OR) following an evaluation. (This means that 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.)

## **Posting Bail**

Bail is money that the defendant deposits with the court to guarantee the defendant's appearance in court for all future proceedings. The court will set bail according to the severity of the crime. The court will also consider whether the defendant has a criminal history, is a danger to the community and is likely to appear for future hearings.

Defendants unable to post cash bail may purchase a bail bond from a licensed company. The money paid to the bail company is not refundable even if the defendant does everything that is required. The company posts the bail bond with the court and agrees to pay the bail if the defendant does not appear. If the defendant fails to appear, a warrant is issued for the defendant's arrest and the bail company will try to return the defendant to court.

The right to bail is not absolute. Probationers, parolees, and repeat felons can be denied bail. Capital felony defendants can be denied bail if there is substantial evidence that the defendant committed the offense.

## **First Appearance**

At a defendant's first appearance in a felony case, the court will inform the defendant of the charges and of his or 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 might ask for a hearing to reduce the amount of bail. A date is also set for a preliminary hearing. A plea is not entered at this time.

## **Preliminary Hearing**

The purpose of the preliminary hearing is to determine whether probable cause exists to show 1) that a crime has been committed, and 2) that the defendant was the person who committed the crime. The judge reviews the evidence presented at the hearing. If the judge finds probable cause, the defendant is bound over for trial and the defendant will be arraigned. If the judge decides that there is not sufficient evidence, the case will be dismissed. The defendant can waive the preliminary hearing and proceed directly to arraignment.

## **Arraignment**

During an arraignment, the judge reads the information to the defendant. The defendant must enter a plea at this time. If the plea is guilty, the case is scheduled for sentencing. If the plea is not guilty, the court schedules a pretrial conference and trial dates. A defendant may also plead 1) “not guilty by reason of insanity”; 2) “guilty and mentally ill,” in which case the judge will order a mental evaluation; or 3) “no contest,” which is treated the same as a guilty plea. The judge decides whether to accept any of these pleas. The judge can reject, for example, a plea of guilty and mentally ill if the defendant is not mentally ill.

## **Pretrial Motions**

Before a felony trial begins, the prosecution and the defense may file motions with the court. A motion is a formal request for the judge to decide an issue that should be resolved before trial. Examples include motions to suppress evidence or motions to compel the prosecution to give information to the defendant.

## **Plea Bargains**

A plea bargain is when the prosecution and defense negotiate a disposition of the case. The judge cannot participate in plea bargain discussions. The defendant must approve any plea bargain before it is presented to the judge. The judge must approve or reject any deal. A plea bargain might involve a guilty plea exchanged for a lesser charge or for dismissal of one or more charges. A victim of a crime has the right to be consulted on the plea deal and to provide input, but is not allowed to veto the prosecutor’s decision to enter into a plea bargain.

If all parties and the judge accept the plea bargain, the next step is to sentence 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 the same as 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 issue a citation instead of arresting a defendant. (An officer will often arrest the defendant for more serious misdemeanor charges, such as driving under the influence or domestic violence.) The citation directs an individual to appear at court within a certain period of time or on a specific date. The defendant may 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 when the prosecutor files 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 is often sentenced at that time. If the defendant does not want to be sentenced at that time, the court will schedule sentencing no later than 45 days out. If the defendant pleads not guilty, the case will be set for trial.

## **Civil Process**

NOTE: This section is a brief overview of the civil process.

### **What is a Civil Case?**

A civil case is a dispute between two or more individuals or entities. Most civil actions involve a plaintiff who is suing a defendant for monetary damages or other relief such as the return of property. Examples of civil actions include a claim for personal injury, contracts, or divorce.

## **How A Civil Case Comes To Trial**

### **Plaintiff's Complaint/Petitioner's Petition**

A civil case begins when a plaintiff or petitioner files a complaint or petition. Whether a complaint or a petition is filed depends on the type of case. The complaint or petition identifies the parties and describes the grievance and the remedy that is sought.

## **Complaint/Petition 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 20 days. Many petitions do not require that an answer be filed and therefore a summons is not required. Instead, the court will automatically schedule a hearing on the petition. The plaintiff is responsible for delivering the complaint or petition to a process server for service.

### **Defendant's Answer**

The defendant must answer the complaint by either admitting or denying the allegations. The defendant will also raise defenses to the action, such as the running of a statute of limitation. If an answer or other response is not filed in time, the court may enter a default judgment against the defendant.

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

### **Discovery**

Discovery allows all parties an opportunity to become fully informed of the relevant facts and issues in the lawsuit. Typical discovery includes parties seeking information through written questions (interrogatories) or gathering information from parties and nonparty witnesses through oral questions under oath (depositions).

### **Pretrial 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 various motions after the answer is filed.

There are certain motions (called "dispositive"), which completely resolve claims without the case going to trial. For example, the defendant may file a motion to dismiss. The court decides the motion based solely on the allegations in the complaint.

Either party may file a motion for summary judgment. This type of motion is filed after the discovery period. The judge will grant summary judgment if the pleadings, answers to interrogatories, depositions, and affidavits show that there is no genuine dispute over the facts and that the law dictates a ruling in favor of the party seeking judgment.

## **District Court Proceedings**

### **Protective Orders**

The district courts have authority to hear cases involving domestic violence when a victim is seeking a protective order. An individual who qualifies as a “cohabitant” and who has been subject to domestic abuse or violence may seek an order restraining the abuser from engaging in certain types of conduct.

#### **What is a cohabitant?**

Individuals are cohabitants if they are, for example, current or former spouses, current or former roommates, or related by blood or marriage. The definition of cohabitant does not include those who are merely dating.

### **Protective Order Process**

An individual who seeks a protective order can obtain forms on the judiciary’s website or directly from a district court. The packet of forms will include a petition, temporary protective order, a notice of hearing, and a protective order. The person seeking the protective order is called the petitioner and must complete all the information in the petition. Upon completing the petition, the petitioner files the petition with the court. The petition will then be reviewed by a judge to determine whether the court should issue a temporary protective order. A temporary protective order is designed to give a victim immediate protection from an abuser and can be issued without giving the abuser prior notice. If the petition does not establish that abuse or domestic violence has occurred, or if the petition does not indicate that immediate relief is necessary, the court will deny the temporary protective order.



If the court issues an order, the court will schedule a protective order hearing to be held within 20 days. The court will arrange for the petition and the temporary protective order to be served on the alleged abuser, who is called the respondent. The court will deliver the documents to the sheriff who will serve those on the respondent. The petitioner will be asked to complete a sheet to help the Sheriff identify the respondent.

At the hearing, the court will receive evidence from the petitioner and the respondent. The court will issue a protective order if it determines that abuse or domestic violence has occurred or if there is a substantial likelihood that abuse or domestic violence will happen in the immediate future. If the petitioner does not appear for the protective order hearing, the case most likely will be dismissed. If the court issues a protective order, the protective order will be served on the respondent at that time. If the respondent is not present, the order will be given to the sheriff for service.

The protective order contains provisions that require the respondent to stay away from and have no contact with the petitioner and any family and household members that the petitioner identifies. The order might also require a respondent to move out of a particular residence and might award items of personal property to each of the parties. For example, if the petitioner needs a vehicle to travel to and from work, the court can award the vehicle to the petitioner. The order can also include provisions on child custody, child support, and parent-time. If the court orders relief in these latter areas, the relief will not last more than five months. The party must file a separate action to have those types of issues resolved beyond five months.

## **Right To Trial By Jury**

The Utah and U.S. Constitution provide for a trial by jury in both criminal and civil cases. The number of jurors in a civil case is eight. A capital case will have 12 jurors, a felony case will have eight, a class A misdemeanor case will have six, and other misdemeanor cases will have four.

## **Stages Of A Trial**

Depending on the type of action, a case may be tried before a judge or before a jury. The following are the steps in a trial.

### **Jury Selection**

Jurors are selected from a random cross section of the population in the county in which the court is located. Potential jurors fill out a qualification questionnaire prior to coming to court. Once the questionnaire is returned, and if the person is qualified, the individual is put on a qualified juror list. In order to qualify, a person must be a citizen, 18 years old, and able to read, speak, and understand English. Being a convicted felon will disqualify a person from jury service.

The court will select a certain number of individuals from the qualified juror list to appear on the day of trial. The judge, and in many cases the lawyers, will ask the potential jurors questions about their backgrounds and beliefs to determine any biases that might affect their ability to be impartial in that case. An attorney can ask that a juror be dismissed for cause, based on a juror's biases. 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 that they may excuse prospective jurors without stating a reason. A juror cannot be dismissed based on the juror's race, ethnicity, or gender.

### **Opening Statement**

Attorneys for each side make opening statements to tell the court and jurors the nature of the case, the evidence they will present, and the facts they expect to prove.

### **Prosecution Evidence/Witnesses**

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

The prosecution/plaintiff calls witnesses first. The defense may ask questions of the same witnesses.

## **Defense Evidence/Witnesses**

Once the prosecution/plaintiff has presented its case, the defense may call witnesses to show weaknesses in the prosecution/plaintiff's case and to establish the defendant's case. The prosecution/plaintiff may cross-examine the witnesses.

## **Rebuttal**

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

## **Jury Instructions**

The judge will instruct the jury about the procedures and the laws it must follow. In civil cases, the plaintiff must show that the preponderance of the evidence is on the plaintiff's side. Preponderance of the evidence means that there is more evidence in favor of one party than there is against. In criminal cases, the prosecution must show that the defendant is guilty beyond a reasonable doubt.

## **Closing Arguments**

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 prosecution/plaintiff offers its closing argument first, then the defense, and then the prosecution/plaintiff may respond to the defense's closing argument. Either side may waive closing arguments.

## **Jury Deliberations**

After closing arguments, the judge sends the jury to the jury room for deliberations. The jury is not allowed to communicate with anyone outside of the jury. Jurors are asked to decide the case on the information they heard in court. Sometimes the foreperson will inform the judge that the jury is not making any progress in reaching a majority or unanimous decision. The judge may direct the jurors to continue the deliberations or, in a criminal case, the court might declare a mistrial. Declaring a mistrial is a drastic decision and the court will

encourage the jurors to deliberate unless there is no chance of reaching a verdict. If a verdict cannot be reached in a criminal case, the case can be set for a new trial.

## **Verdict**

In criminal cases, a verdict must be unanimous. The judge (in a bench trial), or the jury can reach one of four possible verdicts:

- *Guilty*—There is no reasonable doubt that the defendant committed every element of the offense.
- *Not Guilty*—There is reasonable doubt that the defendant committed the offense.
- *Not Guilty by Reason of Insanity*—The defendant, because of mental disease or defect, could not have formed the intent to commit the offense.
- *Guilty and Mentally Ill*—The defendant was mentally ill but was still able to form the intent to commit the offense.

In civil cases, at least three fourths of the jurors must agree to the verdict. The jury in a civil case will determine whether the plaintiff has presented enough evidence to support the plaintiff's request. In most cases the jury must determine whether the "preponderance of the evidence" supports the plaintiff's side. This means that there is more evidence in favor of the plaintiff than against. If the plaintiff has requested monetary damages, the judge or the jury will determine how much the plaintiff should receive.

# **Sentencing/Judgment**

**Judges determine the sentence of a defendant.**

## **Criminal Case**

A judge must hold a sentencing hearing between two and 45 days following conviction. The defendant may choose to waive that time frame and be sentenced the day of conviction or after 45 days. In felony cases, judges usually order a presentence investigation report to be prepared by

the Department of Corrections' Division of Adult Probation and Parole (AP&P). AP&P prepares a confidential report for the judge, which includes the defendant's prior adult and juvenile record, drug and alcohol history, and family history. The report will also include the impact of the crime on the victim. Victims have the right to speak at sentencing. The judge imposes a sentence that may include a jail or prison term, probation, fine, restitution, treatment, and any other condition to promote the punishment and rehabilitation of the defendant.

### **Capital Case**

In capital cases, a defendant may request a jury for the sentencing phase of the case. Defense counsel introduces evidence to show that a death sentence is not warranted, and the state may introduce evidence in favor of a death sentence. The jury or judge then deliberates to determine whether the person should be given the death penalty or a life sentence. The jury can determine whether the life sentence does or does not have the possibility of parole.

### **Civil Case**

In a civil case, the jury or judge may award money damages or other relief. 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 its costs in preparing the case.

## **Juvenile Court Proceedings**

### **Children Who Violate the Law (Delinquency Cases)**

When it is alleged that a juvenile committed a crime, a law enforcement officer will report the alleged offense to the juvenile court. Cases are assigned to an intake officer who screens the case. The intake officer might meet with 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 the charge, the intake officer has two options. The intake officer may refer the matter to the county prosecutor, or the officer

may develop a nonjudicial agreement that creates obligations and penalties for committing the delinquent act. These obligations and penalties can include restitution, fines, and community service. If the agreement is fulfilled, the juvenile's case will not go to court. The court will not offer a non-judicial agreement on a serious offense.

Juvenile court hearings are less formal, but the court must still ensure that the juvenile's rights are protected. Juveniles must be notified of all the charges against them. They have the right to an attorney, the right against self incrimination, and the right to confront witnesses.

## **Dispositions**

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 for juveniles. Juveniles who commit serious crimes or are repeat offenders can be placed on probation and/or sent to a detention center. Juveniles who commit the most serious crimes can be committed to a juvenile correctional facility until the juvenile turns 21 years old.

## **Can a juvenile be tried in an adult court?**

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

1. Any 16 or 17 year old accused of murder.
2. Any 16 or 17 year old who has previously been sentenced to a secure facility and is then charged with a felony.
3. Any 16 or 17 year old charged with one of 10 designated felonies against a person is charged as an adult in juvenile court. The juvenile will be bound over to district court unless the juvenile convinces the juvenile court judge that there are compelling reasons to keep the case in juvenile 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 try the juvenile as an adult.

5. Any 16 or 17 year old who receives a citation for a minor traffic or boating offense will be sent to justice court.

### **What happens to a juvenile's record?**

Generally, only the juvenile, the parents or guardian, and the attorneys 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 the juvenile's record will be considered public after the petition is filed. 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 presentence report.

A juvenile may file a petition to expunge his or her record. The judge may expunge the record if the juvenile is 18 years or older and has been released from the court's jurisdiction for at least a year. The court may expunge any offense except murder.

## **Children Who Are Victims**

### **Abuse, neglect, or dependency**

An abused child is one who has suffered or been threatened with nonaccidental physical or mental harm, sexual exploitation, or has been the victim of sexual abuse. A neglected child is one who has been abandoned, mistreated, 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 custodian.

### **Process**

The Utah Code requires anyone who has information that a child has been abused to report the abuse to a law enforcement agency or the Department of Child and Family Services (DCFS). DCFS initiates most of the child welfare cases filed in juvenile court. However, anyone can file a petition in the juvenile court alleging that a child is abused, neglected, or dependent. The state may place children who are in immediate danger into protective custody before a petition is filed. If a child has been physically harmed, the court can order emergency medical treatment.

If a child is removed from his or her home, the court must hold a shelter hearing within 72 hours. The purpose of the hearing is to determine where the child should remain while the case proceeds. The court can order the child to be in the custody of the parents, relatives, or DCFS, depending on which placement provides the best and safest conditions for the child.

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

### **Juvenile court remedies**

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. Children may remain with their parents, subject to certain conditions, such as attending counseling and receiving regular visits from a DCFS worker. In some cases, the children will be temporarily taken away while the parents have a chance to comply with the court’s order to receive social services. If a parent is found to be unfit or has abandoned the child, the court may order that the parent immediately loses his or her 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 the state. The court can proceed with an adoption if an adoptive family is available.

## **Small Claims**

A small claims action can be filed if the request for damages is \$10,000 or less. The case should be filed in the justice court that has jurisdiction over the defendant. A court has jurisdiction over the defendant if the defendant resides within the boundaries served by the court or if the defendant committed the alleged acts within those boundaries.



A small claims court can only award money judgments. A small claims judge cannot order a return of property or evict someone from a residence.

A person can obtain small claims forms on the judiciary's website or from the court where the individual will be filing the small claims case. The individual should complete the small claims affidavit and file it with the court clerk. The clerk will schedule a date for a small claims trial. The clerk will then give a copy of the affidavit back to the plaintiff to have the affidavit served on the defendant. The plaintiff must find someone who will serve the affidavit, such as a constable or process server.

When the small claims trial is held, both the plaintiff and defendant should appear with all their evidence and witnesses. The small claims proceedings are informal and are usually conducted without attorneys. The plaintiff will present his or her case first, and then the defendant. Both sides will have an opportunity to ask the other side questions. The small claims judge will issue a decision at the trial and will complete a judgment form either awarding money or determining that the plaintiff did not make out a sufficient case.

A person can collect a small claims judgment through such means as garnishment or execution. Garnishment is a process by which an individual attaches money from a defendant's bank account or employer. Execution is a process by which a sheriff or constable collects the defendant's property and conducts a sale. The proceeds from the sale will go to the plaintiff to help pay the judgement.

## 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 for the proceeding that is similar to the trial in a district court.

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

**Aftercare**—This is a juvenile court term for what is considered the same as parole.

**Arraignment**—In a felony case, the proceeding after the indictment or bindover 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.

**Brief**—A lawyer's written statement of a client's case filed in appellate 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.

**Denial**—This is a juvenile court term that in district court is referred to as a not guilty plea.

**Detention**—Similar to jail, it is incarceration for juveniles.

**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. There are exceptions specifically authorized by law, such as protective orders.

**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. It means the same as 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 accept appeals of interlocutory orders.

**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 the juvenile court law term for something that is a crime.

**Petition**—There are various types of petitions, including the document filed by the state charging a juvenile with a crime. (A private petition means a family member 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. The corresponding adult law term is to “file charges.”

**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 was reasonable grounds for law enforcement 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 sentences* are sentences ordered by the court but not imposed, 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 has 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 asking the Utah Supreme Court to review a decision of the Utah Court of Appeals. 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 listing of legal terms, go to [www.utcourts.gov/resources/glossary.htm](http://www.utcourts.gov/resources/glossary.htm)

## **How Do I Find Information About A Court Case?**

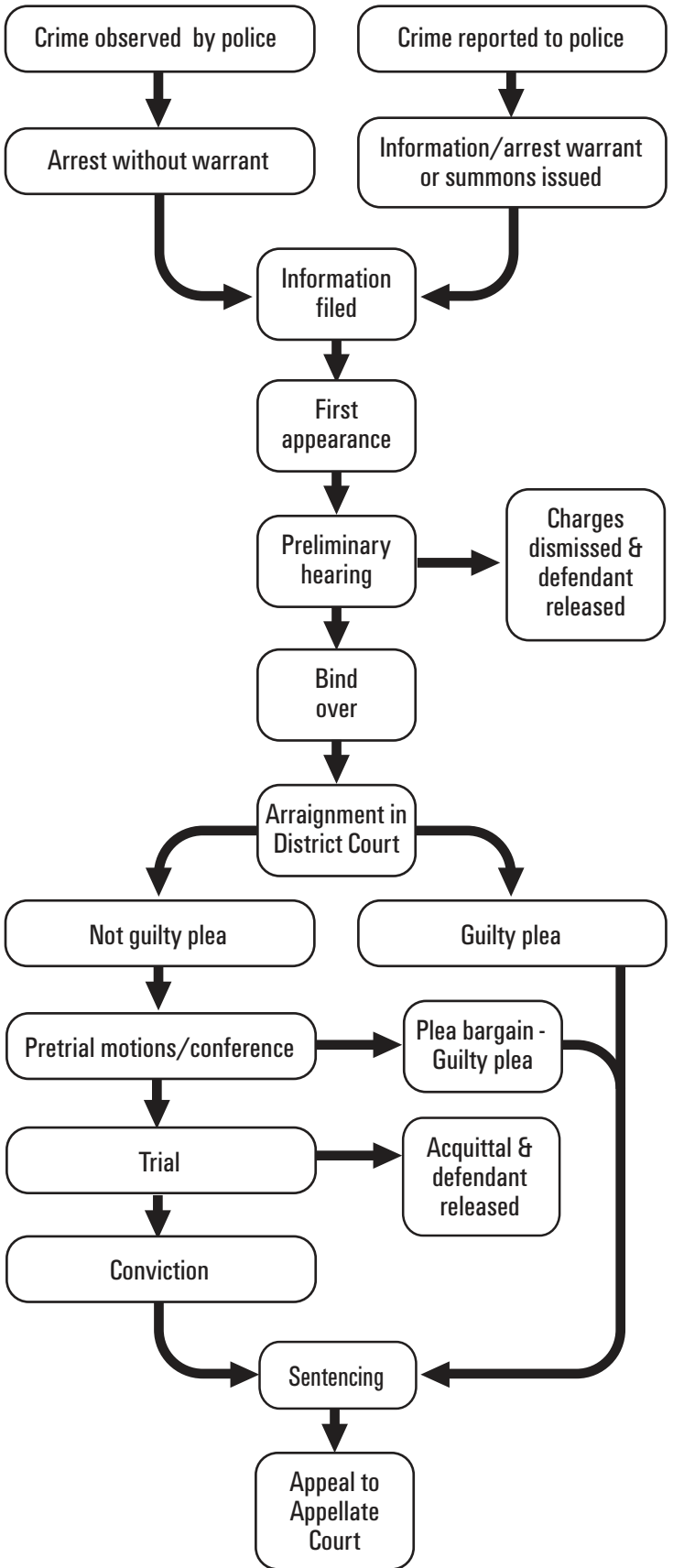
Xchange is an online resource of district and justice court case information. To track a case through the court system, an individual can enter a person's name or case number, which produces the case docket. The docket includes the case name and number, type of case, violation or charge, the judge assigned to the case, and the case history, including arraignments, scheduled hearings, trials, dispositions, motions, and all the pleadings that have been filed. Class B&C misdemeanors, infractions, and small claims cases are filed in justice courts. Most of those are not yet available on Xchange, but they are being added and all of those cases will be available within the next two years.

To access Xchange go to a local courthouse and ask for the public computer terminal.

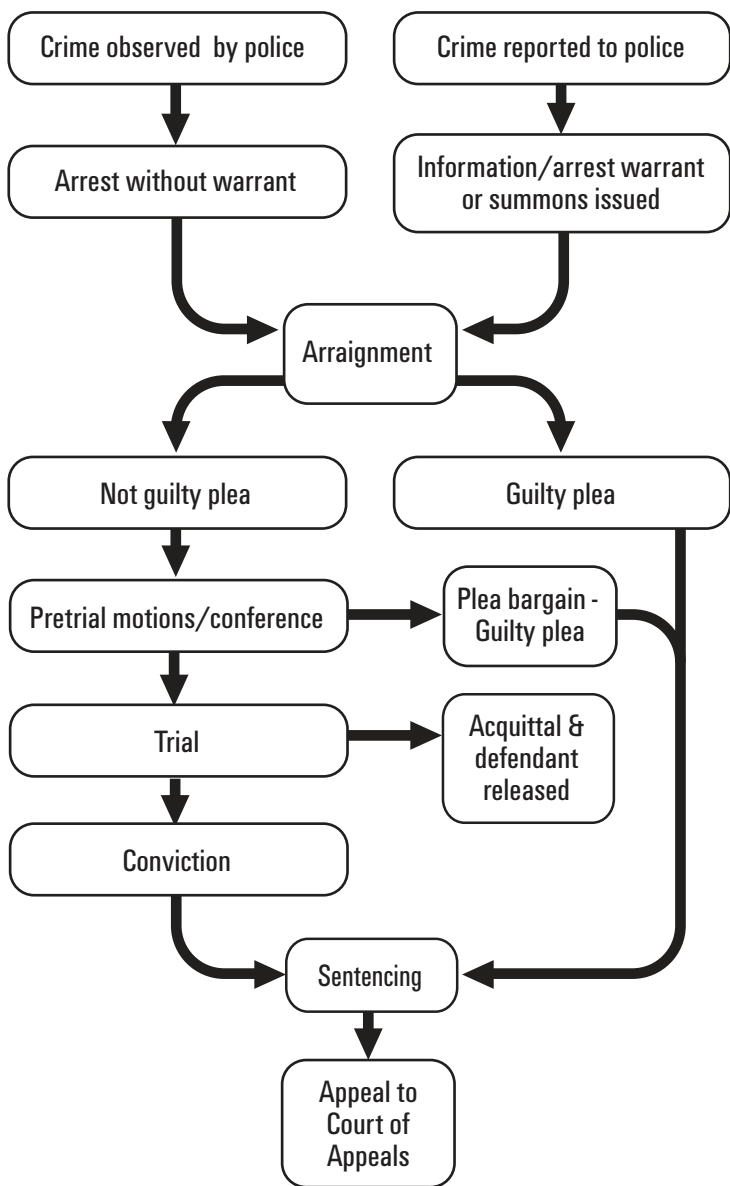
### **Court Calendar**

District court calendars are posted online at [www.utcourts.gov/cal](http://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. Members of the public are invited to attend any court session.

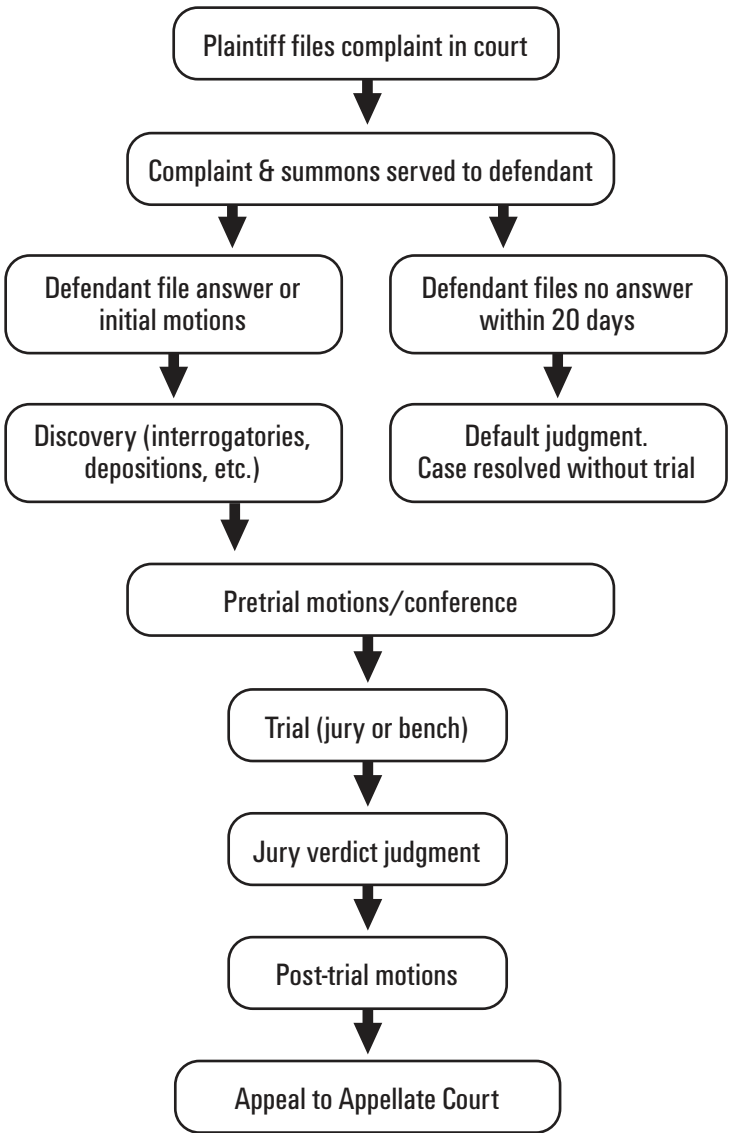
# District Court Felony Case Process (Criminal Case)



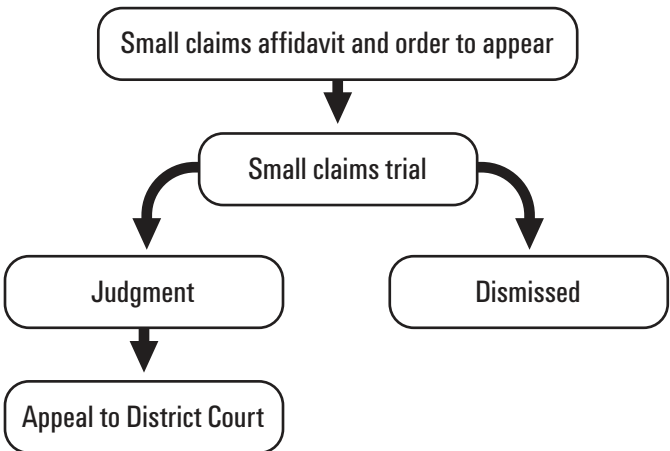
# District Court Misdemeanor Case Process (Criminal Case)



## District Court Civil Case Process

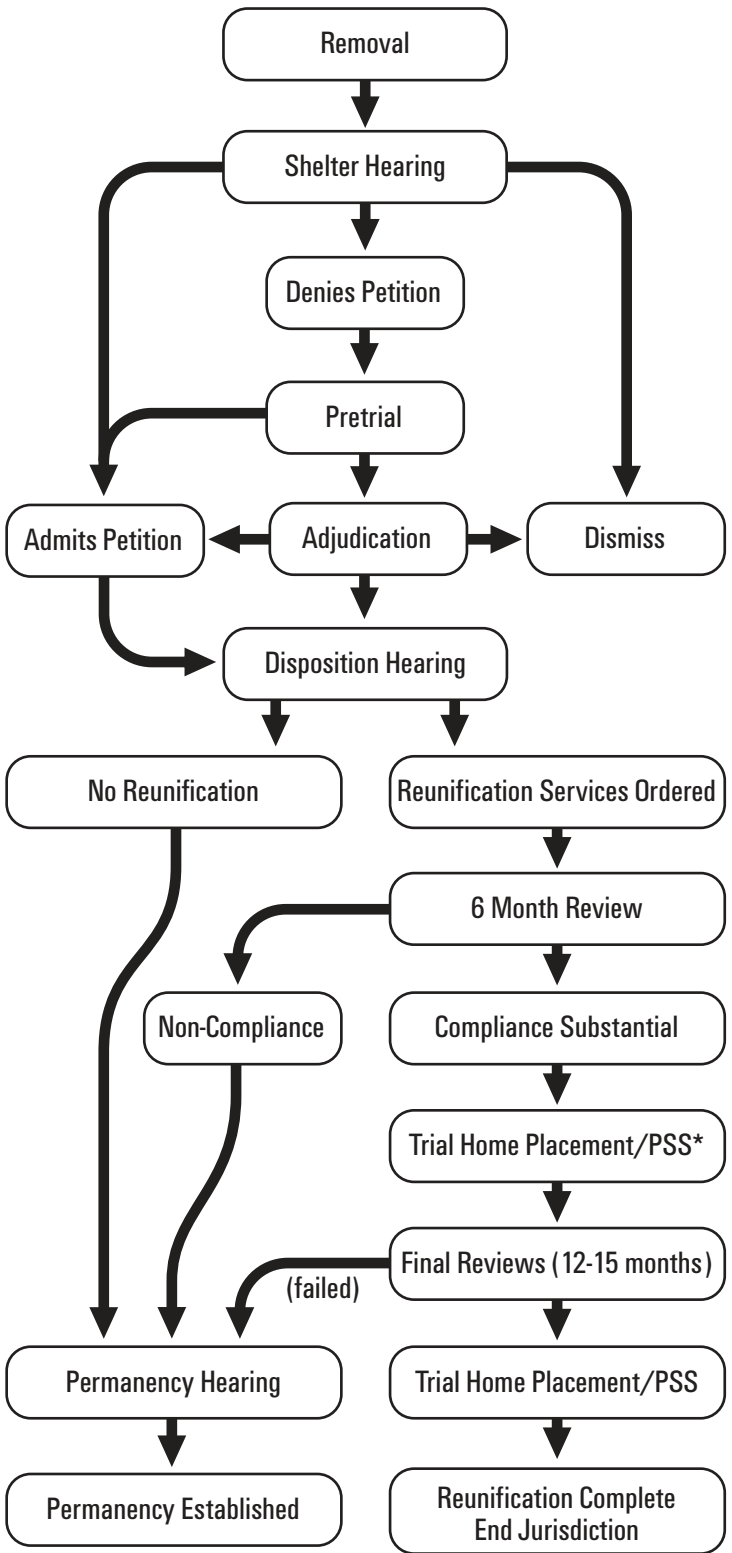


## Small Claims Process





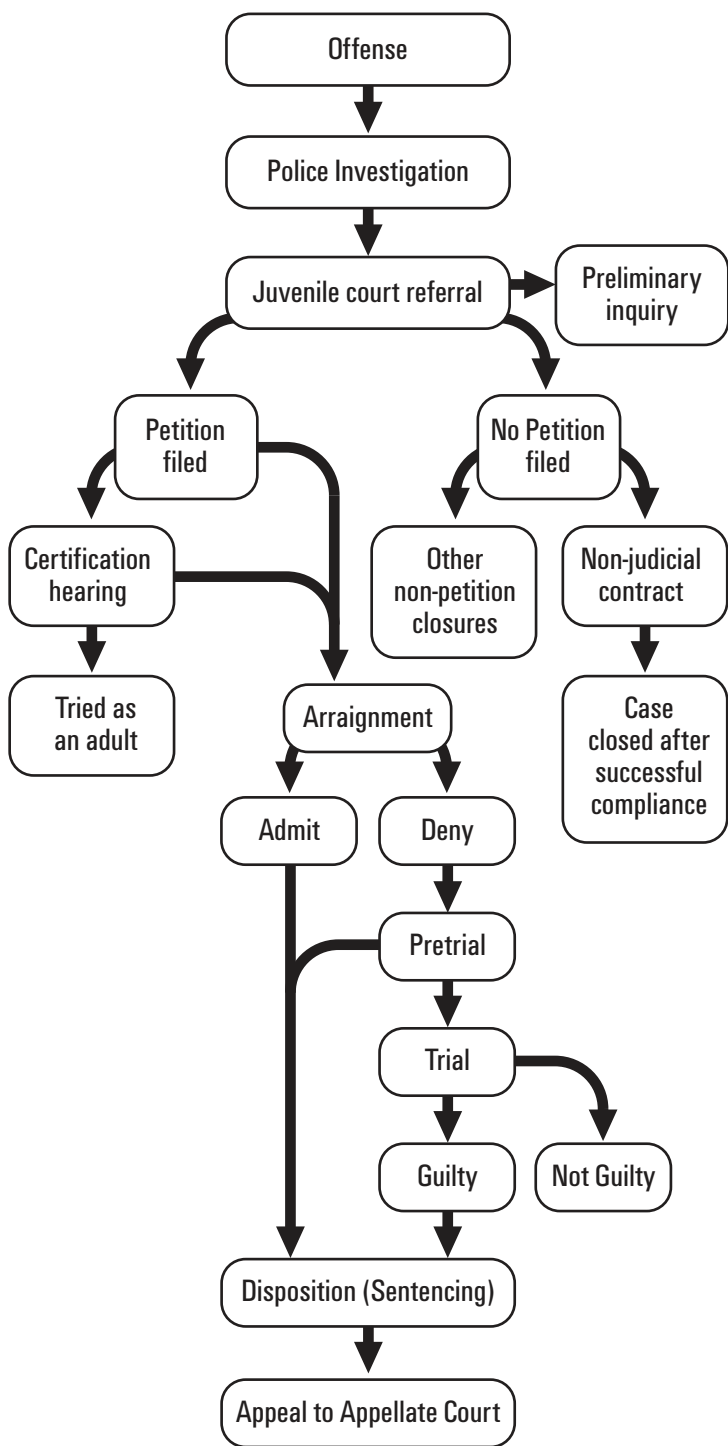
# Juvenile Court Time Requirements for Dependency, Neglect and Abuse Cases



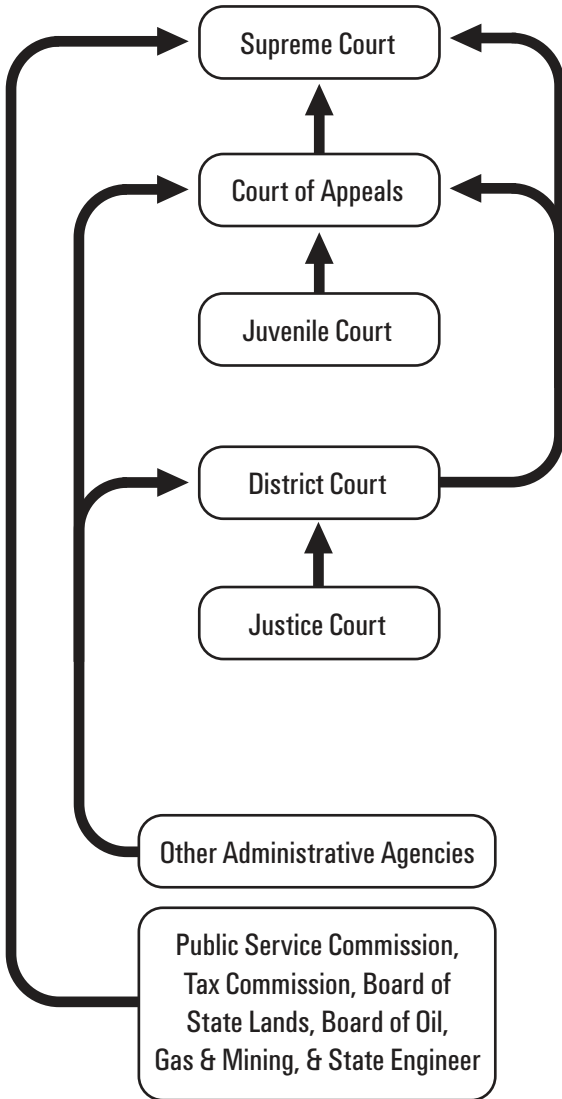
\* Protective Supervision Services

# Juvenile Court

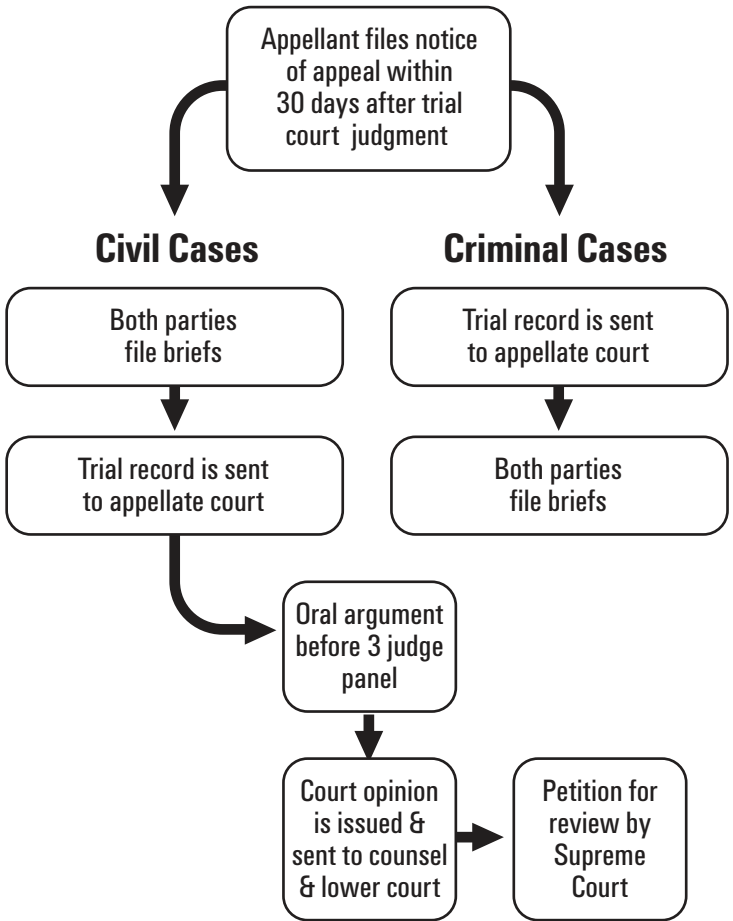
## Juvenile Case Process - Offenders Only



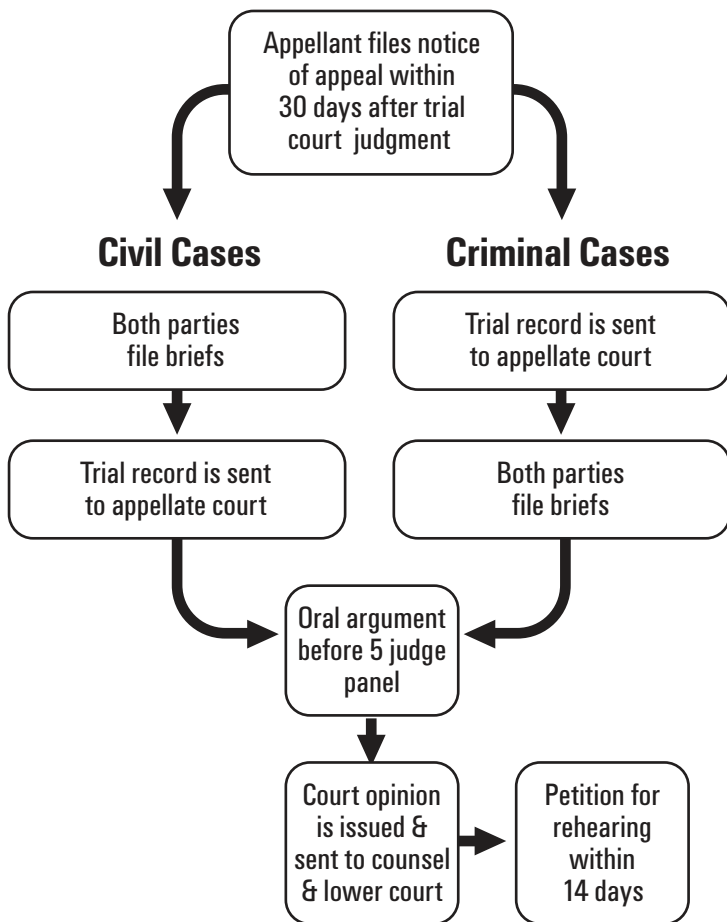
# Appeals Route



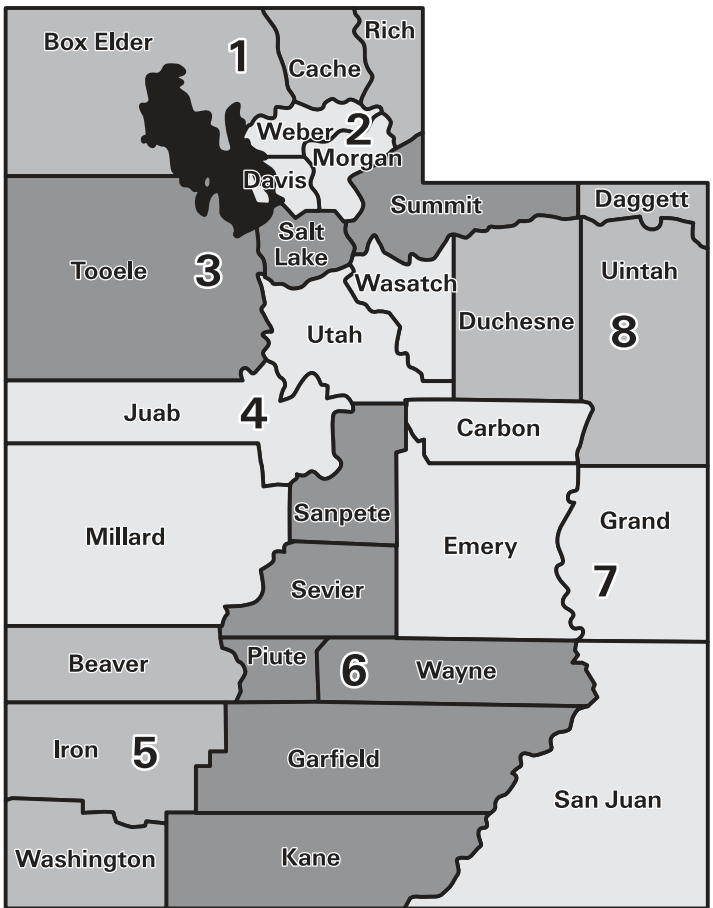
# Court of Appeals Appellate Process



# Supreme Court Appellate Process



# Judicial District Locator Map



## **Legal Resources**

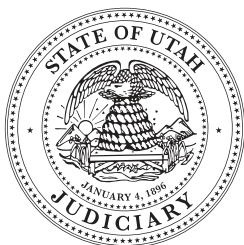
-Utah State Courts: [www.utcourts.gov](http://www.utcourts.gov)

-Legal terms and definitions: [www.utcourts.gov/courts/juv/intro/glossary](http://www.utcourts.gov/courts/juv/intro/glossary)

-Link to rules: [www.utcourts.gov/resources/rules/ucja/index](http://www.utcourts.gov/resources/rules/ucja/index)

-Utah State Bar website [www.utahbar.org/](http://www.utahbar.org/) (to locate an attorney's contact information)

-Utah Open Government Guide and Utah Media Handbook:  
[www.spj.org/uthead](http://www.spj.org/uthead)



Published May 2011

Administrative Office of the Courts

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