

MAY 11 2023

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IN THE UTAH SUPREME COURT

<p>STATE OF UTAH, Plaintiff / Appellant, vs. KOLBY RYAN BARNETT, Defendant / Appellee.</p>	<p>NOTICE OF SUPPLEMENTAL AUTHORITIES UNDER RULE 24(J) App No. 20220636-SC</p>
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Kolby Barnett files this notice of supplemental authority under Utah R. App. P. 24(j). He has attached the following to this notice to aid the Court in oral argument next week:

- Addendum A: 1896 Utah Constitution, Article I
- Addendum B: 1884 Laws of the Territory of Utah (Sec. 59 *et seq*)
- Addendum C: 1888 Compiled Laws of Utah (Sec. 5160 *et seq*)
- Addendum D: 1898 Revised Statutes of the State of Utah (Sec. 4983 *et seq*)

- Addendum E: 1978 Utah Code (§§ 77-43-1 *et seq*)
- Addendum F: 1990 Utah Code (§§ 77-20-1 *et seq*)
- Addendum G: 2023 Utah Code (§§ 77-20-201 *et seq*)

DATED this 11th day of May, 2023.

THE APPELLATE GROUP

/s/ Emily Adams
EMILY ADAMS
Attorney for Appellee

CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2023, I emailed a true and correct copy of the foregoing postage prepaid to the following:

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/s/ Emily Adams

ADDENDUM A

1896 Utah Constitution

Article I

1896 UTAH CONSTITUTION

ARTICLE I

DECLARATION OF RIGHTS

Section 1. [**Inherent and inalienable rights.**] All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

Sec. 2. [**All political power inherent in the people.**] All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require.

Sec. 3. [**Utah inseparable from the Union.**] The State of Utah is an inseparable part of the Federal Union and the Constitution of the United States is the supreme law of the land.

Sec. 4. [**Religious liberty.**] The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof. There shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment. No property qualification shall be required of any person to vote, or hold office, except as provided in this Constitution.

Sec. 5. [**Habeas corpus.**] The privilege of the writ of *habeas corpus* shall not be suspended, unless, in case of rebellion or invasion, the public safety requires it.

Sec. 6. [**Right to bear arms.**] The people have the right to bear arms for their security and defense, but the Legislature may regulate the exercise of this right by law.

Sec. 7. [**Due process of law.**] No person shall be deprived of life, liberty or property, without due process of law.

Sec. 8. [**Offenses bailable.**] All prisoners shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption strong.

Sec. 9. [**Excessive bail and fines. Cruel punishments.**] Excessive bail shall not be required; excessive fines shall not be imposed; nor shall cruel and unusual punishments be inflicted. Persons arrested or imprisoned shall not be treated with unnecessary rigor.

Sec. 10. [**Trial by jury.**] In capital cases the right of trial by jury shall remain inviolate. In courts of general jurisdiction, except in capital cases, a jury shall consist of eight jurors. In courts of inferior jurisdiction a jury shall consist of four jurors. In criminal cases the verdict shall be unanimous. In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded.

Sec. 11. [**Courts open. Redress of injuries.**] All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

Sec. 12. [**Rights of accused persons.**] In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense.

Sec. 13. [**Prosecution by information or indictment. Grand jury.**] Offenses heretofore required to be prosecuted by indictment, shall be prosecuted by information after examination and commitment by a magistrate, unless the examination be waived by the accused with the consent of the State, or by indictment, with or without such examination and commitment. The grand jury shall consist of seven persons, five of whom must concur to find an indictment; but no grand jury shall be drawn or summoned unless in the opinion of the judge of the district, public interest demands it.

Sec. 14. [**Unreasonable searches forbidden. Issuance of warrant.**] The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized.

Sec. 15. [**Freedom of speech and of the press. Libel.**] No law shall be passed to abridge or restrain the freedom of speech or of the press. In all criminal prosecutions for libel the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

Sec. 16. [**No imprisonment for debt. Exception.**] There shall be no imprisonment for debt except in cases of absconding debtors.

Sec. 17. [**Elections to be free. Soldiers voting.**] All elections shall be free, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage. Soldiers, in time of war, may vote at their post of duty, in or out of the State, under regulations to be prescribed by law.

Sec. 18. [**Attainder. Ex post facto laws. Impairing contracts.**] No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be passed.

Sec. 19. [**Treason defined. Proof.**] Treason against the State shall consist only in levying war against it, or in adhering to its enemies or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act.

Sec. 20. [**Military subordinate to the civil power.**] The military shall be in strict subordination to the civil power, and no soldier in time of peace, shall be quartered in any house without the consent of the owner; nor in time of war except in a manner to be prescribed by law.

Sec. 21. [**Slavery forbidden.**] Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within this State.

Sec. 22. [**Private property for public use.**] Private property shall not be taken or damaged for public use without just compensation.

Sec. 23. [**Irrevocable franchises forbidden.**] No law shall be passed granting irrevocably any franchise, privilege or immunity.

Sec. 24. [**Uniform operation of laws.**] All laws of a general nature shall have uniform operation.

Sec. 25. [**Rights retained by people.**] This enumeration of rights shall not be construed to impair or deny others retained by the people.

Sec. 26. [**Provisions mandatory and prohibitory.**] The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

Sec. 27. [**Fundamental rights.**] Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.

ADDENDUM B

1884

Laws of the Territory of Utah

L A W S

OF THE

TERRITORY OF UTAH,

PASSED AT THE

TWENTY-SIXTH SESSION OF THE LEGISLATIVE ASSEMBLY,

HELD AT

The City of Salt Lake, the Capital of said Territory,
Commencing January 14, A. D. 1884, and
Ending March 12, A. D. 1884.

PUBLISHED BY AUTHORITY.

SALT LAKE CITY:

THE TRIBUNE PRINTING AND PUBLISHING COMPANY.

1884.

**UTAH STATE
LAW LIBRARY**

court may hold the defendant to bail to appear for judgment. Unless such postponement is demanded it shall be deemed to be waived.

When judgment of fine only is rendered, defendant must be discharged.

SEC. 53. If judgment of acquittal is given, or judgment imposing a fine only, without imprisonment for non-payment, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

Proceedings when judgment of imprisonment is entered.

SEC. 54. When a judgment of imprisonment is entered, a certified copy thereof or an order of commitment reciting the facts of the conviction and judgment must be delivered to the sheriff, marshal, or other officer, which is a sufficient warrant for the execution of the judgment.

Defendant not to be discharged until fine and costs are paid.

SEC. 55. When a judgment is entered imposing a fine, or a fine and costs, and ordering the defendant to be imprisoned until the fine, or fine and costs, are paid, a certified copy of the judgment or an order of commitment reciting the facts of the conviction and judgment may be delivered to the officer who must hold the defendant in custody during the time specified in the judgment, unless the fine, or fine and costs, are sooner paid. In no case must the total amount of fine and costs be as great as three hundred dollars.

Defendant must be discharged upon payment of the fine, except, etc.

SEC. 56. Upon payment of the fine, or fine and costs, the officer must discharge the defendant, if he is not detained for any other legal cause, and deliver the money to the justice, who shall apply it to the payment of the expenses of the prosecution, and pay over the residue, if any, within thirty days to the county or city treasurer, according as the offense is prosecuted for the violation of a Territorial statute or city ordinance. If a fine is imposed, and paid before commitment, it must be applied as prescribed in this Chapter.

CHAPTER VI.

Bail.

Defendant may be admitted to bail at any time.

SEC. 59. The defendant at any time after his arrest, and before conviction, may be admitted to bail.

SEC. 60. Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon bail.

Admission to bail is an order discharging defendant.

SEC. 61. The taking of bail consists in the acceptance, by a competent court or magistrate, of the undertaking of sufficient bail for the appearance of the defendant according to the terms of the undertaking, or that the bail will pay to the people of this Territory a specified sum.

The taking of bail is the acceptance of a sufficient undertaking.

SEC. 62. The defendant, at any time after the making of an order admitting him to bail, instead of giving bail, may deposit with the magistrate or court, in which he is held to answer, the sum mentioned in the order, and upon delivering to the officer in whose custody he is, a certificate of the deposit, he must be discharged from custody.

Defendant may deposit amount of bail.

SEC. 63. If the defendant has given bail, he may, at any time before the forfeiture of the undertaking, in like manner deposit the sum mentioned in the recognizance, and upon the deposit being made the bail is exonerated.

After defendant has given bail he may deposit amount of, etc.

SEC. 64. When money has been deposited, if it remain on deposit at the time of a judgment for the payment of a fine, the court may apply the money in satisfaction thereof, and after satisfying the fine and costs, must refund the surplus, if any, to the defendant.

Court may apply money on deposit to payment of fine, etc.

Surrender of the Defendant.

SEC. 65. At any time before the forfeiture of their undertaking the bail may surrender the defendant in their exoneration, or he may surrender himself, to the officer to whose custody he was committed at the time of giving bail, in the following manner.

The bail may surrender defendant at any time before forfeiture.

First—A certified copy of the undertaking of the bail must be delivered to the officer who must detain the defendant in his custody thereon as upon a commitment, and by a certificate in writing acknowledge the surrender.

Manner of.

Second—Upon the undertaking and the certificate of the officer, the court in which the action is pending must order that the bail be exonerated, and on filing the order and the papers used on the application, they are exonerated accordingly.

SEC. 66. For the purpose of surrendering the defendant, the bail at any time before they are finally discharged, and at any place within the Territory, may themselves arrest him, or by a written authority endorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

The bail may arrest defendant for the purpose of surrendering him.

If money has been deposited, it must be returned if defendant surrender himself.

SEC. 67. If money has been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, surrenders himself to the officer to whom the commitment was directed, in the manner provided in the last two sections, the court must order a return of the deposit to the defendant, upon producing the certificate of the officer showing the surrender.

Forfeiture of the undertaking of Bail or of the deposit of Money.

When bail is forfeited.

SEC. 68. If, without sufficient excuse defendant neglects to appear for trial or judgment, or upon any other occasion when his presence in court may be lawfully required or to surrender himself in execution of the judgment the magistrate must direct the fact to be entered upon the minutes, and the undertaking of bail, or the money deposited instead of bail, as the case may be, is thereupon declared forfeited. But if at any time before the final adjournment of the court, the defendant or his bail, appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking or the deposit to be discharged upon such terms as may be just.

Court may direct the forfeiture to be discharged, when.

Prosecuting attorney may proceed by action against bail, when.

SEC. 69. If the forfeiture is not discharged, as provided in the last section, the prosecuting attorney may at any time, after the adjournment of the court proceed by action only against the bail upon their undertaking.

Money deposited as bail, when forfeited, must be paid into the county treasury.

SEC. 70. If, by reason of the neglect of the defendant to appear, money deposited instead of bail is forfeited, and the forfeiture is not discharged or remitted the magistrate with whom it is deposited must within five days after the bail is forfeited pay over the money deposited into the county treasury of the county in which the offense was committed.

Manner and form of giving bail.

SEC. 71. Bail is put in by a written undertaking, executed by two sufficient sureties (with or without the defendant in the discretion of the magistrate), and acknowledged before the court or magistrate, in substantially the following form :

An order having been made on the _____ day of _____, A. D. 18—, by A. B., a justice of the peace of _____ County (or as the case may be), that C. D. be held to answer upon a charge of (stating briefly the nature of the offense) upon which he has been admitted to bail in the sum of _____ dollars; we, E. F. and G. H. (stating their

place of residence and occupation,) hereby undertake that the above named C. D. will appear and answer the charge above mentioned, in whatever court it may be prosecuted, and will at all times hold himself amenable to the orders and process of the court, and if convicted, will appear for judgment and render himself in execution thereof, or if he fails to perform either of these conditions, that we will pay to the people of the Territory of Utah the sum of—dollars (inserting the sum in which the defendant is admitted to bail).

SEC. 72. The qualifications of bail are as follows:

Qualification of bail.

First—Each of them must be a resident, and householder, or freeholder within the Territory; but the court or magistrate may refuse to accept any person as bail who is not a resident of the county in which the offense was committed where bail is offered;

Second—They must each be worth the amount specified in the undertaking exclusive of property exempt from execution; but the court or magistrate, on taking bail, may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of sufficient bail.

SEC. 73. The bail must in all cases justify by affidavit taken before the magistrate, that they each possess the qualifications provided in the preceding section. The magistrate may further examine the bail upon oath concerning their sufficiency, in such manner as he may deem proper.

SEC. 74. Upon the allowance of bail, and the execution of the undertaking, the magistrate must, if the defendant is in custody, make and sign an order for his discharge upon the delivery of which to the proper officer the defendant must be discharged.

Defendant to be discharged upon allowance of bail.

CHAPTER VII.

Subpoenas.

SEC. 78. The process by which the attendance of witnesses before a court or magistrate is required is a subpoena.

What is a subpoena.

ADDENDUM C

1888

Compiled Laws of Utah

THE
COMPILED LAWS OF UTAH

THE DECLARATION OF INDEPENDENCE

AND

CONSTITUTION OF THE UNITED STATES

AND

STATUTES OF THE UNITED STATES LOCALLY

APPLICABLE AND IMPORTANT.

COMPILED AND PUBLISHED

BY AUTHORITY.

VOL. II.

SALT LAKE CITY:

HERBERT PEMBROKE, BOOK, JOB AND LEGAL BLANK PRINTER, 72 EAST TEMPLE STREET.

1888.

TITLE IX.

MISCELLANEOUS PROCEEDINGS.

- CHAPTER I. Bail.
- CHAPTER II. Compelling the attendance of witnesses.
- CHAPTER III. Examination of witnesses conditionally.
- CHAPTER IV. Examination of witnesses on commission.
- CHAPTER V. Inquiry into the insanity of the defendant before trial or after conviction.
- CHAPTER VI. Compromising certain public offences by leave of the court.
- CHAPTER VII. Dismissal of the action before or after indictment, for want of prosecution, or otherwise.
- CHAPTER VIII. Proceedings against corporations.
- CHAPTER IX. Entitling affidavits.
- CHAPTER X. Errors and mistakes in pleadings and other proceedings.

CHAPTER I.

BAIL.

- ARTICLE I. In what cases defendant may be admitted to bail.
- ARTICLE II. Bail upon being held to answer before indictment.
- ARTICLE III. Bail upon indictment before conviction.
- ARTICLE IV. Bail on appeal.
- ARTICLE V. Deposit instead of bail.
- ARTICLE VI. Surrender of the defendant.
- ARTICLE VII. Forfeiture of the undertaking of bail or of the deposit of money.
- ARTICLE VIII. Recommitment of the defendant, after having given bail or deposited money instead of bail.
- ARTICLE IX. Who may be witnesses in criminal actions.

ARTICLE I.

IN WHAT CASES DEFENDANT MAY BE ADMITTED TO BAIL.

SECTION.

- 5160 Admission to bail defined.
- 5161 Taking of bail defined.
- 5162 Offence notailable.
- 5163 When defendant may be admitted to bail before conviction.
- 5164 When defendant may be admitted to bail after conviction.

SECTION.

- 5165 On what occasions, and with what conditions, bail may be taken.
- 5166 When bail is a matter of discretion, notice of application must be given to prosecuting attorney.

Admission to bail defined.

§ 5160. s 384. Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon bail.

Taking of bail defined.

§ 5161. s 385. The taking of bail consists in the acceptance by a competent court or magistrate, of the undertaking of sufficient bail for the appearance of the defendant, according to the terms of the undertaking, or that the bail will pay to the people of this Territory a specified sum.

Offence not bailable.

§ 5162. s 386. A defendant charged with an offence punishable with death cannot be admitted to bail, when the proof of his guilt is evident or the presumption thereof great. The finding of an indictment does not add to the strength of the proof or the presumption to be drawn therefrom.

When defendant may be admitted to bail before conviction.

§ 5163. s 387. If the charge is for any other offence he may be admitted to bail before conviction, as a matter of right.

When defendant may be admitted to bail after conviction.

§ 5164. s 388. After conviction of an offence not punishable with death, a defendant who has appealed may be admitted to bail.

1. As a matter of right, when the appeal is from a judgment imposing a fine only.

2. As a matter of discretion in all other cases.

On what occasions, and with what conditions, bail may be taken.

§ 5165. s 389. If the offence is bailable, the defendant may be admitted to bail before conviction:

1. For his appearance before the magistrate on the examination of the charge before being held to answer.

2. To appear at the court to which the magistrate is required to return the depositions and statement, upon the defendant being held to answer after examination.

3. After indictment, either before bench warrant is issued for his arrest or upon any order of the court committing him or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment in the court in which it is found or to which it may be transferred for trial.

4. And after conviction and upon an appeal.

5. If the appeal is from a judgment imposing a fine only, on the undertaking of bail, that he will pay the sum, or such part of it as the appellate court may direct, if the judgment is affirmed or modified, or the appeal is dismissed.

6. If judgment of imprisonment has been given, that he will surrender himself in execution of the judgment, upon

its being affirmed or modified, or upon the appeal being dismissed.

§ 5166. s 390. When the admission to bail is a matter of discretion, the court or officer to whom the application is made must require reasonable notice thereof to be given to the prosecuting attorney.

When bail is a matter of discretion, notice of application must be given to prosecuting attorney.

ARTICLE II.

BAIL UPON BEING HELD TO ANSWER BEFORE INDICTMENT.

SECTION.

5167 What magistrates may admit to bail.
5168 Bail how put in. Form of undertaking.

SECTION.

5169 Qualifications of bail.
5170 Bail, how to justify.
5171 On allowance of bail, defendant to be discharged.

§ 5167. s 391. When the defendant has been held to answer upon an examination for a public offence, the admission to bail may be by the magistrate by whom he is so held, or by any magistrate who has power to issue the writ of habeas corpus.

What magistrates may admit to bail.

§ 5168. s 392. Bail is put in by a written undertaking, executed by two sufficient sureties, (with or without the defendant, in the discretion of the magistrate,) and acknowledged before the court or magistrate, in substantially the following form:

Bail, how put in.

An order having been made on the—day of—, A. D. of—county (or as the case may be), that C. D. be held to answer upon a charge of (stating briefly the nature of the offence), upon which he has been admitted to bail in the sum of—dollars. We, E. F. and G. H. (stating the place of their residence and occupation) hereby undertake that the above named C. D. will appear and answer the charge above mentioned, in whatever court it may be prosecuted, and will at all times hold himself amenable to the orders and process of the court, and if convicted, will appear for judgment and render himself in execution thereof, or if he fails to perform either

Form of undertaking.

of these conditions, that he will pay to the people of the Territory of Utah, the sum of——dollars (inserting the sum in which the defendant is admitted to bail).

Qualifications of bail.

§ 5169. s 393. The qualifications for bail are as follows:

1. Each of them must be a resident householder, or freeholder within this Territory; but the court or magistrate may refuse to accept any person as bail who is not a resident of the district where bail is offered.

2. They must each be worth the amount specified in the undertaking, exclusive of property exempt from execution; but the court or magistrate, on taking bail may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of sufficient bail.

Bail how to justify.

§ 5170. s 394. The bail must in all cases justify by affidavit taken before the magistrate, that they each possess the qualifications provided in the preceding section. The magistrate may further examine the bail upon oath concerning their sufficiency, in such manner as he may deem proper.

On allowance of bail, defendant to be discharged.

§ 5171. s 395. Upon the allowance of bail and execution of the undertaking, the magistrate must, if the defendant is in custody, make and sign an order for his discharge, upon the delivery of which to the proper officer, the defendant must be discharged.

ARTICLE III.

BAIL UPON AN INDICTMENT BEFORE CONVICTION.

SECTION.

5172 When offence is not capital.

5173 When the offence is capital.

5174 Bail upon habeas corpus, upon motion.

SECTION.

5175 Bail, how put in. Form of undertaking.

or 5176 Sections applicable to qualification, etc.

When offence is not capital.

§ 5172. s 396. When the offence charged in the indictment is not punishable with death, the officer serving the bench warrant must, if required take the defendant before a

magistrate in the county in which it is issued, or in which he is arrested, for the purpose of giving bail.

§ 5173. s 397. If the offence charged in the indictment is punishable with death, the officer arresting the defendant must deliver him into custody, according to the command of the bench warrant. When offence is capital.

§ 5174. s 398. When the defendant is so delivered into custody he must be held by the proper officer, unless admitted to bail on examination upon a writ of habeas corpus, or upon a motion to the court in which the action is pending, or the judge thereof, to be admitted to bail. Bail upon habeas corpus or upon motion.

§ 5175. s 399. The bail must be put in by a written undertaking, executed by two sufficient sureties (with or without the defendant, in the discretion of the court or magistrate), and acknowledged before the court or magistrate, in substantially the following form: Bail how put in.

An indictment having been found on the—day of—, Form of undertaking.
 A. D.—, in the district court, of the—district, charging A. B. with the crime of— (designating it generally), and he having been admitted to bail in the sum of—dollars, we, C. D. and E. F., of— (stating their place of residence and occupation), hereby undertake that the above named A. B. will appear and answer the indictment above mentioned, in whatever court it may be prosecuted, and will at all times render himself amenable to the orders and process of the court, and, if convicted, will appear for judgment and render himself in execution thereof, or, if he fails to perform either of these conditions, that we will pay to the people of the Territory of Utah, the sum of—dollars (inserting the sum in which the defendant is held to bail).

§ 5176. s 400. The provisions contained in sections 402, 403 and 404, in relation to bail, apply to the qualifications of the bail, and to all the proceedings respecting the putting in and justifying of bail, and incident thereto. Sections applicable to qualifications, etc.

ADDENDUM D

1898

Revised Statutes of the State of Utah

THE
REVISED STATUTES

OF THE
STATE OF UTAH,

IN FORCE

JAN. 1, 1898.



Revised, Annotated, and Published by Authority of the Legislature,

BY

RICHARD W. YOUNG,

GRANT H. SMITH,

WILLIAM A. LEE,

Code Commissioners.

U.S./U
1897

TOGETHER WITH THE CONSTITUTION OF THE UNITED STATES, THE
CONSTITUTION OF UTAH, THE ENABLING ACT, AND
THE NATURALIZATION LAWS.

errors or defects or exceptions which do not affect the substantial rights of the parties. [C. L. § 5152.]

Cal. Pen. C. § 1258.

Errors and mistakes not affecting substantial rights shall be disregarded, § 5080.

4976. Intermediate orders, etc., reviewed on appeal from judgment. Upon an appeal taken by the defendant from a judgment, the court may review any intermediate order or ruling involving the merits or which may have affected the judgment. [C. L. § 5153.]

Cal. Pen. C. § 1259.

4977. Power of supreme court on appeal. The court may reverse, affirm, or modify the judgment or order appealed from, and may set aside, affirm, or modify any or all the proceedings, subsequent to or dependent upon such judgment or order, and may, if proper, order a new trial. [C. L. § 5154.]

Cal. Pen. C. § 1260.

Power of supreme court, §§ 654, 655.

Supreme court under sec. 5154, C. L. 1888, may

reduce excessive fine. *People v. Reggel*, 8 U. 21; 28 P. 955.

4978. New trial ordered must be had in same court. When a new trial is ordered, it must be directed that it be had in the district court of the county from which the appeal shall have been taken. [C. L. § 5155.]

Cal. Pen. C. § 1261.

All criminal business arising in a county must be

tried there unless a change of venue be taken, Con. art. 8, sec. 5.

4979. Reversal of judgment. Discharge of defendant. If a judgment against the defendant is reversed without ordering a new trial, the supreme court must, if he is in custody, direct that he be discharged therefrom; or if on bail, that his bail be exonerated; or if money shall have been deposited instead of bail, that it be refunded to the defendant. [C. L. § 5156.]

Cal. Pen. C. § 1262.

4980. Affirmance of judgment. Enforcement. If a judgment against the defendant is affirmed, the original judgment must be enforced. [C. L. § 5157.]

Cal. Pen. C. § 1263.

4981. Entry of judgment. Papers remitted to court below. When the judgment of the supreme court shall have been given, it must be entered on the minutes, and a certified copy of the entry, together with the papers transmitted to the supreme court on appeal, forthwith remitted to the clerk of the court from which the appeal shall have been taken. [C. L. § 5158.]

Cal. Pen. C. § 1264*.

4982. After remittitur, district court has jurisdiction. After the certificate of the judgment shall have been remitted to the court below, the supreme court shall have no further jurisdiction of the appeal or of the proceedings thereon, and all orders necessary to carry the judgment into effect must be made by the court to which the certificate shall have been remitted. [C. L. § 5159.]

Cal. Pen. C. § 1265.

CHAPTER 45.

BAIL.

4983. Admission to bail defined. Admission to bail shall be by an order of a competent court, magistrate, or legally authorized officer, that the defendant be discharged from actual custody upon bail. [C. L. § 5160*.]

Cal. Pen. C. § 1268*.

4984. Bail how taken. The taking of bail shall consist in the acceptance, by a competent court, magistrate, or a legally authorized officer, of the undertaking with sufficient sureties for the appearance of the defendant according to the terms of the undertaking, or that the sureties will pay to the state a specified sum if he does not appear. [C. L. § 5161*.

Cal. Pen. C. § 1289*.

Form of bond; qualifications of sureties, §§ 4995-4997.

4985. Bail in capital case taken by whom and when. A defendant charged with an offense punishable with death may be admitted to bail only by a judge of the supreme or district court. When, however, the proof of his guilt is evident or the presumption strong, bail shall not be taken. The filing of an information or the finding of an indictment shall not add to the strength of the proof or the presumption to be drawn therefrom. [C. L. § 5162*.

Cal. Pen. C. § 1270*.

Bail in capital cases, Con. art. 1, sec. 8.

4986. Bail a matter of right in case other than capital. If the charge is for any other offense, he may be admitted to bail before conviction, as a matter of right. [C. L. § 5163.

Cal. Pen. C. § 1271.

Bail as a matter of right in other than capital cases, Con. art. 1, sec. 8.

4987. Bail on appeal after conviction. Discretionary, when. After conviction of an offense not punishable with death, a defendant who shall have appealed may be admitted to bail:

1. As a matter of right, when the appeal is from a judgment imposing a fine only.

2. As a matter of discretion in all other cases. [C. L. § 5164.

Cal. Pen. C. § 1272.

4988. Bail before conviction. Bail on appeal. If the offense is bailable, the defendant may be admitted to bail:

Before conviction—

1. For his appearance before the magistrate on the examination of the charge, before being held to answer.

2. To appear at the court to which the magistrate shall be required to return the complaint, upon the defendant being held to answer after examination.

3. After information filed or indictment found, either before warrant is issued for his arrest or upon any order of the court committing him or enlarging the amount of bail, or upon his being surrendered by his bail to answer the information or indictment in the court in which it is filed or found or to which it may have been transferred for trial.

After conviction and upon an appeal—

1. If the appeal is from a judgment imposing a fine only, on an undertaking of bail that he will pay the same or such part thereof as the appellate court may direct, if the judgment is affirmed or modified, or the appeal is dismissed.

2. If judgment of imprisonment shall have been given, that he will surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the appeal being dismissed, or that in case the judgment is reversed and the cause remanded for a new trial, he will appear in the court to which said cause may be remanded, and submit himself to the orders and process thereof. [C. L. § 5165*.

N. Dak. (1895) § 8448; Cal. Pen. C. § 1273*.

Where a territorial statute provides that, in criminal actions, a defendant who has appealed from a judgment imposing a fine may be admitted to bail as a matter of right and as a matter of discretion in all other cases of an appeal from a judgment inflicting both fine and imprisonment, he is not entitled

to be admitted to bail as a matter of right but only in the discretion of the court. A certificate of probable cause under a statute did not necessarily carry with it the right to bail nor deprive the court of all discretion in the premises. *Clawson v. U. S.*, 113 U. S. 143. Same case, 4 U. S. 34; 5 P. 689.

4989. Notice to county attorney of application for bail. When the admission to bail is a matter of discretion, the court or officer to whom the

application shall be made must require reasonable notice thereof to be given to the county attorney. [C. L. § 5166.

Cal. Pen. C. § 1274.

4990. Bail fixed when information or indictment filed. Entry. When the offense charged is not punishable with death, the court at the time the indictment is presented and filed, or information filed, must make an order, to be entered in the minutes, fixing the amount in which the defendant may be admitted to bail, unless the court indorse such order on the warrant.

Mont. Pen. C. § 2380.

4991. Id. Indorsement on warrant. When the order fixing the amount of bail is entered in the minutes, the clerk must indorse the same on the warrant.

Mont. Pen. C. § 2361.

4992. What magistrate to admit to bail. Except as otherwise provided in capital cases, a defendant held to answer upon an examination for a public offense may be admitted to bail by the magistrate by whom he is so held, or by any magistrate who has power to issue the writ of habeas corpus. [C. L. § 5167.

Cal. Pen. C. § 1277*.

4993. Bail in cases not capital. Duty of officer. When the offense charged in the information or indictment is not punishable with death, the officer serving the warrant must, if required, take the defendant before a magistrate in the county in which it shall have been issued, or in which he is arrested, for the purpose of giving bail. [C. L. § 5172.

Cal. Pen. C. § 1284*.

Bail as a matter of right in other than capital cases, Con. art. 1, sec. 8; § 4986.

4994. Capital cases. Duty of arresting officer. If the offense charged in the information or indictment is punishable with death, the officer arresting the defendant must deliver him into custody, according to the command of the warrant; and when the defendant shall have been so delivered, he must be held by the sheriff, unless admitted to bail on examination upon a writ of habeas corpus, or upon a motion to the court in which the action is pending, or the judge thereof. [C. L. §§ 5173, 5174.

Cal. Pen. C. §§ 1285, 1286*.

Bail in capital cases, Con. art. 1, sec. 8; § 4985.

4995. Form of undertaking of bail. Bail must be put in by a written undertaking, executed by at least two sufficient sureties (with or without the defendant, in the discretion of the magistrate), and duly acknowledged, in substantially the following form:

An order having been made on the _____ day of _____, 18____, by _____, justice of the peace of _____ county (or an information having been filed or an indictment having been found on the _____ day of _____, 18____, in the district court of the county of _____) that _____ be held to answer upon a charge of (stating briefly the nature of the offense), or (as the case may be), charging (name of defendant) with the crime of (designating it generally) and he having been admitted to bail in the sum of _____ dollars;

Now, therefore, we, _____ and _____ (as the fact may be) of (stating their place of residence), jointly and severally, hereby undertake that the above named (naming the defendant), will appear and answer the charge above mentioned (or the information or indictment above mentioned, as the case may be), in whatever court it may be presented, and will at all times hold (or surrender) himself amenable to the orders and process of the court, and if convicted, will appear for judgment, and render himself in execution thereof, or, if he fails to perform either of these conditions, that he will pay to the state of Utah the sum of _____