

IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A.D. 1992

In the Matter of the Amendments of)
Rules 24(c) and (d), 46.1 through 46.5,)
Wyoming Rules of Criminal Procedure)

IN THE SUPREME COURT
STATE OF WYOMING
FILED

OCT 30 1992


JERRILL D. CARTER, CLERK

**ORDER AMENDING RULES 24(c) AND (d), 46.1 THROUGH 46.5,
WYOMING RULES OF CRIMINAL PROCEDURE**

The members of the Permanent Rules Advisory Committee--Criminal Division having submitted to the court proposed revisions to Rules 24(c) and (d), 46.1 through 46.5, Wyoming Rules of Criminal Procedure, and based upon the submission and recommendation of the advisory committee and with the approval of the court; it is therefore

ORDERED that Rules 24(c) and (d), 46.1 through 46.5, Wyoming Rules of Criminal Procedure, as amended and attached hereto shall be, and they are hereby, adopted; and it is further

ORDERED that the amended rules, as attached hereto, be published in the advance sheets of the Pacific Reporter and thereafter in the Wyoming Reporter; that the amended rules shall become effective 60 days after the publication thereof in the advance sheets of the Pacific Reporter, and thereupon shall be spread at length upon the journal of this court.

Dated this 30th day of October, 1992.

BY THE COURT:


Richard J. Macy
Chief Justice

Rule 24. Trial jurors.

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(c) *Examination of jurors.* -- After the jury panel is qualified the attorneys or a *pro se* defendant, shall be entitled to conduct the examination of prospective jurors, but such examination shall be under the supervision and control of the judge, and the judge may conduct such further examination as the judge deems proper. The judge may assume the examination if counsel or a *pro se* defendant fail to follow this rule. If the judge assumes the examination, the judge may permit counsel or a *pro se* defendant to submit questions in writing. The examination shall be on the record.

(1) The only purpose of the examination is to select a panel of jurors who will fairly and impartially hear the evidence and render a just verdict.

(2) The court shall not permit counsel or a *pro se* defendant to attempt to precondition prospective jurors to a particular result, comment on the personal lives and families of the parties or their attorneys, nor question jurors concerning the pleadings, the law, the meaning of words, or the comfort of jurors.

(3) In voir dire examination counsel or a *pro se* defendant shall not:

(A) Ask questions of an individual juror that can be asked of the panel or a group of jurors collectively;

(B) Ask questions answered in a juror questionnaire except to explain an answer;

(C) Repeat a question asked and answered;

(D) Instruct the jury on the law or argue the case;
or

(E) Ask a juror what the juror's verdict might be under any hypothetical circumstance.

(d) *Peremptory challenges.*

(1) *Felony Cases.* -- If the offense charged is punishable by death, each defendant is entitled to 12 peremptory challenges. If the offense charged is punishable by imprisonment for more than one year, each defendant is entitled to eight peremptory challenges. If two or more defendants are being tried jointly, each defendant shall be allowed separate peremptory challenges. The state shall be

allowed the same number of peremptory challenges as the total of peremptory challenges permitted all defendants.

(2) Misdemeanor Cases. -- If the offense charged is punishable by imprisonment for not more than one year, each defendant is entitled to four peremptory challenges. The state shall be allowed the same number of peremptory challenges as the total of peremptory challenges permitted all defendants.

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Rule 46.1. Pretrial release .

(a) *Applicability of rule.* -- All persons shall be bailable by sufficient sureties, except for capital cases when the proof is evident or the presumption great. Excessive bail shall not be required. When a person charged with the commission of a crime is brought before a court or has made a written application to be admitted to bail, a judicial officer shall order that such person be released or detained pending judicial proceedings, under this rule.

(1) Request for Release. -- Within four hours after a person is confined to jail, the custodial officer shall advise the person of the right to file a written request with the court to be admitted to bail. The custodial officer shall provide the necessary writing materials.

(A) No particular form of request for bail shall be required and the request may be hand-written.

(B) If a request for bail is presented to the court before criminal charges have been filed, it shall be docketed as a criminal case and if criminal charges are later filed they shall be filed in the same case.

(C) The custodial officer shall deliver any written request for bail to the court:

(i) Immediately, if made during the court's regular hours; and

(ii) Without unnecessary delay, but in no event more than 48 hours, if made other than during the court's regular hours.

(D) Notwithstanding the foregoing, a judicial officer may consider written petitions for bail presented during non-business hours.

(2) Appearance Before Court. -- Upon a person's first appearance before the court, the judicial officer shall order that, pending trial or the filing of charges, the person be:

(A) Released on personal recognizance or upon execution of an unsecured appearance bond, under subdivision (b); and

(B) Released on a condition or combination of conditions under subdivision (c).

(b) Release on personal recognizance or unsecured appearance bond. -- The judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a federal, state, or local crime during the period of release, unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

(c) Release on conditions.

(1) If the judicial officer determines that the release described in subdivision (b) will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person:

(A) Subject to the condition that the person not commit a federal, state, or local crime during the period of release; and

(B) Subject to the least restrictive further condition, or combination of conditions, will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person:

(i) Remain in the custody of a designated person who agrees to assume supervision and to report any violation of a release condition to the court if the designated person is able reasonably to assure the judicial officer that the person will appear as required, and will not pose a danger to the safety of any other person or the community;

(ii) Maintain employment, or if unemployed, actively seek employment;

(iii) Maintain or commence an educational program;

(iv) Abide by specified restrictions on personal associations, place of abode, or travel;

(v) Avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

(vi) Report on a regular basis to a designated law enforcement agency, or other agency;

(vii) Comply with a specified curfew;

(viii) Refrain from possessing a firearm, destructive device, or other dangerous weapon;

(ix) Refrain from the use of alcohol, or controlled substances, as defined in W.S. 35-7-1002, *et seq.*, without a prescription by a licensed medical practitioner;

(x) Undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

(xi) Execute an agreement to forfeit upon failing to appear as required, such designated property, including money, as is reasonably necessary to assure the appearance of the person as required, and post with the court such indicia of ownership of the property or such percentage of the money as the judicial officer may specify;

(xii) Execute a bail bond with solvent sureties in such amount as is reasonably necessary to assure the appearance of the person as required;

(xiii) Return to custody for specified hours following release for employment, schooling, or other limited purposes;

(xiv) Execute a waiver of extradition; and

(xv) Satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

(2) The judicial officer may at any time amend the order to impose additional or different conditions of release.

(d) *Factors considered.* -- The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning:

(1) The nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;

(2) The weight of the evidence against the person;

(3) The history and characteristics of the person including:

(A) The person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) Whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal, state, or local law; and

(4) The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

(e) *Contents of release order.* -- In a release order issued under subdivision (b) or (c), the judicial officer shall:

(1) Include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

(2) Advise the person of the consequences of violating a condition of release, including the immediate issuance of a warrant for the person's arrest.

(f) *Presumption of innocence.* -- Nothing in this rule shall be construed as modifying or limiting the presumption of innocence.

Rule 46.2. Post conviction release or detention.

(a) *Pending sentence.* -- The court shall order that a defendant who has been found guilty of an offense and who is waiting imposition or execution of sentence be detained, unless the

court finds that the defendant is not likely to flee or pose a danger to the safety of any other person or the community if released under Rule 46.1(b) or (c). If the court makes such a finding, such court shall order the release of the defendant in accordance with Rule 46.1(b) or (c).

(b) *Pending appeal by defendant.* -- The court shall order that a defendant who has been found guilty of an offense who is waiting and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the court finds that the defendant is not likely to flee or pose a danger to the safety of any other person or the community if released under Rule 46.1(b) or (c). If the court makes such findings, such judicial officer shall order the release of the defendant in accordance with Rule 46.1(b) or (c).

Rule 46.3. Release or detention of material witness.

If, upon application filed by the state or the defendant and supported by oath or affidavit, it appears that the testimony of a person is material in a criminal proceeding, and if it is shown that it may become impracticable to secure the presence of the person by subpoena, a judicial officer may order the arrest of the person and treat the person in accordance with the provisions of Rule 46.1. No material witness may be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and if further detention is not necessary to prevent a failure of justice. Release of a material witness may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Wyoming Rules of Criminal Procedure.

Rule 46.4. Sanctions for failure to appear or for violation of release order.

(a) *Failure to appear.* -- Whoever having been released under Rules 46 through 46.4 knowingly fails to appear before a court as required by the conditions of release, or fails to surrender for service of sentence pursuant to a court order may be punished for contempt. It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the person from appearing or surrendering, and that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement to appear or surrender, and that the person appeared or surrendered as soon as such circumstances ceased to exist.

(b) *Declaration of forfeiture.* -- If a person fails to appear before a court as required and the person executed an appearance bond, the judicial officer may regardless of whether the person has been charged with an offense under this rule declare any property designated pursuant to Rule 46.1 to be forfeited to the State of Wyoming.

(c) *Violation of release condition.* -- A person who has been released under Rule 46.1, 46.2, or Rule 46.3 and who has violated a condition of that release, is subject to a revocation of release and a prosecution for contempt of court.

(1) *Revocation of Release.* -- The attorney for the state may initiate a proceeding for revocation of an order of release by filing a motion with the court. A warrant may issue for the arrest of a person charged with violating a condition of release, and the person shall be brought before the court for a hearing. An order of revocation shall issue if, after a hearing, a judicial officer finds that there is:

(A) Probable cause to believe that the person has committed a federal, state, or local crime while on release; or

(B) Clear and convincing evidence that the person has violated any other condition of release.

If an order of revocation issues, the judicial officer shall again treat the person in accordance with the provisions of Rule 46.1 and may amend the conditions of release accordingly.

(2) *Prosecution for Contempt.* -- A prosecution for contempt may be brought under Rule 42 if the person has violated a condition of release.

A person charged with an offense who is released upon the execution of an appearance bond with a surety may be arrested by the surety, and if so arrested, shall be delivered promptly to a sheriff and brought before a judicial officer. The judicial officer shall determine in accordance with the provisions of this rule whether to revoke the release of the person, and may absolve the surety of responsibility to pay all or part of the bond. The person so committed shall be held in official detention until released pursuant to Rule 46.1 or sentenced upon a finding of contempt under Rule 42.