

JUDICIAL COUNCIL MEETING

AGENDA

Monday, July 22, 2013
Judicial Council Room
Matheson Courthouse
Salt Lake City, Utah

Chief Justice Matthew B. Durrant, Presiding

1. 9:00 a.m. Welcome & Approval of Minutes Chief Justice Matthew B. Durrant
(Tab 1 - Action)
2. 9:05 a.m. Chair's Report. Chief Justice Matthew B. Durrant
3. 9:15 a.m. Administrator's Report. Daniel J. Becker
4. 9:30 a.m. Reports: Management Committee. . . . Chief Justice Matthew B. Durrant
Liaison Committee. Justice Jill Parrish
Policy and Planning Judge Greg Orme
Bar Commission. John Lund, esq.
(Tab 2 - Information)
5. 9:40 a.m. Problem Solving Court Approval. Rick Schwermer
(Tab 3 - Action)
6. 9:50 a.m. Court Facilities Planning Committee Update. Judge James Davis
(Tab 4 - Information) Alyn Lunceford
7. 10:10 a.m. Problem Solving Court Certifications. Judge Dennis Fuchs
(Tab 5 - Action) Rick Schwermer
8. 10:30 a.m. Legislative Update and Interim Highlights. Rick Schwermer
(Information)
- 10:40 a.m. Break
9. 10:50 a.m. Concurrent Jurisdiction Discussion. Ray Wahl
(Tab 6 - Discussion)
10. 11:20 a.m. Judicial Branch Education Committee Update. Tom Langhorne
(Tab 7 - Information)
11. 11:40 a.m. Roy Justice Court – Request for Court Hours
Waiver. Judge Scott Waterfall
(Tab 8 - Action)

12. 11:55 a.m. Executive Session

12:05 p.m. Lunch

13. 12:35 p.m. Adjourn

Consent Calendar

The consent items in this section are approved without discussion if no objection has been raised with the Admin. Office (578-3806) or with a Council member by the scheduled Council meeting or with the Chair of the Council during the scheduled Council meeting.

TAB 1

JUDICIAL COUNCIL MEETING

Minutes

Monday, June 23, 2013
Garfield County Courthouse
Panguitch, UT

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:

Chief Justice Matthew B. Durrant
Hon. Kimberly K. Hornak, vice chair
Hon. Judith Atherton
Hon. Glen Dawson
Hon. George Harmond
Hon. Paul Maughan
Hon. Brendan McCullagh
Hon. David Mortensen
Hon. Michele Christiansen for Hon. Gregory Orme
Hon. Reed Parkin
Hon. John Sandberg
Hon. Larry Steele
John Lund, esq. (by phone)

EXCUSED:

Justice Jill Parrish

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Diane Abegglen
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea

GUESTS:

Judge Thomas Higbee, 5th Dist
Judge Wallace Lee, 6th Dist
Wendell Roberts, 6th Dist TCE
Greg Hardman, Kanab City Attny
Duane Huffman, Kanab City Mgr
Nina Laycook, Mayor – Kanab City
Judge Gary Johnson, Kanab Justice
Robert VanDyke, Kane County Attn

1. **WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)**

Chief Justice Durrant welcomed everyone to the meeting.

Motion: Judge Maughan moved to approve the minutes from the May 20, 2013 Judicial Council meeting. Judge Sandberg seconded the motion, and it passed unanimously.

2. **CHAIR'S REPORT: (Chief Justice Matthew B. Durrant)**

Nothing to report at this time.

3. **ADMINISTRATOR'S REPORT: (Daniel J. Becker)**

Mr. Becker reported on the following items:

Judicial Retirements. Judge Bill Thorne has announced his retirement, effective September 15. Judge Kay Lindsay has announced her retirement, effective December 1.

Justice Court Dissolutions. Mr. Becker reminded the Council of Salt Lake and Davis County's letters sent last year with their intent to dissolve their respective justice courts. With no action taken during the 2013 Legislative Session, Mr. Becker sent letters to both justice courts asking for the status of their intent to dissolve their justice courts. Davis County responded

noting that they do not intend to dissolve their justice court at this time, and they will reinitiate the process if they determine they wish to proceed at a later date. Mr. Schwermer has received a verbal representation that Salt Lake County intends to take the same approach.

Juab County Courthouse. The groundbreaking for the Juab County Courthouse took place on June 10.

Ogden Juvenile Courthouse. The groundbreaking is scheduled within the next month.

Visitors to Matheson Courthouse. Mr. Becker mentioned that there were 20,000 fewer visitors to the Matheson Courthouse in May of 2013 compared to May of 2012. Due, he believes, principally to the impact of mandatory e-filing.

E-Filings. 154,000 electronic filings were received in April.

Media Rules. With the new media rules in place, the following requests were highlighted: 1) 27 requests for video, 2) 20 were shot and broadcast, and 3) 7 were not considered or the matter before the courts is pending or was continued.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durrant reported that the Management Committee meeting minutes accurately reflect the issues discussed. The items needing to be addressed by the Council have been placed on today's agenda.

Mr. Becker reported that the Management Committee received a hardship exemption to the mandatory electronic filing requirements (from the Utah State Bar's Pro Bono Commission) relative to a special project involving the representation of defendants appearing for specific hearings during the Third District Court's weekly debt collection calendar. He noted this is the first hardship exemption request received and granted by the Management Committee.

Mr. Becker reminded the Council that Kanab City did not submit a recertification affidavit at the time of recertification of the municipal justice court in January of 2012. Kanab City is requesting dissolution of their justice court effective July 1, 2013. Kane County is requesting more time to prepare for the additional caseload. Discussion of the matter took place at the June Management Committee and will be discussed further later on the agenda.

Liaison Committee Report:

No meeting was held in June.

Policy and Planning Meeting:

Mr. Shea reported on the following:

Several rules have been published for comment.

Discussion took place on the following items at the Committee's June meeting: 1) jury selection and service, 2) guardianship recommendations, and 3) record of arraignment and conviction.

Bar Commission Report:

Mr. Lund reported on the following:

The following award recipients have been selected and will be awarded at the Utah State Bar's Summer Convention, July 17-20 in Snowmass, Colorado: 1) Judge Michael Lyon, Judge of the Year; and 2) Mr. Peter Stirba, Lawyer of the Year.

The Utah State Bar has submitted names for consideration to the Governor for the Appellate Nominating Commission.

Registration for the Summer Convention is going well.

**5. STANDING COMMITTEE ON CHILDREN AND FAMILY LAW UPDATE:
(Judge Thomas Higbee and Ray Wahl)**

Chief Justice welcomed Judge Higbee to the meeting.

Judge Higbee provided an update to the Council on the Committee's activities. He highlighted the following in his update: 1) the Committee was reauthorized in May of 2010, 2) listed the members of the Committee, 3) listing of the four subcommittees – a) adoption, b) divorce procedures, c) custody evaluation, and d) juvenile court jurisdiction.

Adoption. Judge Higbee provided background information on what has taken place with the study of issues relating to concurrent jurisdiction on termination of parental rights. General updates of the Committee's findings and views were provided to the Boards and Council throughout the study. In concluding the study, the Committee has no recommendations. There are no plans to continue studying the matter further.

Divorce Procedures. The subcommittee is working on implementing changes to improve divorce procedures. The following areas are being addressed by the subcommittee: 1) modifications to Rule 101; 2) creation of proposed rule 109, which would enact automatic temporary orders when divorce cases are filed; and 3) review of financial declarations that are used in domestic cases.

Custody Evaluation. The subcommittee's focus deals with fine tuning the statutory and rule synchronization based on Rule 403. Looking at recommendations to change and align them. They are also addressing the matter of custody evaluator consideration of children's preferences.

Juvenile Court Jurisdiction. The subcommittee addresses the matter when an adult was charged with a crime that occurred when they were a juvenile. Recommendations have been made, and the subcommittee will consider whether additional proposals will be made.

The recommendation was to give more discretion to district court in sentencing people charged in the adult system for crimes committed when they were a juvenile.

Guardian ad Litem Practice. An analysis on the recent changes to the guardian ad litem practices in district court on protective orders is in the process of being completed. Commissioner David Dillon has been asked to spearhead this project. He is in the process of contacting each commissioner and others to receive input.

Mr. Becker noted that re-authorization of the Committee would be considered by the Council in 2014, and he asked if the Committee felt they have substantial matters needing to be addressed that would warrant their extension. Judge Higbee indicated he believed they would.

Discussion continued relative to the matter of concurrent jurisdiction on termination of parental rights. A report on the matter of concurrent jurisdiction will be provided to the Council for further discussion at the July 22 Council meeting.

Judge Higbee was thanked for his update.

6. PROPOSED STUDY ITEM: (Daniel J. Becker)

Mr. Becker proposed a study item that would examine the delivery of remote services through technology.

With mandatory e-filing in place for civil, domestic and citation cases and juvenile and criminal e-filing in development, the opportunity exists to determine how best to deliver services through low-volume courts, with consideration to coverage provided remotely.

He highlighted the following: 1) the opportunities to be considered, 2) the issues to be studied, and 3) who should be included in the membership. If approved, an ad-hoc committee would be formed, membership would be selected, and a report would be provided to the Council six months from commencement of the study.

Discussion took place.

The Council agreed to the formation of the study group. Formation of the Committee will be deferred to the July 9 Management Committee meeting.

Mr. Schwermer provided a legislative update.

He highlighted the following in his update: 1) Judge Renee Jimenez, Third Juvenile Court, was confirmed by the Senate; 2) discussion on changing the process of driver's license hearings took place; 3) DUI penalties; 4) court fees for political subdivisions to be discussed by judiciary committee; 5) protection of children in situations of custody or visitation; 6) pre-judgment interest revisions; 7) circuit court system; 8) a request to study law enforcement evidentiary irregularities was made; 9) child welfare parental defense; 10) the court's Appropriation Subcommittee requested to meet twice, with the 1st meeting to be held at the Weber County Courthouse on August 23; 11) interim committees met last week; and 12) administrative subpoena discussion.

7. KANAB JUSTICE COURT – DISSOLUTION ISSUE: (Rick Schwermer)

Mr. Schwermer provided background information on the recertification issue for the Kanab City Justice Court. In January 2012; the judge, rather than Kanab City, submitted a recertification affidavit. Separately, the city asked for an extension of time to consider all of their options relative to the court. At the January 2012 Council meeting, the Council approved a waiver until July 1, 2012. If the recertification ordinance was not received by that date, their prior submission would be treated as a request to dissolve the court.

Discussion took place.

Mr. Greg Hardman, Kanab City Attorney; Mr. Duane Huffman, Kanab City Manager; Mayor Nina Laycook; and Judge Gary Johnson were in attendance. Mr. Hardman provided details as to what transpired relative to the plans for dissolution of the Kanab City Justice Court between city and county officials. Mr. Hardman indicated that written notice was not provided as it is not required in statute. Kanab City officials requested that the court's dissolution be October 1, 2013, rather than July 1, 2013.

Mr. Robert Van Dyke, Chief Deputy Kane County Attorney, spoke on behalf of Kane County. He mentioned that Kane County is in agreement with the proposed October 1, 2013 effective date for dissolution of the Kanab City Justice Court with transfer of the caseload to the Kane County Justice Court. He expressed the need for submitting a notice of dissolution in writing for future dissolutions.

Further discussion took place.

Motion: Judge McCullagh moved to treat the request for dissolution of the Kanab City Justice Court as a request by Kanab City to shorten the one-year waiting period to October 1, 2013. Judge Atherton seconded the motion, and it passed unanimously.

8. CITY ARRANGEMENT WITH ONLINE TRAFFIC SCHOOL PROVIDER TO COLLECT PLEA IN ABEYANCE FEE: (Ray Wahl)

Mr. Wahl mentioned that no action would be taken on this matter today. He provided a brief update on the matter. During an audit, it was found that the city of St. George has an arrangement with an online traffic school provider to collect the plea in abeyance fee. At that time, the matter was referred to the State Auditor's office, but they have declined to take any action at this time. The Management Committee discussed the matter at their June meeting and asked Mr. Brent Johnson to request a copy of the contract. Once the contract has been reviewed, Mr. Johnson will review the findings with the Management Committee and determine what course of action to take.

9. SENIOR JUDGE CERTIFICATION: (Tim Shea)

Judge Michael Lyon has applied to be appointed as an active senior judge. Mr. Shea reported that Judge Lyon meets the minimum performance standards.

Motion: Judge McCullagh moved to forward the recommendations, on behalf of the Council, to the Supreme Court to certify Judge Lyon for appointment as an active senior judge. Judge Maughan seconded the motion, and it passed unanimously.

10. SIXTH DISTRICT UPDATE AND TOUR OF PANGUITCH COURT FACILITY: (Judge Wallace A. Lee and Wendell Roberts)

Chief Justice Durrant welcomed Judge Lee and Mr. Roberts to the meeting.

Judge Lee and Mr. Roberts provided an update to the Council on the Sixth District. He provided a brief history of Garfield County and Panguitch. They highlighted the following in their update: 1) there are two state court facilities in the Sixth District, with the remainder of the court sites being contract sites; 2) all counties are on the state network; 3) e-filing is going well; 4) working on increased security in Richfield; 5) providing judgeship support in the Fifth District when possible; 6) providing judgeship support in the Seventh District as needed; 7) modernizing facilities as needed; 8) added a mental health court in Richfield; 9) Wayne County meeting next week to discuss the possibility of a new courthouse; and 10) security improvements being done in Manti.

Judge Lee and Mr. Roberts were thanked for their update.

The county clerk provided a tour of the facility to the Council.

Motion: Judge Hornak moved to enter into an executive session to discuss personnel matters. Judge Harmond seconded the motion, and it passed unanimously.

11. EXECUTIVE SESSION:

An executive session was held at this time.

12. PRELIMINARY FY2015 BUDGET RELATED ISSUES: (Daniel J. Becker)

Mr. Becker mentioned that two requests for judgeships have been received. A request was received from the Fourth Juvenile Court, and a request was received from the Fifth District Court. He highlighted the following data for the time period of FY 06 – FY 13 relative to the requests: 1) district and juvenile court filings, referrals, and events; 2) district court filings; 3) juvenile court referrals, and events; 4) district court – total judicial officer hours needed; 5) juvenile court – total judicial officer hours needed; 6) district court judicial officer need; 7) juvenile court judicial officer need; and 8) district and juvenile court – judicial workload as a % of standard.

He reviewed the following options for addressing the judgeship requests: 1) don't consider the requests (neither board is recommending the judgeships this year); 2) defer the requests and provide assistance through visiting judges, other court levels within a district, and senior judges; 3) seek appropriation for one or both judgeships; 4) seek legislation increasing the number of judges, but not seek an appropriation (use the savings from mandatory e-filing); and 5) seek legislative/executive authorization to transfer judgeship(s), increase authorized positions in some courts, decrease on others.

Mr. Becker reviewed the mandatory e-filing savings. Possible uses for the savings were highlighted to include: 1) address FY 2015 budget requests, 2) address ongoing needs currently being met with one-time funding; 3) address deficits resulting from reductions in collections due to drop in interest rates and case filings, 4) court visitor program (grant expires in 2014), and 5) selectively restore select programming funds lost during the recession.

A question was asked relative to any future plan for a pay adjustment for law clerks. Mr. Becker explained the process for conducting market comparability adjustments.

Discussion took place.

It was proposed to reach the bottom limit of the projected impact of 8% with the mandatory e-filing savings in district court by July 1, 2014 and downsize the Juvenile Court staff by 3 FTE for a total of 18 FTE. The Council was in agreement with the FY 2014 goal of downsizing by 18 FTEs.

13. ADJOURN

The meeting was adjourned.

TAB 2

**JUDICIAL COUNCIL MANAGEMENT COMMITTEE
MINUTES**

**Tuesday, July 9th, 2013
Matheson Courthouse
450 South State Street
Salt Lake City, Utah**

MEMBERS PRESENT:

Chief Justice Matthew B. Durrant, Chair
Hon. Kimberly Hornak, vice chair
Hon. Judith Atherton
Hon. George Harmond
Hon. John Sandberg

EXCUSED:

GUESTS:

STAFF PRESENT:

Daniel J. Becker
Ray Wahl
Diane Abegglen
Jody Gonzales
Debra Moore
Rick Schwermer
Brent Johnson
Heather Mackenzie-Campbell

1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant welcomed everyone to the meeting. After reviewing the minutes, the following motion was made:

Motion: Judge Sandberg moved to approve the minutes. Judge Harmond seconded the motion, and it passed unanimously.

Chief Justice Durrant noted that this would be Judge Atherton's last meeting before her retirement. He thanked her, on behalf of the Management Committee and the judiciary, for her dedication and service.

2. ADMINISTRATOR'S REPORT: (Daniel J. Becker)

He reported on the following items:

Juvenile Court Administrator. The final interviews to fill the Juvenile Court Administrator vacancy will be held on Monday, July 15. Mr. Becker will be reviewing the qualifications of the final two candidates with the Board of Juvenile Court Judges on Friday, July 12.

Alaskan Court Delegation Visit. A large contingent of court staff from Alaska will be visiting on Monday, July 15 and Tuesday, July 16 to discuss our experience with e-filing.

Judicial Council Vacancy. Judge Randall Skanchy has been nominated by the Third District Bench to fill the vacancy on the Council with Judge Atherton's upcoming retirement.

Minorities on the Bench. Chief Justice Durrant, Mr. Becker, and Mr. Schwermer met with Senator Jim Dabakis and Bar Minority President Jesse Nix to discuss their concern with the need for more minority judges.

3. PROBLEM SOLVING COURT APPROVAL: (Rick Schwermer)

Mr. Schwermer provided background information relative to the proposed problem solving court submitted by Judge James Blanch. He noted that it is somewhat related to a specialty court that Judge Bill Barrett held.

The proposal is for an Alternative Court for High Needs (HN)/Low Risk (LR) offenders and would serve as an alternative track to drug court; therefore, it is not technically considered a drug court.

Discussion took place. The need to assess and evaluate the effectiveness of the court was discussed.

Motion: Judge Hornak moved to approve the court as a pilot court and provide for a review to be completed at the end of two years. Judge Harmond seconded the motion, and it passed unanimously.

4. DRUG COURT CERTIFICATION UPDATE: (Rick Schwermer)

Mr. Schwermer noted that 15 drug courts will be considered for certification at the July 22 Council meeting. He referred to one drug court not meeting all of the requirements. The recommendations for this drug court would be to allow the court in question six months to remedy the problems and revisit them, after that time, to determine if the court has met all requirements for certification.

Discussion took place.

Judge Atherton asked for clarification on the status of certifying mental health courts. Mr. Schwermer provided an update, and he reported that a full certification of the mental health courts will take place next calendar year.

5. STUDY COMMITTEE MEMBERSHIP: (Daniel J. Becker)

Mr. Becker reviewed the proposed membership for the Ad Hoc Committee on Remote Services which will include judges from district, juvenile and justice courts; court executives, clerk of court, and AOC managers. He recommended the committee be authorized to add members as it determined necessary. Mr. Tim Shea will staff the committee.

Discussion took place.

Motion: Judge Atherton moved to approve the proposed membership of the Ad Hoc Committee on Remote Services and allow the Board of Justice Court Judges to submit names of several justice court judges for consideration at the next Management Committee meeting. Judge Hornak seconded the motion, and it passed unanimously.

6. DELTA CITY JUSTICE COURT: (Rick Schwermer)

Mr. Schwermer provided an update on the matter of the Delta City justice court clerk working for both the justice court and the Millard County sheriff's office. A letter, dated June 13, 2013; was sent to the justice court judge, the Delta City Attorney, and the Delta City Mayor requesting the situation be remedied by the July 22 Council meeting, or if not remedied, requesting their attendance at the meeting to discuss the matter further.

Mr. Schwermer reported that the Millard County sheriff's office is in the process of hiring a replacement. The AOC has been assured the matter will be resolved by the July 22 Council meeting.

Discussion took place.

Mr. Schwermer will update the Management Committee at their August 6 meeting as to the outcome.

7. ONLINE TRAFFIC SCHOOL UPDATE: (Brent Johnson)

Mr. Johnson reported that he had received a copy of the contract between St George and an online traffic school provider. He provided background information on the arrangement between St George and the online traffic school provider with regards to collecting the plea in abeyance fee. He reported that the arrangement is legal.

Mr. Johnson noted that to address the matter further, legislation would have to be sought.

Discussion took place.

Ms. Moore will discuss the matter further with the Board of District Court Judges and get feedback on what action, if any they would recommend.

8. ROY JUSTICE COURT – REQUEST FOR COURT HOURS WAIVER: (Rick Schwermer)

Mr. Schwermer provided background information regarding Roy Justice Court's request for a waiver of the statutory four or five day open requirement to a modified four and one-half day schedule for the three summer months, consistent with the Roy City office schedule.

It was noted that the statutory requirement for being open to the public for Class I justice courts is not being met with the modified schedule.

Discussion took place.

The Management Committee asked Mr. Schwermer to invite the appropriate Roy Justice Court officials to the July 22 meeting to discuss the matter further.

9. FOURTH DISTRICT, JUVENILE LIMITED AUDIT TRUST ACCOUNTS: (Heather Mackenzie-Campbell)

Ms. Mackenzie-Campbell reported on the Limited Audit of the Fourth District, Millard, Utah and Wasatch Counties, Juvenile Court Trust Accounts. The audit resulted from the retirement of a clerk and the appointment of a new clerk of court in March 2013.

She highlighted the following in her report: 1) three commendable procedures were recognized, 2) one significant area for improvement was noted, 3) the audit exit conference was held and 4) responses on implementation of action plans have been received.

Mr. Wahl provided comments on the audit.

Motion: Judge Hornak moved to accept the audit report as presented. Judge Sandberg seconded the motion, and it passed unanimously.

10. APPROVAL OF JUDICIAL COUNCIL AGENDA: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant reviewed the proposed Council agenda for the July 22 Council meeting.

Motion: Judge Hornak moved to approve the agenda for the July 22 Council meeting as amended. Judge Sandberg seconded the motion, and it passed unanimously.

Motion: Judge Hornak moved to enter into an executive session to discuss personnel matters. Judge Atherton seconded the motion, and it passed unanimously.

11. EXECUTIVE SESSION

An executive session was held at this time.


12. ADJOURN

The meeting was adjourned.

TAB 3

MEMORANDUM

TO: Judge Royal Hansen, Third District Presiding Judge
Judge Deno Himonas, Third District Associate Presiding Judge
Judge Randall Skanchy, Chair of Third District Specialty Courts Committee
Peyton Smith, Third District Trial Court Executive
Chief Justice Matthew B. Durrant, Chair of Utah Judicial Council
Rick Schwermer, Utah Judicial Council Staff

FROM: Judge James Blanch 

SUBJECT: Proposal for Third District Problem-Solving Court for High-Needs, Low-Risk Drug-Involved Offenders

DATE: May 17, 2013

SUMMARY

The purpose of this memorandum is to propose that the Specialty Courts Committee and Third District Court bench approve, and the Judicial Council certify, an alternative problem-solving court for high-needs, low-risk drug-involved offenders that will supplement the services provided by the Third District's current Drug-Court program. Presently, the Drug-Court program effectively addresses the needs of drug-involved offenders assessed as "high-risk, high-needs" according to the Risk and Needs Triage evaluative tool (the "RANT"). However, offenders assessed as "high-needs, low-risk" with the RANT are not eligible for Drug Court because of the important prohibition against mixing high-risk and low-risk populations in therapeutic courts. This leaves a significant unmet need for a large group of drug-involved offenders who suffer from addiction and could benefit from treatment and the structure of a problem-solving court, but who currently have no options available to them in the Third District other than regular probation.

The specialty court I propose would address the void we currently face with respect to these high-needs, low-risk defendants. Salt Lake County Criminal Justice Services backs the proposal and is prepared to devote to this new court the resources previously committed to the Alternative Resolution Court ("ARC") over which Judge Barrett presided. Prosecutorial resources, defense resources, treatment resources, and law-enforcement resources are all in place. All that remains is for the bench to approve the commitment of judicial resources. This court would convene every other week on Wednesday mornings and would also involve the regular monitoring of clients, through e-mail and otherwise, that is typical of the Drug-Court model. I am willing to assume responsibility for this court. Indeed, I've already constructed my calendar to incorporate these proceedings in the hope and anticipation that this problem-solving court will be approved. I ask that the issue be placed before the Third District bench for consideration as soon as possible so that if the court is approved, it can commence at the beginning of August when I start my regular criminal calendar.

BACKGROUND

The high-needs, low-risk court I propose will differ in important ways from Judge Barrett's ARC program, but it will build off the momentum associated with ARC and draw on many of the resources previously devoted to that program. As it evolved, ARC became known to many by the shorthand term "misdemeanor drug court," with the remainder of our Drug Court program referred to by contrast as "felony drug court." The sense was that ARC was for lower-level offenders who were typically more youthful and less involved criminal histories than the more serious and experienced offenders who populate "felony drug court." Young defendants charged with misdemeanor drug offenses were often referred to ARC out of ECR based on the well-intentioned intuition that such individuals could benefit more from a structured specialty court with available treatment options than from ordinary probation. As I understand it, potential clients were referred based on the level of offense committed—primarily marijuana-related misdemeanor offenses—and their lack of significant prior criminal involvement. They were not usually subjected to the RANT for formal determination of their risk and needs profiles, and there was little formal consideration of whether this client-selection process would result in the unintentional mixing of high-risk and low-risk populations, which research has consistently demonstrated to be detrimental to effective therapeutic courts. There was a mechanism available in ARC whereby clients who demonstrated a need for a higher degree of supervision could be referred to the formal Drug Court program, but clients were rarely referred in the other direction.

With the retirement of Judge Barrett, ARC is coming to an end, with a final court date of May 17, 2013. I have had many conversations with the Salt Lake County personnel involved with ARC, as well as the prosecution and defense attorneys involved in ARC, representatives of the Unified Police Department, and others who would like to see an alternative problem-solving court continue because of the many benefits it creates for the high-needs, low-risk population. The proposed court will correct the shortcomings of ARC (predominantly the lack of RANT screening for clients and the potential of mixing high-risk and low-risk populations), while retaining its substantial benefits.

PROPOSAL

A. Characteristics of Proposed Court

If approved, the problem-solving court I propose would involve screening each potential participant using the RANT. Those not categorized as high-needs, high-risk are ineligible for Drug Court, but they could qualify for the alternative track if they fall within the high-needs, low-risk quadrant. CJS indicates resources and procedure are in place to ensure there would be no mixing of high-risk and low-risk populations, either in court or in treatment groups. These two characteristics of the new court would overcome the shortcomings of ARC, while at the same time preserving ARC's benefits. Given the resources presently available, we would initially plan the court with capacity for approximately 65 clients, with the potential to expand the size in the future depending on our ability and that of CJS to handle a larger group.

Douglas Marlowe, the nation's leading expert on drug courts, has written articles in favor of establishing "alternative tracks" in connection with established Drug Court programs to meet the needs of defendants with different risk/needs profiles. Judge Fuchs and I have spoken with

Professor Marlowe about our proposed problem-solving court, and he has indicated that the proposal fits with goals he has identified in his writings. He has also encouraged us to arrange for a formal study of the effectiveness of this court should we choose to establish it.

The following are some quotations from Professor Marlowe's writing on alternative-track courts, together with descriptions of how the proposed court, as ARC often did before it, meets the stated objectives.

1. *"For these low risk/high need individuals, the primary emphasis should be on ensuring the provision of needed treatment services."* An important benefit of the proposed court is that the high-needs, low-risk client receives immediate treatment services, including full assessment, substance abuse groups, educational classes, and individual sessions if needed. Criminal Justice Services can offer this because it has its own in-house treatment unit with fourteen therapist and two instructors. The alternative for these defendants most likely would be standard probation with Salt Lake County Probation Services. With standard probation, the wait for an initial treatment assessment can take a substantial amount of time. To actually get into treatment can take even longer.

2. *"Rather than spending substantial time in court interacting with high-risk antisocial peers, they should focus their energies in treatment. However, if they stop going to treatment, they should be brought immediately before the judge to receive a swift and certain sanction to ensure they reengage quickly"* Since the proposed court would have regularly scheduled bi-monthly court reviews, the client will see the Judge much sooner than with standard probation. The proposed court would offer intensive case management--65 clients as opposed to a standard probation case load of 100-plus. The court would also have the advantage of a Detective assigned to the court. The Detective would locate clients that fail to appear for court reviews or treatment sessions, conduct home visits, vehicle searches, etc.

3. *"It may be appropriate to hold status hearings for these individuals on an infrequent basis, such as monthly or bi-monthly, for the judge to offer encouragement and administer rewards."* The proposed would convene bi monthly as suggested by Dr. Marlowe. As referenced in number 2, status hearings would not mix high-needs, high-risk clients with high-needs, low-risk. Only defendants screened as high-needs, low-risk would be accepted into the proposed court, so there will be no interacting with the different risk levels.

Some additional points:

CJS indicates that at the time referrals to the ARC program were stopped, there were a total of 99 participants with an 81 percent success rate. ARC involved two case managers. CJS has committed to dedicate one full-time case manager to this new proposed court. For reason, we would plan to begin with a target capacity of 65 clients, hopefully adjusting upwards in the future.

As with any risk assessment tool, the information reported from the client in connection with the RANT may not be truthful. If it becomes apparent, either through extensive relapses or new charges that a client requires more intensive supervision and treatment resources, the client can be transferred to the standard Drug Court program without an interruption in treatment.

Moreover, clients in traditional Drug Court who prove in practice to fall within the high-needs, low-risk profile can be transferred to the alternative track without interruption.

The proposed court would utilize the 10 Key Drug Court Components.

B. Resources Available and Support for Proposed Court

Salt Lake County, the District Attorney's Office, Salt Lake Legal Defender Association, and law enforcement all support the creation of the proposed problem-solving court for high-needs, low-risk offenders and have pledged the resources necessary to make the court a success. These entities have essentially pledged to continue to provide (or to redeploy) the resources previously committed to ARC. Attached as exhibits A-C are letters from Gary Dalton of Salt Lake County, Patrick Anderson of LDA, and Sgt. Stanton VanWagoner of the Unified Police Department confirming their support for a high-needs, low-risk court and committing the resources necessary to make it succeed. The District Attorney's Office has also verbally confirmed its support for the proposed court, and similar letter of that office is forthcoming. All that is necessary now is for the judiciary to put the final piece of the puzzle in place by certifying the court and committing the necessary judicial resources.

C. Commitment Needed From Third District Court

My request is that the judiciary acknowledge the commitment made by the other stakeholders described above my committing the necessary judicial resources to ensure the success of the court. First, I would request that the Third District Court bench pledge its support to the court. It is my desire to preside over the court, and that will require me to participate in staffing and handle a calendar every other Wednesday morning. It will also require me to participate in the frequent e-mail traffic and other discussions relating to bench warrants and other issues that are necessary elements of an effective therapeutic court. As for support, my assistant Cyndia Vigil, who previously assisted Judge Barrett with ARC, has committed to work with me as the in-court clerk for this new court. That would allow the court to function without diverting resources away from the specialty court staff who currently assist with the traditional Drug Courts and Mental Health Courts. Approval from the Third District Court bench should include a commitment to continue to support the court in event something were to happen to me to prevent me from continuing to preside over it. However, my present desire is to continue to preside over the court indefinitely, so I believe the probability that another judge would be burdened with responsibility for the court in the foreseeable future is quite small.

After approval from the Third District Court bench, I respectfully request that the Judicial Council formally certify the court pursuant to Rule 4-409 of the Rules of Judicial Administration. An application for formal approval pursuant to that rule is attached as Exhibit D.

EXHIBIT A



MAY 13, 2013

TO: SHIRLEY JENKINS, SUPERVISOR

FR: GARY K. DALTON

RE: RESOURCES FOR SPECIALTY COURT

BEN McADAMS
Salt Lake County Mayor

LORI BAYS
Human Services Director

**CRIMINAL JUSTICE
SERVICES DIVISION**

GARY K. DALTON
DIRECTOR

RONALD L. OLDROYD
ASSOCIATE DIRECTOR

ADMINISTRATION

385-488-3500
385-488-3431 FAX

COURT & TREATMENT SERVICES

385-468-3559
385-468-3560 FAX

DAY REPORTING CENTER

385-488-3557
385-488-3461 FAX

PRETRIAL SERVICES

385-488-3515
385-488-3430 FAX

PROBATION SERVICES

385-468-3558
385-468-3522 FAX

THE DIVISION OF CRIMINAL JUSTICE SERVICES HAS HISTORICALLY COMMITTED BOTH TREATMENT AND CASE MANAGEMENT SERVICES TO AN ALTERNATIVE RESOLUTION PROCESS THAT THE COURT SUPPORTED.

THOSE RESOURCES ARE STILL AVAILABLE IN OUR AGENCY. IF THE COURT SEES FIT TO IDENTIFY AN 'ALTERNATIVE RESOLUTION' OR SPECIALTY COURT FOR DRUG OFFENDERS, CJS WILL SUPPORT THE COURT WITH THE PRIOR ARC PERSONNEL. THIS INCLUDES THE USE OF ONE FTE CASE MANAGER, A MAJOR PORTION (80%) OF ONE TREATMENT WORKER, AND A MINOR PORTION (20-25%) OF A CASE MANAGEMENT AIDE FOR INCLUSION IN THE NEW SPECIALTY COURT.

IF YOU HAVE ANY QUESTIONS, PLEASE FEEL FREE TO CONTACT ME.

CC: FILE

JANINE HANSEN, PROGRAM MANAGER
RON OLDROYD, ASSOC. DIRECTOR

EXHIBIT B

EXHIBIT C



Judge James R. Blanch <jblanch@utcourts.gov>

New Problem Solving Court

Stanton VanWagoner <SVanWagoner@updsl.org>

Tue, Apr 30, 2013 at 5:14 PM

To: James Blanch <jblanch@utcourts.gov>

Cc: Kendra Herlin <KHerlin@updsl.org>, Jason Mazuran <JMazuran@updsl.org>

Dear Judge Blanch,

This is in response to our earlier conversation regarding the possibility of forming another problem solving court. As requested I'm posting the opinion of my personal experience with the already existing programs as well as what impact the community would see as a result of a new problem solving court.

I'm excited to learn that a new problem solving court is being considered by the judicial. As you know the Sheriff is in full support of programs that offer alternatives to the status quo. You've been able to observe first hand how successful drug court is in directing people's lives toward fulfillment outside the boundaries of drug addiction and criminality. This is due to the structure and direction courts of this type offer. Having been the supervisor of the Unified Police Department Narcotics Diversion Unit for a number of years I can attest to the change in our community that I would refer to as therapeutic law enforcement. I regularly observe the people whom we supervise make drastic comebacks from their criminal past merely because someone showed them a different direction. This comes from the regular report to a magistrate such as yourself who guides offenders toward the needed treatment and supervision that a program like this would support.

My unit recently added an additional detective to provide more direct supervision in the community. This was done because the Salt Lake County Sheriff and Unified Police Department are committed to making our community better for all of us. We know that jail fixes no one. Support of programs like this succeed in reuniting families, providing long term rehabilitation and directing offenders away from their past. This only occurs where all the resources come together as partners. This includes the judicial, prosecutors, legal defenders, law enforcement and treatment. An additional program that would supplement the already existing felony drug courts would go a long way in extending the ideals that our agency and programs of this type were built upon .

The vision of the Unified Police Department is to provide equal service to all through compassion, empathy and respect while defending the rights of individuals and improving the quality of life. Our Mission statement, in partnership with our community, to provide the highest quality service uniquely tailored to individual needs; to safeguard the lives and property of the people we serve; to increase confidence in safety and reduce crime through effective problem solving and responsible resource management. Our strength lies within the diversity of our individual communities creating a depth in our organization enabling a strong collaborative response through safe and progressive law enforcement principles.

As you can clearly see an additional problem solving court would fulfill all that the Unified Police Department and our community deserve. The drug courts have the support of the Sheriff and the Unified Police Department for the long term. We will pledge our support to the additional proposed problem solving court.

Respectfully,



Sergeant VanWagoner

Unified Police Dept. of Greater Salt Lake

Narcotics Diversion Unit

Cellular (801) 505-8330

Office (801) 743-5799

EXHIBIT D

**APPLICATION FOR INITIAL PROJECT PLANNING APPROVAL
FOR PROPOSED PROBLEM SOLVING COURT PROJECT**

Name/Working Title of Proposed Project: Alternative Court for HN/LR Offenders

Court Location: Third District Court

Application Submitted by: James Blanch

I. Target Population

Describe the types of cases or the description of the population that will be served by this project. Please be specific.

The court will target high-needs, low-risk drug-involved offenders as identified by the RANT. It will serve as an alternative track to Drug Court. See Memorandum for greater detail.

II. Purpose/Goal of Project

Please explain why you believe this project is necessary or desirable. How will a problem solving approach benefit your target population?

The project will satisfy an unmet need of HN/LR offenders who can benefit from treatment but are screened out and ineligible for regular Drug Court. Please see the Memorandum for greater detail.

III. What is the size of the proposed project?

Approximately how large is your target population and how many participants would likely be served by the proposed project?

We propose to begin with a target population of 65 clients, with the hope we can expand in the future.

TAB 4

**Courts Facility Planning
Standing Committee
And
Security and Emergency Preparedness
Subcommittee
2013 Annual Report**

RULE 3-409

Courts Facility Planning

Intent:

- Provide for the responsibilities of the Courts Facility Planning Committee
- Provide for the effective planning of courts capital facilities
- Promote the efficient use of new and existing courthouses through application of co-location and multi-use court facility concepts
- Establish a framework for the conceptual, planning, development and implementation phase of courts capital facilities
- Provide for Council review and approval of all proposed court capital facilities
- Ensure adherence to the design and space guidelines and other requirements of the Utah Judicial System Capital Facilities Master Plan

Committee Responsibilities:

Review trends and projections in population, caseload, and other growth indicators to anticipate courthouse construction needs:

2010 – 2011 The Committee studied Davis County.

2011 – 2012 The Committee studied Juab and Sanpete Counties

2012 – 2013 The Committee is currently studying Utah, Duchesne and Carbon Counties

Future studies will include Weber, Iron and San Juan Counties.

Review the evaluations of courthouses required by this rule and recommend the prioritized placement of courthouse construction projects within the Master Plan:

The Committee has reviewed and updated the ten year building plan to reflect the changes in court needs for all court facilities. We have included the Ten Year Building Plan as an attachment to this report. Our review looked at the needs of both owned and leased facilities.

Review recommendations from the facility coordinator on construction projects and the Master Plan:

As part of the budget process the facility coordinators are required to submit a list of projects for funding consideration to the Committee; these requests are reviewed, evaluated and prioritized for the Capital Improvement Project Funding.

Make recommendations to the Council regarding the reordering of Master Plan priorities and amendments to Design and Space Guidelines:

The Master Plan is reviewed as events, conditions or opportunities develop. The Committee evaluates how they affect the prioritization of the Master Plan. The Committee presents any recommendations to change the order of the Master Plan to Council annually and any information related to the recommended changes.

The Design and Space Guidelines were updated and presented to Judicial Council for approval in 2012. As part of the design contract for the new Ogden Juvenile Court the architect is required to update the Design Guidelines to show any changes in the new building. These updates will be reviewed by the Committee and presented to the Judicial Council for approval.

We are requiring the design teams for all future development projects to update the Design Guidelines at the conclusion of the project.

Compare construction requests with the Design and Space Guidelines of the Master Plan to ensure the current and anticipated needs of the court are met:

All construction requests are reviewed for compliance to the Design and Space Guidelines.

Develop timetable for construction requests so the Committee presents recommendations to the Council in advance of the Annual Planning Workshop:

Construction requests are required to be turned in along with the budget request. This allows for staff to review and to evaluate the requests by the Standing Committee.

Make recommendations to the Council for the approval, modification, or disapproval of construction requests:

All Capital Development project requests are evaluated for need, cost, and compliance with the Master Plan. The requests are prioritized for presentation to the Council along with recommendations of funding sources. The Council can then modify or change the list before taking action.

Develop procedures for the delegation of committee responsibilities to the facility coordinator:

The Committee has delegated the responsibility of defining and requesting improvement projects to the facility coordinators for their district. The procedures for evaluating and developing these requests have been incorporated into the annual budget request process. The facility coordinators are attending the construction meetings within their district and over the past year we have transferred more responsibility for managing improvement project them.

Subcommittee on Security and Emergency Preparedness
Annual Update to Facilities Standing Committee
June 14, 2013

Membership: Judge Davis (Chair), Judge Chamberlain, Ray Wahl, Peyton Smith, Terri Yelonek, Alyn Lunceford, Tim Shea, Nancy Volmer, Carol Price. The subcommittee meets quarterly on the first Wednesday of the month.

I. Security Reviews

- Pattern continues with lack of weapon recognition skills by security officers (being addressed by online x-ray simulation training provided by the Courts and through additional training software to be added for Sheriff's Office internal training/testing programs)
- Farmington
- Orem Juvenile
- Cedar City
- St. George
- Matheson
- Ogden District (one-year follow-up)
- Ogden Juvenile (one-year follow-up)
- Tooele (one-year follow-up)
- Vernal (one-year follow-up)
- Provo Juvenile (in process)
- Layton (in process)
- Heber City (in process)

II. Continuity of Operations Plan

- Major revision to the plan which was originally approved by the Judicial Council in May, 2009
- Revision approved by Management Committee on June 11, 2013, anticipated approval of Judicial Council on June 24, 2013.

III. Incident Reporting

- Reports are distributed to subcommittee members and TCEs on a quarterly basis

IV. Judicial Security Survey

Courts Facility Planning
Standing Committee
Capital Development Master Plan
Updated July 2013

UTAH STATE COURTS TEN YEAR BUILDING PLAN

Updated July 2013

State Owned Sites

Project Project Status	Scope and Cost Estimates	Programming and Master Plan	Update and Proposed Legislative Session
<u>Ogden Juvenile Court</u> Status: <u>Construction is will begin September 2013</u> All approvals received contract out for bid July 15, 2013	Property located at 20 th and Wall avenue in Ogden has been acquired. The new building will consist of 85,000 square feet, and the 2009 estimated cost for construction is estimated at \$30,000,000. Planning and Programming completed October 2009 FY 2014 construction cost estimated to be \$ 29,300,000	Complete	The 2008 Legislature funded \$3,250,000 for property acquisition. 2011 Session - We are requesting funding for design and construction. 2013 session funded \$ 29,300,000 for construction, pending DEQ approval of the site.
Provo District Expansion Status: <u>Fourth District Master Planning completed in 2009</u>	To provide a Court facility with nine additional courtrooms (eighteen in total), cost estimates will be determined by the Planning and Programming. Courtroom and clerical space will be included in the project for the Provo City Justice Court (Provo City will pay the cost associated with their space). Planning and Programming will evaluate the options of expanding the building to the north or west along with constructing a replacement facility on site. The Planning and Programming will evaluate how and if the Provo and Orem Juvenile Courts can be included the project. Planning and Programming for the project will be completed Fall of 2013.	Updated – Master Plan complete and approved by Judicial Council May 2009 Planning and Programming Fall 2013	2014 Session - 1. Request funding for design costs to expand up to nine additional courtrooms in Provo. 2. The Updated Master Plan measured the impact of Northern Utah County growth patterns to determined final project scope.
Davis County Court Facilities Layton District Court Farmington District and Juvenile Courts Bountiful District Court	To provide a Court facility with additional courtrooms. Courtroom and clerical space needs will be defined in the Planning and Programming project. The Planning and Programming project will evaluate the needs of Davis County and the court facility located in Farmington and Bountiful. Current courthouses could probably accommodate Courts until 2020 to 2025, but thereafter expansion option becomes a problem.	Planning and Programming will be funded in FY 2016	2015 Session

Cedar City Courts Expansion	Provide for 33,686 SF of addition space for a maximum of 6 courtrooms. Current facility has 3 courtrooms, cost of \$10 million. (Cost to be updated for inflation)	Study Completed 2001	2016
Ogden District Expansion	Identify timing for expansion of existing courthouse. Currently have capacity for 11 courtrooms (one is currently used for juvenile court).	Study Underway	2018

Leased Court Sites

Project Project Status	Scope and Cost Estimates	Programming and Master Plan	Update and Proposed Legislative Session
Juab County Nephi Project under construction Construction started June 2013 to be completed January 2014	Construct a new single courtroom courthouse Cost \$3,000,000 County funded twenty year cost pass-through Lease High Cost Lease approval 2013 Legislative session	Complete	The 2012 started talks with Juab County. The County agreed to fund the project on a Cost Pass-through Lease. 2013 legislative session Courts received a High Cost Lease authorization.
Duchesne County Duchesne County is designing an addition to the current facility.	Build a juvenile courtroom, Judges Chambers and remodel the Clerical work area. Project Cost estimates \$2,500,000 to \$3,200,000 County funded twenty year cost pass through lease on new space (current space will remain at the current rate)	Planning and Programming to be completed fall 2013	The 2013 Legislature authorized two new judicial positions in 8 th district Additional funding will be a budget request for FY 2015 We are looking into one time funding for the project
Carbon County (Price) has agreed to participate in the remodel or replacement of the current court facility	Correct the facility operation and security short falls of the current facility	Planning and Programming to be completed Fall 2013	The 2012 started talks with Carbon County, the County has agreed to fund 50% of the Planning and Programming project. The project to be presented to the 2015 Legislature for funding as needed

**OTHER PROJECTS UNDER CONSIDERATION
LOCAL GOVERNMENT FUNDING
WITH IMPACT ON COURTS LEASE BUDGET**

1. **Wayne County** - Letter has been received from Wayne County stating the County will need to new facility within 10 years, and wants the State to participate. No formal talks have yet been scheduled with the County. Wayne County is talking with DFCM to contract about Planning and Programming a new county facility that would include the Courts needs.
2. **Kane County** – We have contracted with Kane County for additional space that has been remodeled into a lobby area and larger security space. The additional space will accommodate the needs of the Juvenile Probation when their lease ends.
3. **Wasatch County** - Recent population growth has prompted the Courts to consider adding additional court space to the current facility. We are looking at adding one additional courtroom to accommodate Juvenile.
4. **San Juan County** - Expanding the existing courthouse to add an additional courtroom to be shared between State Juvenile Court and County Justice Courts, with additional space for other court staff. This would also provide for separation between the Courts personnel and County employees. This project is currently on hold by the County.
5. **Summit County** – Recent population growth and case load has prompted the Courts to consider adding additional courtrooms. Being considered is a two or three courtroom addition to accommodate the case load; we are also looking at the location of the current facility and the transportation issues related to the current location. Third District Court has been working with us and the County to identify future expansion needs and options. Schematic floor plans have been developed to add two courtrooms to the current facility.
6. **Sanpete County** - (Contract Site) - The Sanpete County Courthouse project was originally presented as a development project to change the site from a contract court site to a state court site. The Capital Development request was for funding to pay the State's share of a lease revenue bond. The authorization for the county revenue bond was defeated in 2008 election (the bond was defeated by an 11 vote margin). The budget request to make the bond payment was withdrawn from the budget request presented to the 2009 legislative session. We have remodeled the current facility improving the security profile of the building and provide better program delivery for the clerical staff.
This project is currently ranked third on the Leased Court Facility priority list; we will contract for Planning and Programming in FY 2014. Options include new state funded facility or a long term lease with the County that would renovate the current facility or construct a new facility on a site (we do not have a new site selected).

The Courts Master Plan for Capital Development is a prioritized court facility by program, security, population and building condition needs. We have designed Master Plan to evaluate and rank building needs for Capital Development and Improvement projects. Over the past fifteen years this prioritization process has resulted in the construction of ten new state owned and twelve new leased court facilities. We evaluate and update the prioritization of future Capital Development requests each year.

This prioritization evaluates the facilities based on security, compliance with current Design Guidelines, facility condition, court programmatic needs, the county population and county growth potential as of January each year.

Evaluation criteria

Security Score 1 to 10 – 1 meets current standard, 10 doesn't meet standards

- Does the facility meet current Security Standards
- Security check points in the building
- Access control systems
- Camera system
- Security equipment (x-ray – metal detector)

Building Condition Score 1 to 10 – 1 very good, 10 needs major work

- Does the facility meet current Design Guidelines
- Can the building be renovated to meet current Design Guidelines
- Building location

Adequacy Score 1 to 10 – 1 meets all current needs, 10 fails to meet needs

- Number of courtroom / number of judges
- Courtroom utilization
- Clerical work area
- Probation work area
- Building renovation potential

County Size Factor Score 1 to 5 – 1 least populated, 5 most populated

- Population of the county
- Court location within the county
- Population centers of the county
- Current court locations (numbers of courthouses, courtrooms)
- Accessibility within and between population centers
- Transportation considerations

County Growth Factor Score 1 to 5 – 1 least growth potential, 5 largest growth potential

- Projected population of the County
 - Five years
 - Ten year
 - Fifteen year
 - Twenty year

Facility Evaluation Scoring
Summary Sheets
2013

All Court Facilities by District

District	County	Facility Type	State / Contract	Unit Name	Lease / Owned	Courtrooms	Square Feet	Security	Condition	Adequacy	County	Growth	Total
1	Box Elder	Courthouse	State	Brigham City	Owned	3	35,000	2	1	1	2	1	7.00
1	Cache	Courthouse	State	Logan	Owned	6	73,644	1	1	2	3	2	9.00
1	Rich	Courthouse	Contract	Randolph	Leased	1	2,415	7	7	5	1	1	21.00
2	Davis	Courthouse	State	Bountiful	Leased	2	26,804	4	3	1	4	4	16.00
2	Davis	Courthouse	State	Farmington 810 W state	Owned	10	131,699	3	2	3	4	4	16.00
2	Davis	Courthouse	State	Layton (lease purchase)	Owned	2	20,025	3	5	2	4	4	18.00
2	Morgan	Courthouse	Contract	Morgan	Leased	1	2,727	7	8	6	2	1	24.00
2	Weber	Courthouse	State	Ogden Dist	Owned	11	91,000	2	3	2	4	4	15.00
2	Weber	Courthouse	State	Ogden JV	Owned	3	23,857	10	4	10	4	4	32.00
3	Salt Lake	Office	State	City Center Probation (1950 West)	Leased	0	8,312	1	1	1	5	5	13.00
3	Salt Lake	Office	State	JV 3500 south building	Owned	0	20,594	2	3	1	5	5	16.00
3	Salt Lake	Courthouse	State	Matheson	Owned	37	417,000	2	2	2	5	4	15.00
3	Salt Lake	Courthouse	State	West Jordan	Owned	10	117,439	2	1	3	5	4	15.00
3	Salt Lake	Office	State	West Valley City JV Prob	Owned	1	26,300	2	2	1	5	5	15.00
3	Summit	Courthouse	State	Park City (Silver Summit)	Leased	2	15,100	4	6	8	3	3	24.00
3	Tooele	Courthouse	State	Tooele	Owned	2	58,968	2	1	2	3	3	11.00
4	Juab	Courthouse	State	Nephi	Leased	1	3,080	10	10	5	2	2	29.00
4	Millard	Office	State	Delta JV Prob	Leased	0	702	5	5	1	1	1	13.00
4	Millard	Courthouse	Contract	Fillmore	Leased	1	8,598	4	4	2	1	2	13.00
4	Utah	Courthouse	State	American Fork	Leased	3	27,588	2	2	4	4	3	15.00
4	Utah	Courthouse	State	Orem	Owned	4	16,080	7	6	5	5	3	26.00
4	Utah	Courthouse	State	Provo Dist	Owned	9	59,928	6	6	10	5	3	30.00
4	Utah	Courthouse	State	Provo JV	Owned	3	18,303	8	7	2	5	3	25.00
4	Utah	Courthouse	Contract	Salem	Leased	0	104	0	0	1	4	2	7.00
4	Utah	Courthouse	State	Spanish Fork	Leased	2	31,779	2	1	2	4	3	12.00
4	Wasatch	Courthouse	State	Heber City	Leased	1	10,043	5	3	7	3	3	21.00
5	Beaver	Courthouse	State	Beaver	Leased	1	7,088	5	2	2	2	2	13.00
5	Iron	Courthouse	State	Cedar City	Owned	3	17,037	4	3	4	3	3	17.00
5	Iron	Office	State	Cedar City JV Prob	Leased	0	5,089	2	2	2	2	2	10.00
5	Iron	Courthouse	State	Parowan	Leased	1	3,077	7	5	1	2	1	16.00
5	Washington	Courthouse	State	St George	Owned	7	95,550	1	1	1	3	3	9.00
6	Garfield	Courthouse	Contract	Panguitch	Leased	1	2,481	3	1	1	1	1	7.00
6	Piute	Courthouse	Contract	Junction	Leased	1	4,120	3	2	1	1	1	8.00
6	Kane	Courthouse	Contract	Kanab	Leased	2	3,846	10	7	5	1	1	24.00
6	Kane	Office	State	Kanab JV	Leased	0	2,180	5	5	5	3	3	21.00
6	Sanpete	Courthouse	State	Manti	Leased	2	7,301	8	7	7	2	1	25.00
6	Sanpete	Office	State	Manti JV	Leased	0	1,940	5	5	5	3	3	21.00
6	Sevier	Courthouse	State	Richfield	Owned	2	19,839	3	4	2	2	1	12.00
6	Wayne	Courthouse	Contract	Loa	Leased	1	2,600	10	9	5	1	1	26.00
7	Carbon	Courthouse	State	Price	Leased	3	18,279	8	8	5	2	1	24.00
7	Emery	Courthouse	State	Castle Dale	Leased	2	8,800	3	2	1	1	1	8.00
7	Grand	Courthouse	State	Moab	Leased	2	11,936	6	3	2	1	1	13.00
7	San Juan	Office	State	Blanding JV	Leased	0	374	5	5	5	3	3	21.00
7	San Juan	Courthouse	State	Monticello	Leased	1	3,206	5	5	7	1	1	19.00
7	San Juan	Office	State	Monticello JV Prob	Leased	0	320	4	4	4	2	2	16.00
8	Daggett	Courthouse	Contract	Manila	Leased	1	3,137	7	7	5	1	1	21.00
8	Duchesne	Courthouse	State	Duchesne	Leased	1	7,013	3	2	1	1	2	9.00
8	Duchesne	Courthouse	State	Roosevelt	Leased	1	4,786	3	3	4	1	2	13.00
8	Uintah	Courthouse	State	Vernal	Owned	3	33,331	2	1	1	2	3	9.00
8	Uintah	Other	State	Vernal training / public programs	Owned	0	4,786	4	4	4	2	2	16.00

All Courthouses

District	County	Facility Type	State / Contract	Unit Name	Lease / Owned	Courtrooms	Square Feet	Security	Condition	Adequacy	County	Growth	Total
2	Weber	Courthouse	State	Ogden JV	Owned	3	23,857	10	4	10	4	4	32.00
4	Utah	Courthouse	State	Provo Dist	Owned	9	59,928	6	6	10	5	3	30.00
4	Juab	Courthouse	State	Nephi	Leased	1	3,080	10	10	5	2	2	29.00
4	Utah	Courthouse	State	Orem	Owned	4	16,080	7	6	5	5	3	26.00
6	Wayne	Courthouse	Contract	Loa	Leased	1	2,600	10	9	5	1	1	26.00
7	Carbon	Courthouse	State	Price	Leased	3	18,279	9	6	6	3	1	25.00
4	Utah	Courthouse	State	Provo JV	Owned	3	18,303	8	7	2	5	3	25.00
6	Sanpete	Courthouse	State	Manti	Leased	2	7,301	8	7	7	2	1	25.00
3	Summit	Courthouse	State	Park City (Silver Summit)	Leased	2	15,100	4	6	8	3	3	24.00
2	Morgan	Courthouse	Contract	Morgan	Leased	1	2,727	7	8	6	2	1	24.00
6	Kane	Courthouse	Contract	Kanab	Leased	2	3,846	10	7	5	1	1	24.00
1	Rich	Courthouse	Contract	Randolph	Leased	1	2,415	7	7	5	1	1	21.00
4	Wasatch	Courthouse	State	Heber City	Leased	1	10,043	5	3	7	3	3	21.00
8	Daggett	Courthouse	Contract	Manila	Leased	1	3,137	7	7	5	1	1	21.00
7	San Juan	Courthouse	State	Monticello	Leased	1	3,206	5	5	7	1	1	19.00
2	Davis	Courthouse	State	Layton	Owned	2	20,025	3	5	2	4	4	18.00
5	Iron	Courthouse	State	Cedar City	Owned	3	17,037	4	3	4	3	3	17.00
2	Davis	Courthouse	State	Bountiful	Leased	2	26,804	4	3	1	4	4	16.00
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5	Iron	Courthouse	State	Parowan	Leased	1	3,077	7	5	1	2	1	16.00
2	Weber	Courthouse	State	Ogden Dist	Owned	11	91,000	2	3	2	4	4	15.00
3	Salt Lake	Courthouse	State	Matheson	Owned	37	417,000	2	2	2	5	4	15.00
3	Salt Lake	Courthouse	State	West Jordan	Owned	10	117,439	2	1	3	5	4	15.00
4	Utah	Courthouse	State	American Fork	Leased	3	27,588	2	2	4	4	3	15.00
4	Millard	Courthouse	Contract	Fillmore	Leased	1	8,598	4	4	2	1	2	13.00
5	Beaver	Courthouse	State	Beaver	Leased	1	7,088	5	2	2	2	2	13.00
7	Grand	Courthouse	State	Moab	Leased	2	11,936	6	3	2	1	1	13.00
8	Duchesne	Courthouse	State	Roosevelt	Leased	1	4,786	3	3	4	1	2	13.00
4	Utah	Courthouse	State	Spanish Fork	Leased	2	31,779	2	1	2	4	3	12.00
6	Sevier	Courthouse	State	Richfield	Owned	2	19,839	3	4	2	2	1	12.00
3	Tooele	Courthouse	State	Tooele	Owned	2	58,968	2	1	2	3	3	11.00
1	Cache	Courthouse	State	Logan	Owned	6	73,644	1	1	2	3	2	9.00
5	Washington	Courthouse	State	St George	Owned	7	95,550	1	1	1	3	3	9.00
8	Duchesne	Courthouse	State	Duchesne	Leased	1	7,013	3	2	1	1	2	9.00
8	Uintah	Courthouse	State	Vernal	Owned	3	33,331	2	1	1	2	3	9.00
6	Plute	Courthouse	Contract	Junction	Leased	1	4,120	3	2	1	1	1	8.00
7	Emery	Courthouse	State	Castle Dale	Leased	2	8,800	3	2	1	1	1	8.00
1	Box Elder	Courthouse	State	Brigham City	Owned	3	35,000	2	1	1	2	1	7.00
4	Utah	Courthouse	Contract	Salem	Leased	0	104	0	0	1	4	2	7.00
6	Garfield	Courthouse	Contract	Panguitch	Leased	1	2,481	3	1	1	1	1	7.00
				Totals		149	1,444,608	4.63	3.83	3.53	2.65	2.25	16.875

State Owned Courthouse												
District	County	Facility Type	Unit Name	Lease / Owned	Courtrooms	Square Feet	Security	Condition	Adequacy	County	Growth	Total
2	Weber	Courthouse	Ogden JV	Owned	3	23,857	10	4	10	4	4	32.00
4	Utah	Courthouse	Provo Dist	Owned	9	59,928	6	6	10	5	3	30.00
4	Utah	Courthouse	Orem	Owned	4	16,080	7	6	5	5	3	26.00
4	Utah	Courthouse	Provo JV	Owned	3	18,303	8	7	2	5	3	25.00
2	Davis	Courthouse	Layton	Owned	2	20,025	3	5	2	4	4	18.00
5	Iron	Courthouse	Cedar City	Owned	3	17,037	4	3	4	3	3	17.00
2	Davis	Courthouse	Farmington 810 W state	Owned	10	131,699	3	2	3	4	4	16.00
2	Weber	Courthouse	Ogden Dist	Owned	11	91,000	2	3	2	4	4	15.00
3	Salt Lake	Courthouse	Matheson	Owned	37	417,000	2	2	2	5	4	15.00
3	Salt Lake	Courthouse	West Jordan	Owned	10	117,439	2	1	3	5	4	15.00
6	Sevier	Courthouse	Richfield	Owned	2	19,839	3	4	2	2	1	12.00
3	Tooele	Courthouse	Tooele	Owned	2	58,968	2	1	2	3	3	11.00
1	Cache	Courthouse	Logan	Owned	6	73,644	1	1	2	3	2	9.00
5	Washington	Courthouse	St George	Owned	7	95,550	1	1	1	3	3	9.00
8	Uintah	Courthouse	Vernal	Owned	3	33,331	2	1	1	2	3	9.00
1	Box Elder	Courthouse	Brigham City	Owned	3	35,000	2	1	1	2	1	7.00
			Totals		115	1,228,700						
			Average	15	115	80,778	4	3	3	4	3	16.63

Leased Court Facilities												
District	County	Facility Type	Unit Name	Lease / Owned	Courtrooms	Square Feet	Security	Condition	Adequacy	County	Growth	Total
4	Juab	Courthouse	Nephi	Leased	1	3,080	10	10	5	2	2	29.00
7	Carbon	Courthouse	Price	Leased	3	18,279	9	6	6	3	1	25.00
6	Sanpete	Courthouse	Manti	Leased	2	7,301	8	7	7	2	1	25.00
3	Summit	Courthouse	Park City (Silver Summit)	Leased	2	15,100	4	6	8	3	3	24.00
4	Wasatch	Courthouse	Heber City	Leased	1	10,043	5	3	7	3	3	21.00
7	San Juan	Courthouse	Monticello	Leased	1	3,206	5	5	7	1	1	19.00
2	Davis	Courthouse	Bountiful	Leased	2	26,804	4	3	1	4	4	16.00
5	Iron	Courthouse	Parowan	Leased	1	3,077	7	5	1	2	1	16.00
4	Utah	Courthouse	American Fork	Leased	3	27,588	2	2	4	4	3	15.00
5	Beaver	Courthouse	Beaver	Leased	1	7,088	5	2	2	2	2	13.00
7	Grand	Courthouse	Moab	Leased	2	11,936	6	3	2	1	1	13.00
8	Duchesne	Courthouse	Roosevelt	Leased	1	4,786	3	3	4	1	2	13.00
4	Utah	Courthouse	Spanish Fork	Leased	2	31,779	2	1	2	4	3	12.00
8	Duchesne	Courthouse	Duchesne	Leased	1	7,013	3	2	1	1	2	9.00
7	Emery	Courthouse	Castle Dale	Leased	2	8,800	3	2	1	1	1	8.00
			Total		25	185,880						
			Average		25	12,392	5.1	4	4	2	2	17.20

Contract Court Sites												
District	County	Facility Type	Unit Name	Lease / Owned	Courtrooms	Square Feet	Security	Condition	Adequacy	County	Growth	Total
6	Wayne	Courthouse	Loa	Leased	1	2,600	10	9	5	1	1	26.00
2	Morgan	Courthouse	Morgan	Leased	1	2,727	7	8	6	2	1	24.00
6	Kane	Courthouse	Kanab	Leased	2	3,846	10	7	5	1	1	24.00
1	Rich	Courthouse	Randolph	Leased	1	2,415	7	7	5	1	1	21.00
8	Daggett	Courthouse	Manila	Leased	1	3,137	7	7	5	1	1	21.00
4	Millard	Courthouse	Fillmore	Leased	1	8,598	4	4	2	1	2	13.00
6	Piute	Courthouse	Junction	Leased	1	4,120	3	2	1	1	1	8.00
4	Utah	Courthouse	Salem	Leased	0	104	0	0	1	4	2	7.00
6	Garfield	Courthouse	Panguitch	Leased	1	2,481	3	1	1	1	1	7.00
			Totals		9	30,028						
			Contract Courthouse Average		9	3,336	5.7	5	3.4	1.4	1.2	16.78

Juvenile Probation and Work Crew Facilities												
District	County	Facility Type	Unit Name	Lease / Owned	Courtrooms	Square Feet	Security	Condition	Adequacy	County	Growth	Total
6	Kane	Office	Kanab JV	Leased	0	2,180	5	5	5	3	3	21.00
6	Sanpete	Office	Manti JV	Leased	0	1,940	5	5	5	3	3	21.00
3	Utah	Work Crew	Provo JV Probation Work Crew	Owned	0	18,302	7	6	1	4	2	20.00
3	Salt Lake	Work Crew	JV 3500 south building	Owned	0	20,594	2	3	1	5	5	16.00
7	San Juan	Office	Monticello JV Prob	Leased	0	320	4	4	4	2	2	16.00
3	Salt Lake	Office	West Valley City JV Prob	Owned	1	26,300	2	2	1	5	5	15.00
3	Salt Lake	Office	City Center Probation (1950 West)	Leased	0	8,312	1	1	1	5	5	13.00
4	Millard	Office	Delta JV Prob	Leased	0	702	5	5	1	1	1	13.00
4	Millard	Court House	Fillmore	Leased	1	8,598	4	4	2	1	2	13.00
5	Iron	Office	Cedar City JV Prob	Leased	0	5,089	2	2	2	2	2	10.00
			Owned Other	3	1	46,542	14	13	7	12	10	56
			Probation Office Leases	7	1	45,475	19	20	12	17	18	86
			Average			9,234	3.7	3.7	2.3	3.1	3	15.80

TAB 5

**Iron County Adult Drug Court
Cedar City**

CERTIFICATION SITE VISIT

PROGRAM: IRON COUNTY ADULT DRUG COURT, CEDAR CITY

JUDGE: JUDGE JOHN WALTON

NUMBER OF PARTICIPANTS: 38

DATE: APRIL 3, 2013

REQUIRED:

YESXXX NO Minimum length of program is twelve months.

Comments:

YESXXXXNO Program requires at least 90 days clean to graduate.

Comments:

YESXXX NO Court has a participant agreement and waiver.

Comments:

YESXXX NO

Pros, Def, Treat, and Judge, at a minimum attend staffing.

Comments:

YESXXX NO

Pros, Def, Treat, and Judge, at a minimum attend court sessions.

Comments:

YESXXX NO

Staffing occurs prior to every court session.

Comments:

YESXXX NO

Participants sign a release of confidentiality.

Comments:

YESXXX NO

Court has written policies and procedures.

Comments:

YESXXX NO

Eligibility criteria do not exclude non-drug charges.

Comments:

YESXXX NO

Participants undergo a substance abuse assessment.

Comments:

YESXXX NO

Participants undergo a criminogenic risk assessment.

Comments:

Comments:

YESXXX NO

Treatment is provided by a state licensed provider.

Comments:

YESXXX NO

Gender specific treatment is provided.

Comments:

YESXXX NO

Drug testing is frequent and random and performed at least twice per week.

Comments:

YESXXX NO

Secular alternative to community support groups if required.

Comments:

YESXXX NO

Participants appear a minimum of every other week in the first phase and no less than once per month in the final phase.

Comments:

YESXXX NO

Judge spends an average of three minutes with each participant.

Comments:

YESXXX NO

Program has more than 15 but less than 125 participants.

Comments:

YESXXX NO

Program does not impose more than an average of three jail days as sanction.

Comment:

YESXXX NO

Judge is leader of team and maintains an active role.

Comments:

YESXXX NO

Court fees are reasonable and based on participants ability to pay.

Comments:

EVIDENCE BASED PRACTICES:

YESXXX NO

Law enforcement is a member of the team

Comments:

YESXXX NO

Team members are assigned for no less than two years.

Comments:

.YESXXXNO

Team members use electronic communication.

Comments:

YESXXX NO

Incentives and sanctions are in writing and shared with participants and other team members.

Comments:

YESXXX NO

The Judge can impose a sanction immediately and prior to the next scheduled court hearing for inappropriate behavior.

Comments:

YESXXX NO

Drug testing is available on weekends and holidays and all results are available and available in no more than two days.

Comments:

YESXXX NO

Participants are screened and not denied the program for mental health issues.

Comments:

YESXXX NO

Eligibility criteria are written.

Comments:

YESXXX NO

Treatment fees are based on a sliding fee schedule.

Comments:

YESXXX NO

Program has policy dealing with challenges to drug tests.

Comments:

YESXXX NO

Court has a written policy dealing with medically assisted treatment.

Comments:

YESXXX NO

Clients are placed in program within 50 days of arrest.

Comments:

BEST PRACTICES:

YESXXX NO

Treatment group is no more than 15 members.

Comments:

YESXXX NO

Treatment is conducted in multiple phases.

Comments:

YESXXX NO

Treatment and court phases are not dependent on each other.

Comments:

YESXXX NO

Treatment addresses family, parenting, and education.

Comments:

YESXXX NO

Participants have the aid of an attorney if requested.

Comments:

YESXXX NO

Participants are not removed from program for dirty ua if doing well otherwise.

Comments:

YESXXX NO

Program conducts an exit interview for self improvement.

Comments:

YESXXX NO

Program maintains adequate data for program monitoring.

Comments:

STAFF MEMBER COMMENTS:

Defense: They have had the contract for the drug court since inception. Thinks the program is working well.

Prosecution: Thinks that his boss, the County Attorney is a little tough on letting people into the program. He has been with the program for two and a half years. Most participants come in after an application from the defense attorney.

Tracker: Has been with the program for the last two years. Will probably be with the program one more year. He tries to make one contact a night with the participants in phase I. He usually gets out once per week to make house checks. If there is a problem during a routine house he will contact the Judge before taking any action.

Treatment: Treatment does not have any problems with the program.

PARTICIPANT COMMENTS:

All of the participants I talked to really liked the program and feel that if it was not for the program they would be in prison or dead. They had no criticisms.



SUGGESTIONS: Giving participants an option of community service or pay with gift certificates to help support the incentives.

To start using a fish bowl and a drawing as one of the incentives for the program.

Judge could ask participants how many clean days they have.

RECOMMENDATION: CERTIFY



Carbon County Adult Drug Court Price

CERTIFICATION SITE VISIT

PROGRAM: CARBON COUNTY ADULT DRUG COURT, PRICE

JUDGE: THOMAS

NUMBER OF PARTICIPANTS: 37

DATE: JUNE 5, 2013

REQUIRED:

YESXXX NO

Minimum length of program is twelve months.

Comments:

YESXXX NO

Program requires at least 90 days clean to graduate.

Comments:

YESXXX NO

Court has a participant agreement and waiver.

Comments:

YESXXX NO

Pros, Def, Treat, and Judge, at a minimum attend staffing.

Comments: Also attended by Tracker.

YESXXX NO

Pros, Def, Treat, and Judge, at a minimum attend court sessions.

Comments: Also attended by Tracker.

YESXXX NO

Staffing occurs prior to every court session.

Comments:

YESXXX NO

Participants sign a release of confidentiality.

Comments:

YESXXX NO

Court has written policies and procedures.

Comments:

YESXXX NO

Eligibility criteria do not exclude non-drug charges.

Comments:

YESXXX NO

Participants undergo a substance abuse assessment.

Comments:

YESXXX NO

Participants undergo a criminogenic risk assessment.

Comments:

YESXXX NO

Program uses RANT.

Comments:

YESXXX NO

Treatment is provided by a state licensed provider.

Comments:

YESXXX NO

Gender specific treatment is provided.

Comments:

YESXXX NO

Drug testing is frequent and random and performed at least twice per week.

Comments:

YESXXX NO

Secular alternative to community support groups if required.

Comments:

YESXXX NO

Participants appear a minimum of every other week in the first phase and no less than once per month in the final phase.

Comments:

YESXXX NO

Judge spends an average of three minutes with each participant.

Comments:

YESXXX NO

Program has more than 15 but less than 125 participants.

Comments:

YESXXX NO

Program does not impose more than an average of three jail days as sanction.

Comment:

YESXXX NO

Judge is leader of team and maintains an active role.

Comments:

YESXXX NO

Court fees are reasonable and based on participants ability to pay.

Comments:

EVIDENCE BASED PARACTICES:

YESXXX NO

Law enforcement is a member of the team

Comments: Tracker

YESXXX NO

Team members are assigned for no less than two years.

Comments:

YESXXX NO

Team members use electronic communication.

Comments:

YES NOXXX

Incentives and sanctions are in writing and shared with participants and other

team members.

Comments: Judge was instructed to get his team together and prepare a sanction and incentive grid which could be used by the team and distributed to the participants. Judge told me that this was already being planned by the team.

YESXXX NO

The Judge can impose a sanction immediately and prior to the next scheduled court hearing for inappropriate behavior.

Comments:

YESXXX NO

Drug testing is available on weekends and holidays and all results are available and available in no more than two days.

Comments:

YESXXX NO

Participants are screened and not denied the program for mental health issues.

Comments:

YESXXX NO

Eligibility criteria are written.

Comments:

YES NOXXX

Treatment fees are based on a sliding fee schedule.

Comments: Was informed that treatment was charging a minimum of 30.00 per month to remain in the program. Was told of an example where a participant was denied treatment because she was behind on fees. Talked to State Substance Abuse and they were going to check into this and put a stop to it.

State substance abuse was assured that this was not happening and it was a participant who was using it as an excuse for not attending treatment.

YESXXX NO

Program has policy dealing with challenges to drug tests.

Comments:

YESXXX NO

Court has a written policy dealing with medically assisted treatment.

Comments:

YESXXX NO

Clients are placed in program within 50 days of arrest.

Comments:

BEST PRACTICES:

YESXXX NO

Treatment group is no more than 15 members.

Comments:

YESXXX NO

Treatment is conducted in multiple phases.

Comments:

YESXXX NO

Treatment and court phases are not dependent on each other.

Comments:

YESXXX NO

Treatment addresses family, parenting, and education.

Comments:

YESXXX NO

Participants have the aid of an attorney if requested.

Comments:

YESXXX NO

Participants are not removed from program for dirty ua if doing well otherwise.

Comments:

YESXXX NO

Program conducts an exit interview for self improvement.

Comments:

YESXXX NO

Program maintains adequate data for program monitoring.

Comments:

STAFF MEMBER COMMENTS:

Prosecutor: The prosecutor has worked in drug court for the last 10 years. He is a valuable member of the team. The Carbon County Attorney is very supportive of drug court. Anyone that applies and meets eligibility criteria is let into the program. Only issue is he feels the program needs more incentives.

Adult Probation and Parole: They have been an active team member since inception of the drug court. Originally the agent went in kicking and screaming but now is an ardent supporter of the program and works well with the other team members and the participants.

Trackers: the two present trackers have been with the program since January 2013. They are excellent and truly understand addiction and their role in the program. All of the participants spoke very highly of the trackers. They are also the same two trackers that staff the Dependency Court presided over by Judge Johansen.

Defense: This is the same Defense Attorney that staffs the Dependency Court with Judge Johansen. HE has been with the drug courts for over 5 years. He has an excellent understanding of his role in drug court and is a good team member.

PARTICIPANT COMMENTS:

Had trouble with prior trackers but the two they have now are excellent.

They are having a problem with the no association rule of the program.

Participants do not always know why some participants are being treated differently for the same conduct.

In Phase I the drug tests are too far apart.

They would love to see an alumni association and a mentor program be started.

Comments: The Judge does a good job controlling and leading the staffing. There was really good participation among team members. The team was talking about suggestions they heard at their local conference and incorporating them into their drug court program.

In court the Judge did a fine job. He always ended on a positive. I liked the fact that the Judge asked every participant for the number of clean days. The Judge is very positive with the participants.

Recommendations:

Suggested to the Judge that he have treatment and the rest of the staff give a report in court.

It was recommended that the staff schedule a retreat to discuss a sanction and incentive grid. He stated it was already planned.

Looking into treatments charging participants for treatment and then refusing entrance if they fall behind.

Might want to increase drug testing during Phase I.

Suggested they re-evaluate the no association rule they have in the program.



The Judge was very receptive to all of the above recommendations and immediately incorporated those that he could.

CERTIFY



Salt Lake County Adult Drug Court
Judge Skanchy

CERTIFICATION SITE VISIT

PROGRAM: SALT LAKE COUNTY ADULT DRUG COURT

JUDGE: SKANCHY

NUMBER OF PARTICIPANTS: 138

DATE: JANUARY 7, 2013

REQUIRED:

YESXXX NO Minimum length of program is twelve months.

Comments:

YESXXX NO Program requires at least 90 days clean to graduate.

Comments:

YESXXX NO Court has a participant agreement and waiver.

Comments:

YESXXX NO Pros, Def, Treat, and Judge, at a minimum attend staffing.

Comments:

YESXXX NO

Pros, Def, Treat, and Judge, at a minimum attend court sessions.

Comments:

YESXXX NO

Staffing occurs prior to every court session.

Comments:

YESXXX NO

Participants sign a release of confidentiality.

Comments:

YESXXX NO

Court has written policies and procedures.

Comments:

YESXXX NO

Eligibility criteria do not exclude non-drug charges.

Comments:

YESXXX NO

Participants undergo a substance abuse assessment.

Comments:

YESXXX NO

Participants undergo a criminogenic risk assessment.

Comments:

YESXXX NO

Program uses RANT.

Comments:

YESXXX NO

Treatment is provided by a state licensed provider.

Comments:

YESXXX NO

Gender specific treatment is provided.

Comments:

YESXXX NO

Drug testing is frequent and random and performed at least twice per week.

Comments:

YESXXX NO

Secular alternative to community support groups if required.

Comments:

YESXXX NO

Participants appear a minimum of every other week in the first phase and no less than once per month in the final phase.

Comments:

YESXXX NO

Judge spends an average of three minutes with each participant.

Comments: However due to the number of participants some of those that are doing well are rewarded by being called up first by Phase and then dismissed early.

YESXXX NO

Program has more than 15 but less than 125 participants.

Comments: When those who are incarcerated or out on warrant are not counted.

YESXXX NO

Program does not impose more than an average of three jail days as sanction.

Comment:

YESXXX NO

Judge is leader of team and maintains an active role.

Comments:

YESXXX NO

Court fees are reasonable and based on participants ability to pay.

Comments:

EVIDENCE BASED PARACTICES:

YESXXX NO

Law enforcement is a member of the team

Comments:

YESXXX NO

Team members are assigned for no less than two years.

Comments:

.YESXXXNO

Team members use electronic communication.

Comments:

YESXXX NO

Incentives and sanctions are in writing and shared with participants and other

team members.

Comments:

YESXXX NO

The Judge can impose a sanction immediately and prior to the next scheduled court hearing for inappropriate behavior.

Comments:

YESXXX NO

Drug testing is available on weekends and holidays and all results are available and available in no more than two days.

Comments: Officers test during home visits.

YESXXX NO

Participants are screened and not denied the program for mental health issues.

Comments:

YESXXX NO

Eligibility criteria are written.

Comments:

YESXXX NO

Treatment fees are based on a sliding fee schedule.

Comments:

YESXXX NO

Program has policy dealing with challenges to drug tests.

Comments:

YESXXX NO

Court has a written policy dealing with medically assisted treatment.

Comments:

YESXXX NO

Clients are placed in program within 50 days of arrest.

Comments:

BEST PRACTICES:

YESXXX NO

Treatment group is no more than 15 members.

Comments:

YESXXX NO

Treatment is conducted in multiple phases.

Comments:

YESXXX NO

Treatment and court phases are not dependent on each other.

Comments:

YESXXX NO

Treatment addresses family, parenting, and education.

Comments:

YESXXX NO

Participants have the aid of an attorney if requested.

Comments:

YESXXX NO

Participants are not removed from program for dirty ua if doing well otherwise.

Comments:

Salt Lake County Adult Drug Court
Judge Bernard-Goodman

CERTIFICATION SITE VISIT

PROGRAM: SALT LAKE COUNTY ADULT DRUG COURT

JUDGE: BERNARD-GOODMAN

NUMBER OF PARTICIPANTS: 140

DATE: JANUARY 17, 2013

REQUIRED:

YESXXX NO Minimum length of program is twelve months.

Comments:

YESXXX NO Program requires at least 90 days clean to graduate.

Comments:

YESXXX NO Court has a participant agreement and waiver.

Comments:

YESXXX NO

Pros, Def, Treat, and Judge, at a minimum attend staffing.

Comments:

YESXXX NO

Pros, Def, Treat, and Judge, at a minimum attend court sessions.

Comments:

YESXXX NO

Staffing occurs prior to every court session.

Comments:

YESXXX NO

Participants sign a release of confidentiality.

Comments:

YESXXX NO

Court has written policies and procedures.

Comments:

YESXXX NO

Eligibility criteria do not exclude non-drug charges.

Comments:

YESXXX NO

Participants undergo a substance abuse assessment.

Comments:

YESXXX NO

Participants undergo a criminogenic risk assessment.

Comments:

YESXXX NO

Program uses RANT.

Comments:

YESXXX NO

Treatment is provided by a state licensed provider.

Comments:

YESXXX NO

Gender specific treatment is provided.

Comments:

YESXXX NO

Drug testing is frequent and random and performed at least twice per week.

Comments:

YESXXX NO

Secular alternative to community support groups if required.

Comments:

YESXXX NO

Participants appear a minimum of every other week in the first phase and no less than once per month in the final phase.

Comments:

YESXXX NO

Judge spends an average of three minutes with each participant.

Comments:

YESXXX NO

Program has more than 15 but less than 125 participants.

Comments: The program usually reaches the target number when individuals who are out on warrant or in jail are not counted as active participants.

YESXXX NO

Program does not impose more than an average of three jail days as sanction.

Comment:

YESXXX NO

Judge is leader of team and maintains an active role.

Comments:

YESXXX NO

Court fees are reasonable and based on participants ability to pay.

Comments:

EVIDENCE BASED PARACTICES:

YESXXX NO

Law enforcement is a member of the team

Comments:

YESXXX NO

Team members are assigned for no less than two years.

Comments:

.YESXXXNO

Team members use electronic communication.

Comments:

YESXXX NO

Incentives and sanctions are in writing and shared with participants and other

team members.

Comments:

YESXXX NO

The Judge can impose a sanction immediately and prior to the next scheduled court hearing for inappropriate behavior.

Comments:

YESXXX NO

Drug testing is available on weekends and holidays and all results are available and available in no more than two days.

Comments: Usually weekend tests are conducted by law-enforcement during home visits.

YESXXX NO

Participants are screened and not denied the program for mental health issues.

Comments:

YESXXX NO

Eligibility criteria are written.

Comments:

YESXXX NO

Treatment fees are based on a sliding fee schedule.

Comments:

YESXXX NO

Program has policy dealing with challenges to drug tests.

Comments:

YESXXX NO

Court has a written policy dealing with medically assisted treatment.

Comments:

YESXXX NO

Clients are placed in program within 50 days of arrest.

Comments:

BEST PRACTICES:

YESXXX NO

Treatment group is no more than 15 members.

Comments:

YESXXX NO

Treatment is conducted in multiple phases.

Comments:

YESXXX NO

Treatment and court phases are not dependent on each other.

Comments:

YESXXX NO

Treatment addresses family, parenting, and education.

Comments:

YESXXX NO

Participants have the aid of an attorney if requested.

Comments:

YESXXX NO

Participants are not removed from program for dirty ua if doing well otherwise.

Comments:

YESXXX NO

Program conducts an exit interview for self improvement.

Comments:

YESXXX NO

Program maintains adequate data for program monitoring.

Comments:

STAFF MEMBER COMMENTS:

Defense Attorney: She has been with the court for over 5 years and has extensive training and experience. She feels the court is running well and had made some significant changes since state-wide training 2 years ago. She is looking forward to additional training at the state conference and the national conference.

Case-Manager: Feels the program is operating well.

Treatment: Really likes the Judge and the way the program is operating. Judge gives due consideration to therapeutic responses.

Law-Enforcement: Really enjoys working with the program. He will be conducting a session at the Utah State Training in regards to Problem Solving Courts and alternatives to incarceration.

PARTICIPANT COMMENTS: The Participants seemed to appreciate the Judge and everything the team was doing to support them. Felt like they were being treated fairly. They really appreciated the relationship with law-enforcement. They felt the UAs were adequate to keep them in line. They had no recommendations for improvement of the program.

RECOMMEND: CERITIFY

YESXXX NO

Program conducts an exit interview for self improvement.

Comments:

YESXXX NO

Program maintains adequate data for program monitoring.

Comments:

STAFF MEMBER COMMENTS:

Drug Court Therapist: She attends all staffings and as many court sessions as possible. She feels the program is running well.

Case Manager: Enjoys working with the program and feels it is running well.

Drug Court Detective: Really enjoys the work although came into the program reluctantly. He has established a relationship with a number of the participants.

Defense Attorney: She has been working with Drug Courts for over ten years. It is her impression that Judge does a really good job. She has seen him change over the years.

Prosecutor: He is the newest member of the team. He is feeling his way although he did attend when prior prosecutor was unavailable. He thinks he could use some training and is planning on attending the state wide training and hopefully the national training.

PARTICIPANT COMMENTS: The participants are very pleased with the program. They feel that everyone on the team is trying to help them. There was a comment that sometimes it feels like the case managers are just doing their job and are not really interested in the clients. They all liked and had respect for the Judge.

RECOMMENDATION: CERTIFY

**Washington County Adult Drug Court
Judge Shumate**

CERTIFICATION SITE VISIT

PROGRAM: WASHINGTON COUNTY, ADULT DRUG COURT

JUDGE: SHUMATE

NUMBER OF PARTICIPANTS: 90

DATE: APRIL 10, 2013

REQUIRED:

YESXXX NO Minimum length of program is twelve months.

Comments:

YESXXX NO Program requires at least 90 days clean to graduate.

Comments:

YESXXX NO Court has a participant agreement and waiver.

Comments:

YESXXX NO Pros, Def, Treat, and Judge, at a minimum attend staffing.

Comments:

YESXXX NO

Pros, Def, Treat, and Judge, at a minimum attend court sessions.

Comments:

YESXXX NO

Staffing occurs prior to every court session.

Comments:

YESXXX NO

Participants sign a release of confidentiality.

Comments:

YESXXX NO

Court has written policies and procedures.

Comments:

YESXXX NO

Eligibility criteria do not exclude non-drug charges.

Comments:

YESXXX NO

Participants undergo a substance abuse assessment.

Comments:

YESXXX NO

Participants undergo a criminogenic risk assessment.

Comments:

YESXXX NO

Program uses RANT.

Comments:

YESXXX NO

Treatment is provided by a state licensed provider.

Comments:

YESXXX NO

Gender specific treatment is provided.

Comments:

YESXXX NO

Drug testing is frequent and random and performed at least twice per week.

Comments: The participants related that there could be some more flexibility in the time that participants are required to show for drug testing.

YESXXX NO

Secular alternative to community support groups if required.

Comments:

YESXXX NO

Participants appear a minimum of every other week in the first phase and no less than once per month in the final phase.

Comments:

YESXXX NO

Judge spends an average of three minutes with each participant.

Comments: Judge did a good job in conversing with participants. It was suggested to the Judge that he might ask for a treatment and other staff members reports in court so he had more information to discuss with the participants.

YESXXX NO

Program has more than 15 but less than 125 participants.

Comments:

YESXXX NO Program does not impose more than an average of three jail days as sanction.

Comment: Still struggling with the practice of therapeutic responses to behavior and not as much jail.

YESXXX NO Judge is leader of team and maintains an active role.

Comments:

YESXXX NO Court fees are reasonable and based on participants ability to pay.

Comments:

EVIDENCE BASED PARACTICES:

YESXXX NO Law enforcement is a member of the team
Comments: Use trackers in this court. Participants have to pay for the trackers at the rate of \$30.00 per week. Sheriff will not help without reimbursement.

YESXXX NO Team members are assigned for no less than two years.

Comments: Had just been assigned a new prosecutor but he claimed his boss was supportive and that he would remain with the court an indefinite period of time.

.YESXXXNO Team members use electronic communication.

Comments:

YESXXX NO

Incentives and sanctions are in writing and shared with participants and other team members.

Comments: Like all of the drug courts the program could use some more incentives.

YESXXX NO

The Judge can impose a sanction immediately and prior to the next scheduled court hearing for inappropriate behavior.

Comments:

YESXXX NO

Drug testing is available on weekends and holidays and all results are available and available in no more than two days.

Comments:

YESXXX NO

Participants are screened and not denied the program for mental health issues.

Comments:

YESXXX NO

Eligibility criteria are written.

Comments:

YESXXX NO

Treatment fees are based on a sliding fee schedule.

Comments:

YESXXX NO

Program has policy dealing with challenges to drug tests.

Comments:

YESXXX NO

Court has a written policy dealing with medically assisted treatment.

Comments:

YESXXX NO

Clients are placed in program within 50 days of arrest.

Comments:

BEST PRACTICES:

YESXXX NO

Treatment group is no more than 15 members.

Comments:

YESXXX NO

Treatment is conducted in multiple phases.

Comments:

YESXXX NO

Treatment and court phases are not dependent on each other.

Comments:

YESXXX NO

Treatment addresses family, parenting, and education.

Comments:

YESXXX NO

Participants have the aid of an attorney if requested.

Comments:

YESXXX NO Participants are not removed from program for dirty ua if doing well otherwise.

Comments:

YESXXX NO Program conducts an exit interview for self improvement.

Comments:

YESXXX NO Program maintains adequate data for program monitoring.

Comments:

STAFF MEMBER COMMENTS:

Prosecutor: The prosecutor is brand new to the program. He has been with drug court approximately one month. It is his understanding he will be there for at least two years. Prior to his assignment he had filled in when needed so he was aware of what drug court did. He claims his boss is supportive of drug court and there is a positive feeling in the office among the other attorneys.

Treatment: The program needs more incentives for the participants. They are thinking of reinstituting a fish bowl as an incentive. They are just starting an alumni association and a mentoring program. In the past there has been a problem with communication between the trackers and treatment but they claim that has been improving.

PARTICIPANT COMMENTS: The participants are excited about the mentor program that is being instituted. They claim the trackers do a good job and are fair and easy to communicate with. They think the treatment staff is good. Have a difficult time with the limited amount of time they are given to report for their drug tests. The participants would like to see the rule regarding association change so that they can associate with other participants who are doing well in the program.

Suggestions: Suggested to the Judge the following: More flexibility in drug testing.



Have treatment give a report in court.

Rein in the trackers a little.

Objective criteria for entry into the program.

Association among participants.

The Judge was very receptive to the suggestions and stated that he would make the necessary changes.

Recommendation: CERTIFY

**Carbon County Family Dependency
Price - Judge Johansen**

CERTIFICATION SITE VISIT

PROGRAM: CARBON COUNTY FAMILY DEPENDENCY, PRICE

JUDGE: JOHANSEN

NUMBER OF PARTICIPANTS: 17

DATE: May 29. 2013

REQUIRED:

YESXXX NO

Minimum length of program is twelve months.

Comments:

YESXXX NO

Program requires at least 90 days clean to graduate.

Comments:

YESXXX NO

Court has a participant agreement and waiver.

Comments:

YESXXX NO

Pros, Def, Treat, and Judge, at a minimum attend staffing.

Comments: Since this is a Family Dependency Drug Court staffing is also attended by a Tracker, DCFS workers, Guardian-ad-Litem, Attorney General, and

an individual from Four Corners Counseling that is in charge of keeping track of fees.

YESXXX NO

Pros, Def, Treat, and Judge, at a minimum attend court sessions.

Comments: Same as above.

YESXXX NO

Staffing occurs prior to every court session.

Comments:

YESXXX NO

Participants sign a release of confidentiality.

Comments:

YESXXX NO

Court has written policies and procedures.

Comments:

YESXXX NO

Eligibility criteria do not exclude non-drug charges.

Comments:

YESXXX NO

Participants undergo a substance abuse assessment.

Comments:

YESXXX NO

Participants undergo a criminogenic risk assessment.

Comments:

YESXXX NO

Program uses RANT.

Comments:

YESXXX NO

Treatment is provided by a state licensed provider.

Comments:

YESXXX NO

Gender specific treatment is provided.

Comments:

YESXXX NO

Drug testing is frequent and random and performed at least twice per week.

Comments:

YESXXX NO

Secular alternative to community support groups if required.

Comments:

YESXXX NO

Participants appear a minimum of every other week in the first phase and no less than once per month in the final phase.

Comments:

YESXXX NO

Judge spends an average of three minutes with each participant.

Comments: Judge did a good job trying to spend sufficient time with each participant. Instructed Judge to have treatment and the rest of the team give a report in court so the Judge can be fed more information to discuss with each participant.

YESXXX NO

Program has more than 15 but less than 125 participants.

Comments:

YES NOXXX

Program does not impose more than an average of three jail days as sanction.

Comment: the Judge on occasion will impose significantly more jail time than three days. Judge was instructed that additional jail time is not therapeutic but I am not sure he cares or listens. Judge also attended training given by Rick Schwermer and myself in which he was instructed that more than three days jail is counterproductive.

YESXXX NO

Judge is leader of team and maintains an active role.

Comments:

YESXXX NO

Court fees are reasonable and based on participants ability to pay.

Comments:

EVIDENCE BASED PARACTICES:

YESXXX NO

Law enforcement is a member of the team

Comments: The Tracker is a member of law enforcement.

YESXXX NO

Team members are assigned for no less than two years.

Comments:

.YES NOXXX

Team members use electronic communication.

Comments: The team was instructed to do so.

YES NOXXX

Incentives and sanctions are in writing and shared with participants and other team members.

Comments: Team was instructed to prepare a grid and try to follow it. They were also instructed that the grid should be shared with the participants.

YESXXX NO

The Judge can impose a sanction immediately and prior to the next scheduled court hearing for inappropriate behavior.

Comments:

YESXXX NO

Drug testing is available on weekends and holidays and all results are available and available in no more than two days.

Comments:

YESXXX NO

Participants are screened and not denied the program for mental health issues.

Comments:

YESXXX NO

Eligibility criteria are written.

Comments:

YESXXX NO

Treatment fees are based on a sliding fee schedule.

Comments:

YESXXX NO

Program has policy dealing with challenges to drug tests.

Comments:

YESXXX NO

Court has a written policy dealing with medically assisted treatment.

Comments:

YESXXX NO

Clients are placed in program within 50 days of arrest.

Comments: In most instances however all participants are referred by DCFS.

BEST PRACTICES:

YESXXX NO

Treatment group is no more than 15 members.

Comments:

YESXXX NO

Treatment is conducted in multiple phases.

Comments:

YESXXX NO

Treatment and court phases are not dependent on each other.

Comments:

YESXXX NO

Treatment addresses family, parenting, and education.

Comments:

YESXXX NO

Participants have the aid of an attorney if requested.

Comments:

YESXXX NO

Participants are not removed from program for dirty ua if doing well otherwise.

Comments:

YESXXX NO

Program conducts an exit interview for self improvement.

Comments: Program was instructed to expand the exit interview to cover participants that have failed the program.

YESXXX NO

Program maintains adequate data for program monitoring.

Comments:

STAFF MEMBER COMMENTS:

Defense: Thought there was too much use of jail and that the jail stays were too long. He thought there needed to be better training for new team members. He thought there needed to be better dissemination of participant progress prior to staffing. He was enthusiastic about email communication.

Trackers: The Trackers thought it would be beneficial for there to be a better coordinated treatment plan between DCFS and Treatment. They thought it would be useful for them to know what the treatment plan was especially when they went on home visits. They thought that DCFS was using too many case-workers and that the drug court clients needed to be more centralized. They thought the program needed more incentives. The Trackers have been very innovative and have started classes in nutrition, finances, and have started an intern program with some of the small businesses in town.

AG: Did not have much to say. He is the newest member of the team.

Treatment: Needed more incentives in the program. Jail is used too heavily.

PARTICIPANT COMMENTS: Participants were very complimentary of the program. They especially liked the Trackers and did not have enough good to say about them. Participants thought that the drug testing could be increased and be a little bit more random. Participants complained about the rule not allowing association. They thought the rule was too rigid. They were in favor of the establishment of an alumni association and starting a mentoring program.

Recommendation: CERTIFY

**Sanpete County Adult Drug Court
Manti - Judge Bagley**

CERTIFICATION SITE VISIT

PROGRAM: SANPETE COUNTY, MANTI, ADULT DRUG COURT

JUDGE: BAGLEY

NUMBER OF PARTICIPANTS: 11

DATE: JULY, 2013

REQUIRED:

YESXXX NO Minimum length of program is twelve months.

Comments:

YESXXX NO Program requires at least 90 days clean to graduate.

Comments:

YESXXX NO Court has a participant agreement and waiver.

Comments:

YESXXX NO

Pros, Def, Treat, and Judge, at a minimum attend staffing.

Comments:

YESXXX NO

Pros, Def, Treat, and Judge, at a minimum attend court sessions.

Comments:

YESXXX NO

Staffing occurs prior to every court session.

Comments:

YESXXX NO

Participants sign a release of confidentiality.

Comments:

YESXXX NO

Court has written policies and procedures.

Comments:

YESXXX NO

Eligibility criteria do not exclude non-drug charges.

Comments:

YESXXX NO

Participants undergo a substance abuse assessment.

Comments:

YESXXX NO

Participants undergo a criminogenic risk assessment.

Comments:

YESXXX NO

Program uses RANT.

Comments:

YESXXX NO

Treatment is provided by a state licensed provider.

Comments:

YESXXX NO

Gender specific treatment is provided.

Comments:

YESXXX NO

Drug testing is frequent and random and performed at least twice per week.

Comments:

YESXXX NO

Secular alternative to community support groups if required.

Comments:

YESXXX NO

Participants appear a minimum of every other week in the first phase and no less than once per month in the final phase.

Comments

YESXXX NO

Judge spends an average of three minutes with each participant.

Comments: Judge did an excellent job communicating with the participants.

YES NOXXX

Program has more than 15 but less than 125 participants.

Comments: Program has 11 participants but has had up to 16.

YES NOXXX

Program does not impose more than an average of three jail days as sanction.

Comment: Program has used jail as detox since nothing else is available.

YESXXX NO

Judge is leader of team and maintains an active role.

Comments:

YESXXX NO

Court fees are reasonable and based on participants ability to pay.

Comments:

EVIDENCE BASED PARACTICES:

YESXXX NO

Law enforcement is a member of the team

Comments:

YESXXX NO

Team members are assigned for no less than two years.

Comments:

.YESXXXNO

Team members use electronic communication.

Comments:

YESXXX NO

Incentives and sanctions are in writing and shared with participants and other

team members.

Comments:

YESXXX NO

The Judge can impose a sanction immediately and prior to the next scheduled court hearing for inappropriate behavior.

Comments:

YESXXX NO

Drug testing is available on weekends and holidays and all results are available and available in no more than two days.

Comments:

YESXXX NO

Participants are screened and not denied the program for mental health issues.

Comments:

YESXXX NO

Eligibility criteria are written.

Comments:

YESXXX NO

Treatment fees are based on a sliding fee schedule.

Comments:

YESXXX NO

Program has policy dealing with challenges to drug tests.

Comments:

YESXXX NO

Court has a written policy dealing with medically assisted treatment.

Comments:

YESXXX NO

Clients are placed in program within 50 days of arrest.

Comments:

BEST PRACTICES:

YESXXX NO

Treatment group is no more than 15 members.

Comments: Only have 11 participants.

YESXXX NO

Treatment is conducted in multiple phases.

Comments:

YESXXX NO

Treatment and court phases are not dependent on each other.

Comments:

YESXXX NO

Treatment addresses family, parenting, and education.

Comments:

YESXXX NO

Participants have the aid of an attorney if requested.

Comments:

YESXXX NO

Participants are not removed from program for dirty ua if doing well otherwise.

Comments:

YESXXX NO

Program conducts an exit interview for self improvement.

Comments:

YESXXX NO

Program maintains adequate data for program monitoring.

Comments:

STAFF MEMBER COMMENTS:

Defense attorney: Program runs well for a small community. Thinks maybe jail is used too frequently.

Prosecutor: Likes the program and is very willing to look at all arrestees for eligibility.

Coordinator: Brand new to the program. She has been with the program for one month. She is in recovery herself and her husband is a graduate of the program. Got the impression she will be very good in her job. She is planning on attending the state-wide training in October. I referred her to two national websites for training and information.

Participants: One of the participant's complaints was how far they had to travel to report for a drug test. They did feel that treatment needed more structure. There seemed to be some disagreement as to whether participants could enter phase four if not current on fees.

RECOMMENDATION: CERTIFY

**Box Elder Adult Mental Health Court
Brigham City - Judge Allen**

BOX ELDER ADULT MENTAL HEALTH COURT, BRIGHAM

Judge ALLEN

BRIGHAM CITY

FEBRUARY 2013

Overview:

A. Authority: this review was conducted under the authority of CJA Rule 4-409 and the Judicial Council.

B. Purpose and Scope: the purpose of the review is to provide oversight and assistance to mental health courts operating in the State of Utah.

C. Methodology: The certification process included a review of the drug court policies, procedures and practices, and the (10) essential elements of a mental health court. Interviews were conducted with the mental health court staff, team members, and other persons involved in the operation of the mental health court.

D. Rating Criteria:

Compliant: Subject area was in compliance with standards.

Compliant with Comment: Subject area was in general compliance with standards but specific areas need to be addressed.

Non-compliant: Subject area has one or more significant problems with standards.

F. Mental Health Court Description: Judge Allen runs an excellent Mental Health Court. His team consists of treatment, probation, defense and prosecution, and a mental health court coordinator. All are present for staffing and for court. There was excellent discussion concerning participants during the staffing. There was no reluctance during court for the team members to speak concerning participants. The probation agent is excellent with mentally ill clients.

H. The Ten (10) Essential Elements:

1. A BROAD BASED GROUP OF STAKEHOLDERS REPRESENTING THE CRIMINAL JUSTICE, MENTAL HEALTH, SUBSTANCE ABUSE TREATMENT, AND RELATED SYSTEMS AND THE COMMUNITY GUIDES PLANNING AND ADMINISTRATION OF THE COURT.

a. Used in design phase COMPLIANT

b. Determined eligibility criteria, monitoring mechanisms, and articulated clear, specific, and realizable goals. COMPLIANT

c. The planning committee designated members of an Advisory Group which monitor the court's adherence to its mission. COMPLIANT

2. ELIGIBILITY CRITERIA ADDRESS PUBLIC SAFETY AND CONSIDER A COMMUNITY'S TREATMENT CAPACITY, IN ADDITION TO THE AVAILABILITY OF ALTERNATIVES TO PRETRIAL DETENTION FOR DEFENDANTS WITH MENTAL ILLNESS.

a. Take into account the relationship between mental illness and a defendant's offenses. COMPLIANT

b. Specialized police based responses and pre-trial services programs. COMPLIANT

c. Closely coordinated with other problem solving courts such as drug court. COMPLIANT

3. PARTICIPANTS ARE IDENTIFIED, REFERRED, AND ACCEPTED INTO MENTAL HEALTH COURTS, AND THEN LINKED TO COMMUNITY-BASED SERVICE PROVIDERS AS QUICKLY AS POSSIBLE.

a. Welcome referrals from an array of sources such as law enforcement officers, jail and pretrial services staff, defense counsel, Judges, and family members. COMPLIANT

b. Advertise eligibility criteria and actively educates referral sources. COMPLIANT

c. The time required to accept someone into the program does not exceed the length of the sentence that someone would have received for the crime. COMPLIANT

d. Final determination of eligibility is a team decision. COMPLIANT

4. TERMS OF PARTICIPATION ARE CLEAR, PROMOTE PUBLIC SAFETY, FACILITATE THE DEFENDANT'S ENGAGEMENT IN TREATMENT, ARE INDIVIDUALIZED TO CORRESPOND TO THE LEVEL OF RISK THAT THE DEFENDANT PRESENTS TO THE COMMUNITY, AND PROVIDE FOR POSITIVE LEGAL OUTCOMES FOR THOSE INDIVIDUALS WHO SUCCESSFULLY COMPLETE THE PROGRAM.

a. There is a written treatment plan shared with the participant prior to entry into the program and the participant is made aware of noncompliance. COMPLIANT

b. Participants are made aware of all of the collateral consequences of a criminal conviction, i.e. housing, employment, future treatment. COMPLIANT

c. Length of program is not longer than maximum length of probation or incarceration the participant would have received. COMPLIANT

d. Intensity of supervision is determined by seriousness of the crime they committed. COMPLIANT

e. Length of the program is determined by the participant's progress in treatment. COMPLIANT

f. A participant is allowed to withdraw from the program, if in compliance, at any time without any adverse consequences. COMPLIANT

5. DEFENDANTS FULLY UNDERSTAND THE PROGRAM REQUIREMENTS BEFORE AGREEING TO PARTICIPATE IN A MENTAL HEALTH COURT. THEY ARE PROVIDED LEGAL COUNSEL TO INFORM THIS DECISION AND SUBSEQUENT DECISIONS ABOUT PROGRAM INVOLVEMENT. PROCEDURES EXIST IN THE MENTAL HEALTH COURT TO ADDRESS, IN A TIMELY FASHION, CONCERNS ABOUT A DEFENDANT'S COMPETENCY WHENEVER THEY ARISE.

a. Staff ensures that defendants fully understand the terms of participation, including the legal consequences if they do not adhere to the program conditions. COMPLIANT

b. Counsel is always present at a minimum when there is a risk of sanctions or removal from the program. COMPLIANT

6. MENTAL HEALTH COURTS CONNECT PARTICIPANTS TO COMPREHENSIVE AND INDIVIDUALIZED TREATMENT SUPPORTS AND SERVICES IN THE COMMUNITY.

a. The program provides coordinated treatment for both mental illness and substance abuse if needed. COMPLIANT

b. The case-manager has a caseload that allows for the performance of core functions and allows for the monitoring of the overall condition of the participant.
COMPLIANT

c. The program assures that treatment and services will remain available after court supervision ends. **COMPLIANT**

7. HEALTH AND LEGAL INFORMATION SHOULD BE SHARED IN A WAY THAT PROTECTS POTENTIAL PARTICIPANTS' CONFIDENTIALITY RIGHTS AS MENTAL HEALTH CONSUMERS AND THEIR CONSTITUTIONAL RIGHTS AS DEFENDANTS.

a. The program adheres to federal and state laws that protect the confidentiality of medical, mental health, and substance abuse treatment records.
COMPLIANT

b. The court maintains clinical records separate from court files. **COMPLIANT**

c. Discussions involving clinical information in open court is avoided.
COMPLIANT

8. A TEAM OF CRIMINAL JUSTICE AND MENTAL HEALTH STAFF AND SERVICE AND TREATMENT PROVIDERS RECEIVES SPECIAL, ONGOING TRAINING AND HELPS MENTAL HEALTH COURT PARTICIPANTS ACHIEVE TREATMENT AND CRIMINAL JUSTICE GOALS BY REGULARLY REVIEWING AND REVISING THE COURT PROCESS.

a. The judge leads and encourages collaboration among the mental health court team. **COMPLIANT**

b. Team members take part in cross-training. **COMPLIANT**

c. The team attends national and/or in-state training and has the opportunity to observe the operation of other mental health courts. **COMPLIANT**

d. There is periodic review and revision of the court process. **COMPLIANT**

9. CRIMINAL JUSTICE AND MENTAL HEALTH STAFF COLLABORATIVELY MONITOR PARTICIPANTS' ADHERENCE TO COURT CONDITIONS, OFFER INDIVIDUALIZED GRADUATED INCENTIVES AND SANCTIONS, AND MODIFY TREATMENT AS NECESSARY TO PROMOTE PUBLIC SAFETY AND PARTICIPANTS' RECOVERY.

a. Court staff is informed of participant's progress from all agencies involved.
COMPLIANT

b. Sanctions are explained to participants prior to entering the program.
COMPLIANT

c. There are incentives for a participant that exceeds the expectations of the program. **COMPLIANT**

10. DATA IS COLLECTED AND ANALYZED TO DEMONSTRATE THE IMPACT OF THE MENTAL HEALTH COURT, ITS PERFORMANCE IS ASSESSED PERIODICALLY, COURT PROCESSES ARE INSTITUTIONALIZED, AND SUPPORT FOR THE COURT IN THE COMMUNITY IS CULTIVATED AND EXPANDED.

a. Court and treatment conduct an exit interview with participants.
COMPLIANT

b. The court has formulated and written policies and procedures. **COMPLIANT WITH COMMENT:** Court is in the process of formulating written policies and procedures.

c. The court has a plan for continued funding. **COMPLIANT**

d. The court has a plan on how to respond to serious program failures.
COMPLIANT

Comments: The program is developing as they operate. The Judge and staff have all attended training and plan on additional training in the future. Treatment has done a number of presentations concerning the dynamics of mental illness. They are in the process of starting a mentoring program. This is a good program with a Judge that is willing to listen and learn. He has a good team behind him.

THIS COURT SHOULD BE USED AS A MENTORING COURT FOR THE REST OF THE STATE OF UTAH.

J. Recommendations: Preliminary Certification.

**Cache County Juvenile Mental
Health Court
Judge Larry Jones**

CACHE COUNTY JUVENILE MENTAL HEALTH COURT

Judge LARRY JONES

DATE: JUNE 24,2013

Overview:

A. Authority: this review was conducted under the authority of CJA Rule 4-409 and the Judicial Council.

B. Purpose and Scope: the purpose of the review is to provide oversight and assistance to mental health courts operating in the State of Utah.

C. Methodology: The certification process included a review of the drug court policies, procedures and practices, and the (10) essential elements of a mental health court. Interviews were conducted with the mental health court staff, team members, and other persons involved in the operation of the mental health court.

D. Rating Criteria:

Compliant: Subject area was in compliance with standards.

Compliant with Comment: Subject area was in general compliance with standards but specific areas need to be addressed.

Non-compliant: Subject area has one or more significant problems with standards.

F. Mental Health Court Description: Judge Jones presides over a Juvenile Mental Health Court in both Cache County and Box Elder County. Neither Court meets the Ten Essential Elements of a Mental Health Court. Staffing is conducted between the Mental Health Court Coordinator and Treatment once a month. Neither the Judge, Prosecutor, or Defense are present for the staffing. The Judge stated that if Bear River Mental Health was required to come to staffing every week they would withdraw from the program. HE also stated that the Coordinator gets treatment information not only from Bear River but also from all the private providers. However, insurance will usually only pay for approximately ten visits with a private provider and after those ten visits the participants in the program do not receive any additional counseling. Most of his participants seem to be in the program because of problems with theft related charges and mental health issues.

There are 7 participants in the Cache County Program.

- a. Welcome referrals from an array of sources such as law enforcement officers, jail and pretrial services staff, defense counsel, Judges, and family members. N/A
- b. Advertise eligibility criteria and actively educates referral sources. N/A
- c. The time required to accept someone into the program does not exceed the length of the sentence that someone would have received for the crime. N/A
- d. Final determination of eligibility is a team decision. N/A

4. TERMS OF PARTICIPATION ARE CLEAR, PROMOTE PUBLIC SAFETY, FACILITATE THE DEFENDANT'S ENGAGEMENT IN TREATMENT, ARE INDIVIDUALIZED TO CORRESPOND TO THE LEVEL OF RISK THAT THE DEFENDANT PRESENTS TO THE COMMUNITY, AND PROVIDE FOR POSITIVE LEGAL OUTCOMES FOR THOSE INDIVIDUALS WHO SUCCESSFULLY COMPLETE THE PROGRAM.

- a. There is a written treatment plan shared with the participant prior to entry into the program and the participant is made aware of noncompliance. N/A
- b. Participants are made aware of all of the collateral consequences of a criminal conviction, i.e. housing, employment, future treatment. COMPLIANT
- c. Length of program is not longer than maximum length of probation or incarceration the participant would have received. COMPLIANT
- d. Intensity of supervision is determined by seriousness of the crime they committed. COMPLIANT
- e. Length of the program is determined by the participant's progress in treatment. COMPLIANT
- f. A participant is allowed to withdraw from the program, if in compliance, at any time without any adverse consequences. COMPLIANT

5. DEFENDANTS FULLY UNDERSTAND THE PROGRAM REQUIREMENTS BEFORE AGREEING TO PARTICIPATE IN A MENTAL HEALTH COURT. THEY ARE PROVIDED LEGAL COUNSEL TO INFORM THIS DECISION AND SUBSEQUENT DECISIONS ABOUT PROGRAM INVOLVEMENT. PROCEDURES EXIST IN THE MENTAL HEALTH COURT TO ADDRESS, IN A TIMELY FASHION, CONCERNS ABOUT A DEFENDANT'S COMPETENCY WHENEVER THEY ARISE.

- a. Staff ensures that defendants fully understand the terms of participation, including the legal consequences if they do not adhere to the program conditions. COMPLIANT

b. Counsel is always present at a minimum when there is a risk of sanctions or removal from the program. **NON-COMPLIANT**

6. MENTAL HEALTH COURTS CONNECT PARTICIPANTS TO COMPREHENSIVE AND INDIVIDUALIZED TREATMENT SUPPORTS AND SERVICES IN THE COMMUNITY.

a. The program provides coordinated treatment for both mental illness and substance abuse if needed. **COMPLIANT**

b. The case-manager has a caseload that allows for the performance of core functions and allows for the monitoring of the overall condition of the participant. **N/A**

c. The program assures that treatment and services will remain available after court supervision ends. **NON-COMPLIANT**

7. HEALTH AND LEGAL INFORMATION SHOULD BE SHARED IN A WAY THAT PROTECTS POTENTIAL PARTICIPANTS' CONFIDENTIALITY RIGHTS AS MENTAL HEALTH CONSUMERS AND THEIR CONSTITUTIONAL RIGHTS AS DEFENDANTS.

a. The program adheres to federal and state laws that protect the confidentiality of medical, mental health, and substance abuse treatment records. **COMPLIANT**

b. The court maintains clinical records separate from court files. **COMPLIANT**

c. Discussions involving clinical information in open court is avoided. **COMPLIANT**

8. A TEAM OF CRIMINAL JUSTICE AND MENTAL HEALTH STAFF AND SERVICE AND TREATMENT PROVIDERS RECEIVES SPECIAL, ONGOING TRAINING AND HELPS MENTAL HEALTH COURT PARTICIPANTS ACHIEVE TREATMENT AND CRIMINAL JUSTICE GOALS BY REGULARLY REVIEWING AND REVISING THE COURT PROCESS.

a. The judge leads and encourages collaboration among the mental health court team. **NON-COMPLIANT**

b. Team members take part in cross-training. **NON-COMPLIANT**

c. The team attends national and/or in-state training and has the opportunity to observe the operation of other mental health courts. **COMPLIANT**

d. there is periodic review and revision of the court process. **COMPLIANT**

9. CRIMINAL JUSTICE AND MENTAL HEALTH STAFF COLLABORATIVELY MONITOR PARTICIPANTS' ADHERENCE TO COURT CONDITIONS, OFFER INDIVIDUALIZED GRADUATED INCENTIVES AND SANCTIONS, AND MODIFY TREATMENT AS NECESSARY TO PROMOTE PUBLIC SAFETY AND PARTICIPANTS' RECOVERY.

a. Court staff is informed of participant's progress from all agencies involved.
COMPLIANT

b. Sanctions are explained to participants prior to entering the program.
COMPLIANT

c. There are incentives for a participant that exceeds the expectations of the program. **COMPLIANT WITH COMMENT: NOT ENOUGH IMMEDIATE INCENTIVES.**

10. DATA IS COLLECTED AND ANALYZED TO DEMONSTRATE THE IMPACT OF THE MENTAL HEALTH COURT, ITS PERFORMANCE IS ASSESSED PERIODICALLY, COURT PROCESSES ARE INSTITUTIONALIZED, AND SUPPORT FOR THE COURT IN THE COMMUNITY IS CULTIVATED AND EXPANDED.

a. Court and treatment conduct an exit interview with participants.
COMPLIANT

b. The court has formulated and written policies and procedures. **NON-**
COMPLIANT

c. The court has a plan for continued funding. **NON-COMPLIANT**

d. the court has a plan on how to respond to serious program failures. **NON-**
COMPLIANT



J. Recommendations: PROVIDE OVERSIGHT STATING WHAT MUST OCCUR FOR THE PROGRAM TO BE CERTIFIED.



**Iron County Mental Health Court
Cedar City - Judge Walton**

IRON COUNTY MENTAL HEALTH COURT, CEDAR CITY

Judge Walton

DATE April 2013

Overview:

A. Authority: this review was conducted under the authority of CJA Rule 4-409 and the Judicial Council.

B. Purpose and Scope: the purpose of the review is to provide oversight and assistance to mental health courts operating in the State of Utah.

C. Methodology: The certification process included a review of the drug court policies, procedures and practices, and the (10) essential elements of a mental health court. Interviews were conducted with the mental health court staff, team members, and other persons involved in the operation of the mental health court.

D. Rating Criteria:

Compliant: Subject area was in compliance with standards.

Compliant with Comment: Subject area was in general compliance with standards but specific areas need to be addressed.

Non-compliant: Subject area has one or more significant problems with standards.

F. Mental Health Court Description: This court is presided over by Judge John Walton. Judge Walton does an excellent job in mental health court. He should be considered a leader and mentor when it comes to this problem solving court. His team is cohesive and present during staffing and court. He has the addition of NOMI being present at all times. His team is experienced having been involved in drug court for a number of years.

H. The Ten (10) Essential Elements:

1. A BROAD BASED GROUP OF STAKEHOLDERS REPRESENTING THE CRIMINAL JUSTICE, MENTAL HEALTH, SUBSTANCE ABUSE TREATMENT, AND RELATED SYSTEMS AND THE COMMUNITY GUIDES PLANNING AND ADMINISTRATION OF THE COURT. Compliant

a. Used in design phase. Compliant

b. Determined eligibility criteria, monitoring mechanisms, and articulated clear, specific, and realizable goals. Compliant

c. The planning committee designated members of an Advisory Group which monitor the court's adherence to its mission. Compliant

2. ELIGIBILITY CRITERIA ADDRESS PUBLIC SAFETY AND CONSIDER A COMMUNITY'S TREATMENT CAPACITY, IN ADDITION TO THE AVAILABILITY OF ALTERNATIVES TO PRETRIAL DETENTION FOR DEFENDANTS WITH MENTAL ILLNESS.

a. Take into account the relationship between mental illness and a defendant's offenses. Compliant

b. Specialized police based responses and pre-trial services programs.
Compliant

c. Closely coordinated with other problem solving courts such as drug court.
Compliant

3. PARTICIPANTS ARE IDENTIFIED, REFERRED, AND ACCEPTED INTO MENTAL HEALTH COURTS, AND THEN LINKED TO COMMUNITY-BASED SERVICE PROVIDERS AS QUICKLY AS POSSIBLE. Compliant

a. Welcome referrals from an array of sources such as law enforcement officers, jail and pretrial services staff, defense counsel, Judges, and family members.
Compliant

b. Advertise eligibility criteria and actively educates referral sources.
Compliant

c. The time required to accept someone into the program does not exceed the length of the sentence that someone would have received for the crime. Compliant

d. Final determination of eligibility is a team decision. Compliant

4. TERMS OF PARTICIPATION ARE CLEAR, PROMOTE PUBLIC SAFETY, FACILITATE THE DEFENDANT'S ENGAGEMENT IN TREATMENT, ARE INDIVIDUALIZED TO CORRESPOND TO THE LEVEL OF RISK THAT THE DEFENDANT PRESENTS TO THE COMMUNITY, AND PROVIDE FOR POSITIVE LEGAL OUTCOMES FOR THOSE INDIVIDUALS WHO SUCCESSFULLY COMPLETE THE PROGRAM. Compliant

a. There is a written treatment plan shared with the participant prior to entry into the program and the participant is made aware of noncompliance. Compliant

b. Participants are made aware of all of the collateral consequences of a criminal conviction, i.e. housing, employment, future treatment. Compliant

c. Length of program is not longer than maximum length of probation or incarceration the participant would have received. Compliant

d. Intensity of supervision is determined by seriousness of the crime they committed. Compliant

e. Length of the program is determined by the participant's progress in treatment. Compliant

f. A participant is allowed to withdraw from the program, if in compliance, at any time without any adverse consequences. Compliant

5. DEFENDANTS FULLY UNDERSTAND THE PROGRAM REQUIREMENTS BEFORE AGREEING TO PARTICIPATE IN A MENTAL HEALTH COURT. THEY ARE PROVIDED LEGAL COUNSEL TO INFORM THIS DECISION AND SUBSEQUENT DECISIONS ABOUT PROGRAM INVOLVEMENT. PROCEDURES EXIST IN THE MENTAL HEALTH COURT TO ADDRESS, IN A TIMELY FASHION, CONCERNS ABOUT A DEFENDANT'S COMPETENCY WHENEVER THEY ARISE. Compliant

a. Staff ensures that defendants fully understand the terms of participation, including the legal consequences if they do not adhere to the program conditions. Compliant

b. Counsel is always present at a minimum when there is a risk of sanctions or removal from the program. Compliant

6. MENTAL HEALTH COURTS CONNECT PARTICIPANTS TO COMPREHENSIVE AND INDIVIDUALIZED TREATMENT SUPPORTS AND SERVICES IN THE COMMUNITY. Compliant

a. The program provides coordinated treatment for both mental illness and substance abuse if needed. Compliant

b. The case-manager has a caseload that allows for the performance of core functions and allows for the monitoring of the overall condition of the participant. Compliant

c. The program assures that treatment and services will remain available after court supervision ends. Compliant

7. HEALTH AND LEGAL INFORMATION SHOULD BE SHARED IN A WAY THAT PROTECTS POTENTIAL PARTICIPANTS' CONFIDENTIALITY RIGHTS AS MENTAL HEALTH CONSUMERS AND THEIR CONSTITUTIONAL RIGHTS AS DEFENDANTS. Compliant

a. The program adheres to federal and state laws that protect the confidentiality of medical, mental health, and substance abuse treatment records. Compliant

b. The court maintains clinical records separate from court files. Compliant

c. Discussions involving clinical information in open court are avoided. Compliant

8. A TEAM OF CRIMINAL JUSTICE AND MENTAL HEALTH STAFF AND SERVICE AND TREATMENT PROVIDERS RECEIVES SPECIAL, ONGOING TRAINING AND HELPS MENTAL HEALTH COURT PARTICIPANTS ACHIEVE TREATMENT AND CRIMINAL JUSTICE GOALS BY REGULARLY REVIEWING AND REVISING THE COURT PROCESS. Compliant

a. The judge leads and encourages collaboration among the mental health court team. Compliant

b. Team members take part in cross-training. Compliant

c. The team attends national and/or in-state training and has the opportunity to observe the operation of other mental health courts. Compliant

d. there is periodic review and revision of the court process. Compliant

9. CRIMINAL JUSTICE AND MENTAL HEALTH STAFF COLLABORATIVELY MONITOR PARTICIPANTS' ADHERENCE TO COURT CONDITIONS, OFFER INDIVIDUALIZED GRADUATED INCENTIVES AND SANCTIONS, AND MODIFY TREATMENT AS NECESSARY TO PROMOTE PUBLIC SAFETY AND PARTICIPANTS' RECOVERY. Compliant

a. Court staff is informed of participant's progress from all agencies involved. Compliant

b. Sanctions are explained to participants prior to entering the program. Compliant

c. There are incentives for a participant that exceeds the expectations of the program. Compliant

10. DATA IS COLLECTED AND ANALYZED TO DEMONSTRATE THE IMPACT OF THE MENTAL HEALTH COURT, ITS PERFORMANCE IS ASSESSED PERIODICALLY, COURT PROCESSES ARE INSTITUTIONALIZED, AND SUPPORT FOR THE COURT IN THE COMMUNITY IS CULTIVATED AND EXPANDED. Compliant

a. Court and treatment conduct an exit interview with participants. Compliant

b. The court has formulated and written policies and procedures. Compliant

c. The court has a plan for continued funding. Compliant

d. the court has a plan on how to respond to serious program failures.

Compliant

J. Recommendations: The court is presently working on written policies and procedures. He follows the guidelines and has no set graduation time. All graduations are figured on a case by case basis. The court has no phases but does use an All Star Docket.

They are trying to work on a shorter amount of time till entry into the program. They are having a problem with establishing direct referrals from the jail so it is taking too much time starting participants in the program.

They have established a dual jurisdiction with the Justice court so that participants can be referred to the program from the justice court.

RECOMMENDATION: CERTIFY

TAB 6

REPORT ON

CONCURRENT

JURISDICTION

Report on Concurrent Jurisdiction

To: Judicial Council

From: Standing Committee on Child and Family Law

Date: _____

Introduction

At its meeting on October 25, 2010 the Judicial Council charged its Standing Committee on Children and Family Law (the "Committee" or the "Standing Committee") to review "the narrow issue of concurrent jurisdiction, the issues raised by concurrent jurisdiction and in differing standards for termination of parental rights in juvenile and district courts." Since then the Committee has done so and submits this report, which includes identification of issues/problems and proposed solutions. We note at the outset that while not charged to review concurrent jurisdiction over adoption, termination and adoption are interrelated to the point that one cannot be discussed without the other and several of our recommendations relate to adoption as well as termination. Most of the leg work for this report was done by an Adoption Subcommittee. Perhaps the subcommittee would be more accurately called the termination of parental rights subcommittee, but adoption seemed simpler and more appealing. The Subcommittee was chaired by Judge Tom Higbee of the juvenile court and consisted of both members of the Committee and invitees from the community. Judge John Walton from the district court, Sophia Moore and Rick Smith represented the Standing Committee. David McConkie, Frank Call and Larry Jenkins, each of whom has an extensive adoption practice, served on the subcommittee by invitation. In addition, two county attorneys, Scott Garrett from Iron County and Jeff Buhman from Utah County, were invited to give input on the issue of

county funding of parents attorneys. This Report was prepared and unanimously approved by the Standing Committee, except for the question of full concurrent jurisdiction, which was not unanimously approved. The details will be set forth below.

Summary of Statutes and Application

Generally stated, the termination of the legal parent/child relationship is the exclusive jurisdiction of the juvenile court.¹ Any person may file a petition to terminate parental rights in the juvenile court and such petitions are governed by Part 5 of the Juvenile Court Act. A parent responding to a petition for termination of parental rights in the juvenile court has the right to an attorney, as granted in the following sections of the Juvenile Court Act:

- DRAFT**
- A. Section 78A-5-106(2) which states: "A hearing shall be held specifically on the question of termination of parental rights no sooner than 10 days after service of summons is complete. A verbatim record of the proceedings shall be taken and the parties shall be advised of their right to counsel."
 - B. Section 78A-6-1111 which states: "The parents...shall be informed that they have the right to be represented by counsel at every stage of the proceedings. They have the right to employ counsel of their own choice and if any of them request an attorney and is found by the court to be indigent, counsel shall be appointed by the court, subject to the provisions of this section."

While the juvenile court has primary jurisdiction for parental terminations, the jurisdiction of juvenile courts to complete adoptions is limited. Utah Code Ann. §78A-6-103(p) provides that the juvenile court has jurisdiction to conduct adoptions "in accordance with the

¹Utah Code Ann. § 78A-6-103 (g).

procedures described in Title 78B, Chapter 6 (the Utah Adoption Act) ...when the juvenile court has previously entered an order terminating the rights of a parent and finds that adoption is in the best interest of the child.” Thus, juvenile courts can only grant an adoption if they have previously terminated the rights of the parent. Brent Johnson, General Counsel to the AOC, has given the opinion that the word “previously” means that the termination of parental rights and adoption cannot be handled in the same petition. In other words, an adoption cannot be handled in the juvenile court unless parental rights were terminated in a previous action, not as part of the action seeking adoption. *See, In re Adoption of B.B.G.*, 2007 UT App 149, ¶ 7, 160 P.3d 9.

The district court is the court of general jurisdiction, and handles all adoptions except those stated above. As an exception to the juvenile court's exclusive jurisdiction to terminate parental rights, the Utah Adoption Act allows the district court to terminate parental rights “if the party who filed the petition is seeking to terminate parental rights in the child for the purpose of facilitating the adoption of the child.” Utah Code Ann. §78B-6-112(1). Unlike the Juvenile Court Act, under the Adoption Act a petition for termination in the district court may either be joined with the adoption petition or filed as a separate proceeding, and it may be filed before or after a petition to adopt the child is filed. Utah Code Ann. §78B-6-112(2).

When a petitioner brings a termination petition in the district court in contemplation of an adoption, “the person’s parental rights [may be] terminated on grounds described in Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.” This reference seemingly incorporates at least the grounds, and arguably all of the processes and procedures contained in the Termination of Parental Rights Act. Even though an argument could be made that even in district court, by incorporating the reference to the Termination of Parental Rights Act, the responding parent is

entitled to an attorney, the district court judges uniformly decline to appoint counsel in termination of parental rights cases handled under their jurisdiction.

In these ways and in other ways that will be set out below, the laws and rules governing termination and adoption differ between district and juvenile court. The present allocation of concurrent jurisdiction between juvenile and district courts seems to have evolved haphazardly, resulting in some clumsy processes and inconsistencies. The Standing Committee was unable to identify any logical reason why the procedures and protections are different between juvenile and district court when the requested action and the end result is essentially exactly the same.

Analysis of Flaws and Proposed Solutions

In the remainder of this report we identify and analyze what we consider to be the most significant problems with the present concurrent jurisdictional scheme, together with proposed solutions.

Issue #1 – The jurisdiction and procedure for termination of parental rights when connected to adoptions is too restrictive in juvenile court and too broad in district court

As noted above, in both juvenile court and district court a party can now petition for termination of parental rights. The conditions precedent to filing and the procedures are significantly different. In the district court, a petitioner can only seek termination of parental rights in connection with an adoption. But the standard that binds the termination and the adoption together is extremely loose. If termination will “facilitate” an adoption, then the district court has jurisdiction to terminate and the termination and adoption do not have to be in the same action. The Utah Supreme Court has recently cleared up some of the confusion created by the statute by holding that a termination petition may only be filed if an adoption petition is also

pending.² Even with this judicial clarification this existing standard seems too broad, in that terminations could be granted with no guarantee if or when the adoption would be completed to conclusion, leaving no permanency or stability for the child.

On the other extreme, in the juvenile court a petitioner cannot join a petition to terminate parental rights with a petition for adoption. Juvenile courts only have jurisdiction to grant adoption if they have “previously” terminated parental rights. Thus, a person seeking termination of parental rights and adoption in the juvenile court must first petition for termination of parental rights, and then when that action is concluded file a separate petition for adoption. There may be times when a party chooses to proceed separately, such as when they want to have all appeal issues relating to the termination resolved before going forward with an adoption. But requiring the dual petition procedure typically takes more time, costs more money and also creates the possibility that parental rights could be terminated with no adoption to follow. The Standing Committee recognizes that in juvenile court not all terminations will be followed by an adoption, but when the petitioning parties contemplate an immediate adoption the dual petition procedure can create unnecessary problems.

As now in place, neither the district court approach nor the juvenile court approach are in the best interest of the children. Stability and permanency are generally best served when an adoptive parent or parents are waiting in the wings as soon as possible following termination of parental rights.³ Both district court and juvenile court approaches, as they now exist, work

² In the Matter of the Adoption of R.B.F.S., A.M.F.S., R.E.F.S. and O.J.F.S., 2011 UT 46.

³ Of course when it is in the child’s best interest to terminate parental rights without an adoption in the wings, a petition can always be filed in juvenile court to do so.

against this purpose to a point.

First Recommendation. The Standing Committee recommends that the Judicial Council consider a proposal to the legislature amending both the Juvenile Court Act and the Utah Adoption Act. The Juvenile Court Act would be amended to allow a petition for adoption to be included in the same petition as a petition to terminate parental rights. The Utah Adoption Act would be amended to require that a petition to terminate parental rights to “facilitate” an adoption must be filed in the same action as the adoption proceeding.

Making this change could be problematic when, for whatever reason, the termination should be done here in Utah, but the child is placed for adoption in another state. Often adoption providers place children for adoption in other states even though a birth parent or parents reside here or the child is born in Utah. Some of those other states will not allow a petition for adoption to be filed until the parental rights have been terminated. In those situations, the Adoption Act should be amended to provide that a petition for termination of parental rights may be filed in the district court without a cause of action for adoption if the child has been placed for adoption in another state. The placement in the other state will be the trigger event for jurisdiction.

Second Recommendation. The Adoption Subcommittee and some members of the Standing Committee also propose that the Judicial Council consider another step beyond this, which the Adoption Subcommittee and some members of the Standing Committee believe will facilitate greater efficiency in adoptions, both for children and for the involved adults. This recommendation was not unanimous among the members of the Standing Committee and is therefore both positions are stated here.

A. Position of the Adoption Subcommittee and members of the Standing Committee. We are aware that the following recommendation is comparatively drastic. We propose that the Council consider whether the two Acts also be amended to provide for concurrent and identical jurisdiction for all adoptions. The present separation of authority between juvenile court is understandable, but may not always be in the best interest of the children and families. District courts have general jurisdiction for adoptions, but when termination of parental rights are contested as part of an adoption, logic dictates that the termination issues would be more effectively handled by the juvenile court because that's what juvenile courts do (see discussion under Issue 3, below). To more easily facilitate juvenile courts handling these issues, and other adoptions as well, we propose giving juvenile courts jurisdiction to handle all adoptions would be beneficial, all things considered, to litigants and the affected children.

The reasons are both practical and logical. The fundamental purpose of juvenile courts is to resolve legal issues relating to children. From a logical standpoint, it certainly seems like juvenile courts should have jurisdiction to grant this most fundamental of all procedures regarding children. The law has evolved otherwise, for reasons that seem more historical than logical, but adoptions are squarely within the philosophical framework of why we have juvenile courts.

The primary advantages are more practical than theoretical. At root, the primary benefit of this proposal is to allow a person who anticipates that a request for termination of parental rights in the context of an adoption will be contested, to choose to have that contest heard in the court which has the greatest expertise in contested terminations – the juvenile court. Under the present structure a petitioner cannot practically do so. Often the petitioner does not know in

advance what the position of the responding party will be. Thus the petitioner must plead alternatively that either the respondent will consent or his/her rights should be terminated. Because juvenile courts only have jurisdiction for terminations, not consents, the petitioner must necessarily bring it in district court even though it may well end up going to termination.⁴

There are other practical advantages as well. Because of the differences in procedures, time frames, court calendars, or type of issues, there may be times when the parties may prefer district court over juvenile court and vice versa. In some places a contested termination/adoption trial could take twice as long to calendar in one court as it would the other. Sometimes the shorter time frame would be in district court and sometimes it would be in juvenile. And, since timing is always critical when children's rights are involved, the party could select the forum that could handle the case most expeditiously. The present structure encourages forum shopping to a point, for litigation advantage. It would be in the best interest of children and parties generally if a party seeking an adoption had access to dual forums which would be governed by essentially the same statutes and rules. There would still be a choice of forums, but if the governing laws and rules are identical, the parties would logically select the forum that is most convenient rather than for an upper hand.

B. Position of the District Court Board

The Board of District Court Judges disagrees with this proposal and has set forth it's

⁴Since this option is not now available, we have no way of knowing how often this or a similar scenario would play out. The analysis here is based strictly on what we perceive the possibilities to be, not on any survey or other statistical quantification. The adoption attorneys who participated on the Adoption/Termination subcommittee indicated that they would very much like to have this option in cases where the responding parent would be likely to resist the adoption.

position in a separate paper which will presented to the Judicial Council directly.

As will be noted below, the Standing Committee recognizes that this may result in a reallocation of work load between the district court and juvenile court. The extent of the case shift will be hard to predict. Since right now all of the adoptions involving consents rather than terminations are held in the district court, the shift would most certainly be from district to juvenile.

Issue # 2 – Juvenile courts should have jurisdiction to grant both terminations and adoptions for children within its jurisdiction

Independent of the concept of concurrent jurisdiction, the juvenile court should always have jurisdiction to terminate parental rights and grant adoptions for children already within its jurisdiction. Sometimes adoption is the best solution even without first requiring a termination of parental rights. By way of example, occasionally when a child comes before the court on delinquency matters the court finds that they live with someone other than parents. The line often blurs between delinquency and child welfare. The court should have the option of making temporary placements like this permanent, both by adoption and guardianship, when it is in the best interest of the child to do so.⁵ As it is now, the juvenile court could only grant an adoption to guardians if the rights of the parent were first terminated. Juvenile courts should be given jurisdiction to grant adoptions by consent of the parents, without a required fault finding, for children within their jurisdiction.

⁵ On a related issue, occasionally parties to proceedings in juvenile court have gone to the district court seeking adoption of children already within the jurisdiction of the juvenile court. When a child is subject to the jurisdiction of the juvenile court for abuse, neglect or dependency, the district court does not have jurisdiction to terminate parental rights. Utah Code Ann § 78B-6-112(4)(b).

Recommendation #3. If the juvenile courts are granted full concurrent jurisdiction then this issue would not need to be addressed. If not, then juvenile courts should be given jurisdiction to handle adoptions for children within its jurisdiction and the Adoption Act should be amended to prohibit actions for termination when the juvenile is already within juvenile court jurisdiction on any ground, not just abuse, neglect or dependency, even when the juvenile court has not previously terminated parental rights.

Issue # 3 (Including Recommendation #4) – Contested terminations are not always best handled in district court (the proposed solution is built into the discussion on this issue)

As we have surveyed the district court bench (in a limited and informal fashion) virtually to the person the bench expressed its uneasiness about handling contested termination of parental rights cases. Juvenile courts do it all the time and are familiar with the issues and procedures involved. The Standing Committee recommends that a mechanism be put in place so that in some circumstances contested adoptions where termination is an issue could be transferred to the juvenile court by the district court. This would require a grant of additional jurisdiction, as discussed above. Without concurrent jurisdiction for adoptions juvenile courts could not handle these cases, for the reasons set forth above. Once again, this could involve a shift in resources between district and juvenile courts, and that could be addressed as part of the solution.

There are four issues that need to be resolved to implement this case transfer: A. Mandatory or optional; B. The triggering event; C. The method; and D. The timing.

A. Mandatory or optional. The driving philosophy behind this transfer process is to more fully take advantage of the existing expertise of the juvenile courts in handling these kinds

of cases. There will likely be district court judges who want to keep them and who feel qualified to do so. Thus, the Committee concluded that these transfers should be optional.

B. Triggering event. This is the most difficult of the implementation issues. All agree that when the parent does not contest the termination the case should stay in district court to conclusion. The conclusion the Standing Committee reached on when transfer would be allowed was quite general. We concluded that when evidence will be required to resolve any material issue the district court should have the option of making the transfer. We will leave for another day the details of how this determination will be made. Ideally there would be a specific hearing, such as a pre-trial or scheduling conference, at which this decision could be made. But the district courts handle their procedures in so many different ways that a uniform event may not be possible.

C. The method. The details of the method of transfer can be worked out fairly easily much in the same way that transfers of protective orders are now handled from juvenile court to district.

D. Timing. This ties in directly with the triggering event. Generally stated, the transfer should be made as early in the proceeding as possible. The judge actually trying the case should make most of the decisions on significant pre-trial issues. Once again, a designated event such as a pre-trial hearing or scheduling conference would be preferred. But in reality it may end up being something general, such as "whenever a district court determines that an evidentiary hearing will be necessary to resolve any material issue, the district court may transfer the case to the juvenile court for further proceedings. The transfer shall be made as promptly as circumstances allow."

Issue # 4 – Defending parents get a state appointed attorney in juvenile court but do not in district court

Under existing law parents are entitled to a public defender for all petitions for termination of parental rights filed in the juvenile court and are likely not entitled to a public defender for similar petitions in district court. We first discussed why the two laws treat what are essentially the same rights differently. We have not commissioned one of the AOC law clerks to research legislative history to see if there is a reason, historical or otherwise, which would justify the differences. The observable history of these two bodies of law (the Juvenile Court Act and the Utah Adoption Act) pretty clearly demonstrate that they were created on separate tracks and the differences between them (and the similarities too for that matter) evolved independent of each other. So far as we can tell, there has never been an attempt to reconcile them. In district courts contested terminations involve only private parties while in juvenile court DCFS is most often the petitioner. This largely explains the different treatment as near as we can tell.

We next attempted to ferret out the purposes for giving parents a public funded attorney at all. The Standing Committee believes that there is not a constitutional right to a publically funded attorney to defend TPR petitions. The primary purpose seems to be simply to protect the integrity of this most fundamental human right. Of course in juvenile court DCFS files the overwhelming majority of TPR petitions and a second reason is to level the playing field for indigent respondents. It is inherently unfair to make indigent respondents defend their parental rights against the comparatively vast resources of the state. As noted, we concluded that this partially explains why there is now no existing right to an appointed attorney in district court and there is in juvenile court.

Recommendation #5: We considered three options, in addition to the possibility of leaving it the way it is. First, we considered recommending that no parents get a public defender. Second, we considered recommending that all parties to a termination case in both courts get a public defender. Third, we considered recommending that parents only get a public defender when DCFS (or another state agency) is the petitioning party. We recognize that the ultimate decision here is a policy decision that will have to be made by first by the Judicial Council and then ultimately by the legislature. We concluded that our role was to explain the pros and cons, make our recommendation, and then leave it to the Council and the legislature to decide. We eliminated the first option quickly. The Standing Committee firmly believes that parents should get a public defender in juvenile court when the state petitions for termination. The right to parent is indeed a right worthy of defending at state expense for indigent parents. It is inherently unfair to have the issue decided with such significantly different resources.

The crucial issue is whether parents should get a public defender when someone other than the state petitions for termination. The huge majority of private petitions in juvenile court are filed by family members, typically either the other parent, grandparents or aunts/uncles. In a typical scenario the grandparents feel like their grandchildren are at risk with the parent or parents and therefore petition for termination. In district court, a larger percentage are filed by the other parent, often in anticipation of a step parent adoption.

From the perspective of the defending parent, it doesn't matter who petitions, the fundamental rights and the end result are the same. From the perspective of the child, however, there are times when parental rights should be terminated. The unfairness shifts to the child when one private party gets a free attorney and the other one doesn't. The Committee feels like

either both sides should get an attorney or neither side should get an attorney.⁶ In situations where rights should be terminated in the best interest of children, family members may be deterred from filing necessary petitions if they have to fund the action themselves against an attorney paid for by the state for the parent whose rights are being challenged. Our recommendation, therefore, is that in both courts parents get a publically funded attorney when they are defending an action against DCFS or another state agency, but not when they are defending an action against a private party. Since the state does not file petitions in district court, there would likely be no change to the Adoption Act. The Juvenile Court Act would have to be amended accordingly.

Issue # 5 – The appeal times for termination cases are different in district court than in juvenile court

The Juvenile Court Act provides that appeals from juvenile court cases must be taken within 15 days, including both adoptions and terminations. In district court the appeal time is 30 days for both adoptions and terminations. Keeping in mind that the best interest of the child should be the controlling concern, it makes no sense to have different appeal times for the exact same action.

Recommendation #6: The Standing Committee recommends that the appeal times be the same for terminations and adoptions regardless of which court makes the order and that the appeal time be 15 days. This will require an amendment of the rules and will also undoubtedly require some attorney education. We have reviewed drafts of proposed amendments prepared in

⁶The two participating county attorneys do not necessarily agree with the possibility that both parties get an attorney at state expense.

times past which we believe should be adopted.

Issue # 6 – The persons authorized to receive consents and relinquishments differ between the two courts

The Adoption Act and the Juvenile Court Act have different procedures for consents to adoption and relinquishment of parental rights and authorize different people to take them. The two acts are pretty much the same in principle for birth mothers. Each allow relinquishments to be taken by a judge, by someone appointed by a judge, or by an authorized child placing agency. Both require certification of voluntariness and that the document was read and understood. But there are irritating differences that should be squared. For example, under the Adoption Act the relinquishment may be taken by an “person” appointed by the judge to take it. Under the Juvenile Court Act, the court must appoint a “public officer” to take the relinquishment. These small differences have no apparent benefit and leave the potential for confusion and/or mistakes in practical application.

For other parties, including fathers, the two acts are vastly different. The Adoption Act allows the relinquishment to be taken by any Notary Public and requires no certification. Utah Code Ann. §78B-6-124(3). The Juvenile Court Act requires appearance before a judge or someone appointed by the court to receive the relinquishment, just as with mothers, and it requires the same certification as that required for mothers. Utah Code Ann. §78A-6-514(1). The Standing Committee recommends that the procedures be the same in both courts, for several reasons. Consistency between the Acts would promote uniformity in practice and reduce mistakes. It would allow a uniform body of caselaw and other precedent to develop. There would be less chance for confusion and/or mistakes for attorneys and others working in both

courts.

Recommendation #7: The Standing Committee recommends that both Acts be amended to make the procedures and persons authorized to take consents and relinquishments uniform. We recommend that the general procedure now followed in the district court be adopted in the Juvenile Court Act. That is, for mothers a judge, someone commissioned by a judge and child placing agencies would be allowed to take consents and relinquishments. For fathers and others, Notaries Public would be authorized to do so. While not now required for fathers, a certification of reading, understanding and voluntariness should be required. Some basic procedures for the person receiving the consent should be specified. This general process has worked well under the Adoption Act for a while now and seems to be functional without compromising the integrity of the relinquishment.

DRAFT

Summary

In order to implement the recommendations of the Standing Committee, both statutory amendments and rule changes would be required. As described above, the changes seem somewhat daunting, but when the chaff is blown away the changes could actually be made quite simply. As noted, some of the proposed changes would certainly involve some shift of cases between juvenile court and district court. Both benches have been given opportunity for input. The Board of Juvenile Court Judges approved all of these recommended changes. The Board of District Court Judges approved all of the recommended changes except for the proposal which would grant to the juvenile court full concurrent jurisdiction for adoptions. The reasoning for both positions is set forth above.

MEMOS TO

DISTRICT COURT

JUDGES FROM

JUDGE THOMAS

MEMORANDUM

To: Board of Juvenile Court Judges

From: Judge Doug Thomas

Date: July 31, 2012

Re: Objection to proposal that juvenile court share full concurrent jurisdiction with district court in all adoption cases.

Background

The various proposals of the adoption subcommittee of the Standing Committee on Children and Family Law were presented to the entire standing committee last year by co-chair of the standing committee, Juvenile Court Judge Thomas Higbee. I am the other co-chair. As I reviewed the proposal to have both juvenile and district courts exercise full concurrent jurisdiction of adoptions, I voiced my disapproval of that measure. Because of the divergent views on the standing committee, Judge Higbee and I decided to each take our positions to our respective boards. Judge Higbee and I have both presented our views to the Board of District Court Judges on two occasions and that board has twice unanimously rejected the proposal for concurrent jurisdiction. Judge Higbee reported to the standing committee that the Board of Juvenile Court Judges approved the concurrent jurisdiction proposal last year. I am grateful for the opportunity to now share my thoughts with your board.

I want to emphasize that the standing committee has not voted to support the concurrent jurisdiction proposal. If you have had an opportunity to read the adoption subcommittee's "Final-Draft" of the proposal, it gives the impression that a majority of the standing committee has approved the concurrent jurisdiction proposal. That is not the case. The standing committee specifically desired to take no position on that issue and agreed that Judge Higbee and I would present our two positions to the judicial council. It is my understanding that the management committee of the Judicial Council has now requested that the standing committee vote on the issue before it will be considered by the council and I anticipate that it will come for a vote at a future meeting. A brief summary of my objections follows:

Objections

1. Full concurrent jurisdiction in adoptions significantly expands the traditional role exercised by juvenile courts. The role of juvenile courts traditionally has been limited to resolving the criminal offenses and truancy committed by juveniles and issues of abuse, neglect and dependency involving children's care. It is appropriate and necessary that juvenile courts have the ability to hear adoptions ancillary to these functions. This new proposal, however, significantly broadens the scope of juvenile court activities into a general jurisdictional arena for the first time.

Once this bright line is crossed there is really no theoretical basis to deprive the juvenile court from exercising jurisdiction in any matter involving children, including the resolution of custody disputes in divorce and paternity actions, the implementation of guardianships and

conservatorships of minors, and the litigation and settlement of minors' claims. Obviously, the expansion into these areas is not now being sought. However, the justification for limiting the role of juvenile courts becomes more tenuous if lawyers seek concurrent jurisdiction in other areas on similar grounds of "convenience" as is now occurring. The prospect of again facing the issue of dedicated "family courts" which was opposed by district court judges and the judicial council in the 1990's could again become a focal point of discussion.

2. No need has been shown for full concurrent jurisdiction. This issue has not arisen because anyone has alleged that the district court is incapable of handling adoptions or is handling them poorly. No one is deprived of the ability to have adoption cases fully and fairly heard in district court if the district court retains its traditional role in this area. The proposal is a solution in search of a problem. The only basis that has been expressed for granting full concurrent jurisdiction has been convenience to the filing attorneys, but no one has yet articulated why it is more convenient to file a normal adoption case in juvenile court than in district court.

3. Concurrent jurisdiction lends itself to judge shopping. May I suggest that those pushing for concurrent jurisdiction are not doing so because they believe that district judges have been too lenient in granting adoption requests. Practitioners quickly learn which judges will hold their feet to the fire in meeting statutory criteria and which judges are more lax. They increase their odds of having a more lenient judge if they can pick their forum. This becomes especially apparent in smaller jurisdictions with few judges.

4. Full concurrent jurisdiction runs counter to the efforts of both the juvenile court and the district court to delineate our roles. For example, in child protective orders both the district court and juvenile court have concurrent jurisdiction. To prevent duplication and uncertainty as to where these should be filed and heard, the courts have had to work together. They have decided that the district court would hear them when they involve parents who already had a case involving custody in the district court. The juvenile court would hear all others. The proposal to simply share full concurrent jurisdiction of adoptions in both courts runs contrary to these efforts to establish boundaries between the two courts.

5. The district court bench has developed expertise through the years in various areas of adoption of which the juvenile court has no knowledge. For example, there were red flags that arose when dealing with adoptions of children from the Marshall Islands several years ago. Other issues have also arisen through the years. These were typically discussed at district court judges conferences. The juvenile court does not have this institutional experience as a group. While they would undoubtedly be able to gain experience over time, why go through that process when it is unnecessary?

6. The concurrent jurisdiction issue could again create tension between the district and juvenile courts in the allocation of resources. Indeed, the subcommittee's final draft includes the following language: "this may result in a reallocation of work load between the district court and juvenile court. The extent of the case shift will be hard to predict. Since right now all of the adoptions involving consents rather than terminations are held in the district court, the shift would most certainly be from district to juvenile."

While the resources associated with adoptions may or may not be material, if the bright-line limits of juvenile court authority are expanded, I would anticipate that each succeeding move to encroach on areas now handled by the district court will involve substantial discussions regarding a shift of resources.

7. The adoption subcommittee has gone substantially further than their charge from the judicial council. The standing committee was asked to review "the narrow issue of concurrent jurisdiction, the issues raised by concurrent jurisdiction and in differing standards for termination of parental rights in juvenile and district courts." The committee was not invited to examine whether the juvenile court should share full concurrent jurisdiction of all adoptions with the district court. The final draft also acknowledges that the proposal for full concurrent jurisdiction "is comparatively drastic".

8. I believe a more useful and practical approach would be to clearly delineate those adoption cases that the district and juvenile courts each should hear. Specifically, that the juvenile court has and would continue to have exclusive jurisdiction to hear adoptions in all cases where a termination of parental rights is based on alleged abuse, neglect or dependency. In those instances, we should work to eliminate the double filing fees that now exist in juvenile court and streamline that process. As has traditionally occurred, the district court would have exclusive jurisdiction over all other adoptions.

9. For the above reasons, I also do not think that the district court should have the ability to elect to "pour over" a termination trial to the juvenile court as proposed by the adoption subcommittee. The board of district court judges, however, has accepted this proposal. It was their understanding when they voted on this proposal that it already had been voted on and accepted by the Board of Juvenile Court Judges.

Thank-you for taking the time to consider these views.

Judge Doug Thomas



Fwd: September Board of District Court Judges Meeting

Judge Douglas Thomas <dbthomas@utcourts.gov>

Fri, Jun 28, 2013 at 11:44 AM

To: Ray Wahl <rayw@utcourts.gov>

I am also forwarding the Memo that I sent to Judge Toomey and Debra Moore that allowed me to get on the Board of District Court Judges meeting last September. My recollection of that meeting is that the board voted to restrict the elimination of the two-tiered filing fee only to the extent it applied to the adoption cases that the juvenile court are currently handling. The e-mail may be useful to clarify the district board's position. If you have any questions, let me know. Thanks!

----- Forwarded message -----

From: Judge Douglas Thomas <dbthomas@utcourts.gov>

Date: Thu, Aug 30, 2012 at 10:58 AM

Subject: September Board of District Court Judges Meeting

To: Judge Kate Toomey <ktoomey@utcourts.gov>, Debra Moore <debram@utcourts.gov>

Good Morning,

As you may recall, Tim Shea drafted a memo and proposed legislation at Judge Steele's request that would implement full concurrent jurisdiction in all adoptions between juvenile and district courts. The full concurrent jurisdiction proposal twice has been unanimously opposed by the Board of District Court Judges. The most salient aspect of Tim's draft reflected his view that because the Juvenile Court and District Court already share concurrent jurisdiction in adoption cases, full concurrent jurisdiction could be achieved simply through eliminating the two step process that currently exists in juvenile court, (i.e. a party must first file a termination of rights petition and after that is concluded file an adoption case). If the two tier process is eliminated, then any adoption could simply be filed in either court.

The Board of District Court Judges voted to approve the proposal to eliminate the double filing fee and two tier process in the juvenile court at the same time it voted to oppose full concurrent jurisdiction. The board accepted the proposal to eliminate the two tier process simply to remove the extra expense associated with a double filing fee in juvenile court. No discussion occurred that revealed this could lead to full concurrent jurisdiction. If Tim is correct, however, the Board of District Court Judges voted to oppose full concurrent jurisdiction on one hand and voted at the same time to implement it by eliminating the double filing and two tier restriction.

No one on the adoption subcommittee, the standing committee, the Board of Juvenile Court Judges or the Board of District Court Judges had viewed the full concurrent jurisdiction issue quite that simply. The issue of whether the juvenile court can hear adoptions based on abandonment needs to be more fully addressed. However, I think it would be useful to clarify the Board of District Court Judges position that its vote to eliminate the two tier approach only applied to cases where the juvenile court would have exclusive jurisdiction anyway (i.e. those cases where the termination of parental rights is based on abuse, neglect or dependency).

I don't think this issue would take more than 5 minutes to address at a board meeting and get a clarifying vote. Would it be possible for me to take 5 minutes at the September board meeting? I need to be there early on Wednesday anyway because I have been invited to present my objections regarding full concurrent jurisdiction to the Board of Juvenile Court judges.

Thanks for considering this!

Doug

TIM SHEA MEMO

TERMINATION OF PARENTAL

RIGHTS AND ADOPTION

DRAFT LEGISLATION



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

To: Standing Committee on Children and Family Law
From: Tim Shea *TS*
Date: July 10, 2012
Re: Termination of parental rights and adoption

I am redistributing my draft legislation to the committee chairs and staff and the Board chairs and staff. And I have revised this memo based on conversations with some of the judges. The Judicial Council has removed this topic from its July meeting to allow the committee to more fully discuss the issues and to more clearly come to closure. The Council will consider any recommendations from the committee, whether they are unanimous or supported by a majority of the committee members. The committee is completing a charge given it by the Council, but the Boards obviously have an interest as well.

There is considerable confusion over the finality of the committee's recommendations. I have drafted the proposed legislation based on the attached report, which represents itself to be a draft final report of the full committee to the Council. A Council member asked that I do so after the committee's report to the Council on June 25.

I am now told that this report is instead a report from the adoption subcommittee to the full committee. There remains some question about whether the full committee or even the subcommittee has approved it. Regardless, it served as the model for the legislation. Perhaps having that legislation, rather than just the concepts in the report, will help the committee reach its ultimate recommendations.

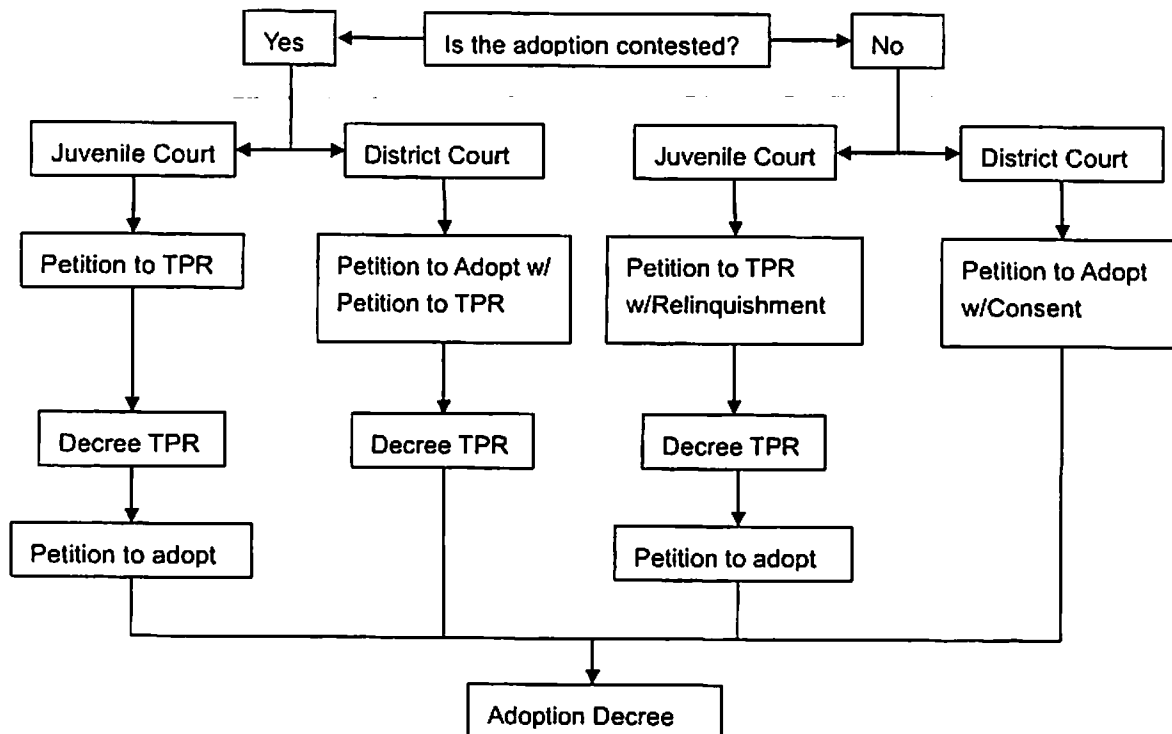
Concurrent jurisdiction

Provided that a petitioner is pursuing an adoption, rather than termination of parental rights alone, I conclude that the two courts already share most of the jurisdiction. There are procedural differences, which the committee recognized and recommended be made uniform, but the authority to hear and decide the adoption of a minor and the termination of parental rights in the minor is almost the same in both courts.¹

¹ The district court is divested of jurisdiction over the adoption of a minor if the juvenile court has previously terminated the parental rights of the minor's parents. Section 78A-6-103(p).

There are certain adoption scenarios that one expects to find in the district court, similarly in the juvenile court. For example, adoptions by step parents are traditionally filed in district court, and adoptions by grandparents and other relatives are traditionally filed in juvenile court. These patterns may be so uniform as to have assumed the patina of jurisdiction, but they remain convention, not law. Either scenario could be filed in the other court.

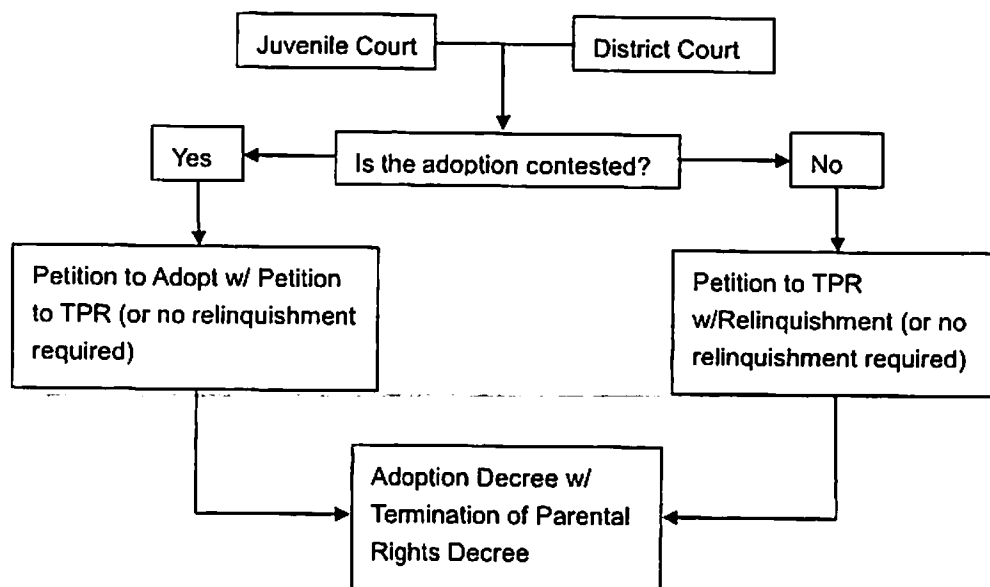
The subcommittee concluded otherwise, but I believe that conclusion is based on an incorrect premise. The committee report states: "[J]uvenile courts only have jurisdiction for terminations, not consents" On its face, this is true. One of the grounds for termination of parental rights, found in the Juvenile Court Act, is the relinquishment of those rights. Section 78A-6-507(1)(g). "Consent" to the adoption is a term from the Adoption Code not found in the grounds for termination, but the effect is the same: termination of parental rights.² So if the parent(s) do not contest the adoption, they are just as likely to sign a relinquishment form as a consent form. If the parent(s) do contest the adoption, the court—whether district or juvenile—will have to base the termination of parental rights on one of the other statutory grounds. The current model looks something like this:



² There is considerable confusion in the statutes between "consent" to an adoption and "relinquishment" of parental rights, which I have tried to eliminate in the proposed legislation, but the legal effect is the same.

The petitioner's choice of forum affects only the timing of the petition to terminate parental rights in relation to the petition to adopt. In the juvenile court, the petition to terminate parental rights must be decided before the petition to adopt can be decided. Section 78A-6-103(1)(p); *In re Adoption of B.B.G.*, 2007 UT App 149. In the district court, the petition to adopt must be filed first.³ The petition to terminate parental rights can be joined with the petition to adopt or filed as a separate action. The committee recommended that the difference on the timing of the petitions be removed.

Without modifying subject matter jurisdiction, if the procedural changes recommended by the committee are made, the adoption/TPR model would look something like this:



Historically, the Judicial Council has always opposed concurrent jurisdiction. Personally, I believe that the case has not been made for a different conclusion this time. The committee report cites the expertise of juvenile court judges in dealing with termination issues. That cannot be denied since juvenile court judges confront termination much more frequently than district court judges. To the extent that this expertise is needed in a district court adoption, the authority to transfer the case recommended by the committee should suffice.

The committee report cites several practical advantages, but those mentioned are primarily the procedural differences between the two courts. Remove those differences and neither court would be more advantageous.

The committee report says:

³ Section 78B-6-112(2) allows either petition in the district court to be filed first, but the Supreme Court has held that the petition to adopt must be pending for the district court to terminate parental rights. *In re Adoption of R.B.F.S.*, 2011 UT 46, ¶17.

Stability and permanency are generally best served when an adoptive parent or parents are waiting in the wings as soon as possible following termination of parental rights. Both district court and juvenile court approaches, as they now exist, work against this purpose to a point.

The premise is true enough, but, after the Supreme Court decision in *In re Adoption of R.B.F.S.*, 2011 UT 46, there will always be adoptive parents waiting in the wings in district court. And, by allowing a petition to adopt to be joined with a petition to terminate parental rights in juvenile court, the same will usually be true in juvenile court. The only exception should be when the juvenile court is called on to terminate parental rights and there is no planned adoption. We can hope that this circumstance is rare, but there is no way to legislate it away. The juvenile court must retain its authority to hear and decide a stand-alone petition to terminate parental rights.

If the committee ultimately recommends eliminating the procedural differences between the two courts and to retain the traditionally separate jurisdiction, I recommend a further amendment to Section 78A-6-103 something like this:

78A-6-103. Jurisdiction of juvenile court -- Original -- Exclusive.

(1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings concerning:

...

(q) adoptions conducted in accordance with the procedures described in Title 78B, Chapter 6, Part 1, Utah Adoption Act, ~~when-if:~~

(i) the child comes within the court's jurisdiction under other provisions of this section;

(ii) the juvenile court has previously entered an order terminating the rights of a parent and finds that adoption is in the best interest of the child; and

(iii) a parent's rights must be terminated for reasons other than relinquishment of parental rights.

This may not be exactly right; someone with more experience will have to describe the scenarios traditionally found in the two courts. In any event, the approach should be to describe the exclusive jurisdiction of the juvenile court and to rely on the general jurisdiction of the district court to include anything not mentioned: "The district court has original jurisdiction in all matters civil and criminal, not excepted in the Utah Constitution and not prohibited by law." Section 78A-5-102.

Committee recommendation: Amend the Juvenile Court Act to allow a petition for adoption to be included in the same petition as a petition to terminate parental rights. Amend the Utah Adoption Act to require that a petition to terminate parental rights to "facilitate" an adoption must be filed in the same action as the adoption proceeding.

Although this recommendation is procedural in nature (a petition to adopt must include termination of parental rights) not jurisdictional, it is part of the concurrent jurisdiction section of the report.

I further recommend eliminating the concept of termination of parental rights in order to "facilitate" an adoption. Termination of parental rights should be a necessary feature of an adoption since that is the effect of the adoption decree. That termination might be for cause or based on relinquishment of parental rights, but that is the current law.

- Section 78A-6-103(1)(q).
- Section 78A-6-504(1)
- Section 78B-6-112(2).

Committee recommendation: Amend the Adoption Act to provide that a petition for termination of parental rights may be filed in the district court without a cause of action for adoption if the child has been placed for adoption in another state.

- If the procedural changes recommended by the committee are made, there appears to be no reason to give these cases to the district court rather than to the juvenile court, which has jurisdiction now. I recommend that the juvenile court retain its exclusive jurisdiction to terminate parental rights in a private petition if there is no accompanying adoption. Section 78A-6-504(1). No change to the statute is needed.

Committee recommendation: Juvenile courts should have jurisdiction to grant both terminations and adoptions for children within its jurisdiction. Juvenile courts should be given jurisdiction to grant adoptions by consent of the parents, without a required fault finding, for children within their jurisdiction. There are several components to this recommendation:

- "both terminations and adoptions": Section 78A-6-504(1); Section 78B-6-112(2).
- "for children within its jurisdiction": Section 78A-6-103(1)(q).
- "consent of the parents, without a required fault finding": Section 78A-6-507(1)(g). The juvenile court already has this authority although it is phrased as "relinquishment" rather than "consent." I am proposing amendments that will clarify that only non-parents "consent" to an adoption; parents "relinquish" their rights voluntarily or there are specified circumstances in which relinquishment is not needed for the adoption to proceed.

Committee recommendation: The Adoption Act should be amended to prohibit actions for termination when the juvenile is already within juvenile court jurisdiction on any ground, not just abuse, neglect or dependency, even when the juvenile court has not previously terminated parental rights.

A parent's rights and responsibilities are necessarily terminated as the result of an adoption. Section 78B-6-138. I propose therefore that any adoption in any court necessarily include an express termination of the parent's rights. As recommended by the committee, that termination should meet the grounds in Section 78A-6-507 of the Juvenile Court Act, which includes relinquishment of parental rights. With this model a judge could terminate parental rights in an agreed-upon adoption based on relinquishment or in a contested adoption upon the grounds described in the statute.

- Section 78A-6-507(1)(g).
- Section 78B-6-112.
- Section 78B-6-133(1).

Encl. Draft legislation and rules
Draft Report of the Standing Committee on Children and Family Law,
undated

copy Board of District Court Judges
Board of Juvenile Court Judges

78A-6-103. Jurisdiction of juvenile court -- Original -- Exclusive.

(1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings concerning:

(a) a child who has violated any federal, state, or local law or municipal ordinance or a person younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age, regardless of where the violation occurred, excluding offenses in Subsection 78A-7-106(2);

(b) a person 21 years of age or older who has failed or refused to comply with an order of the juvenile court to pay a fine or restitution, if the order was imposed before the person's 21st birthday; however, the continuing jurisdiction is limited to causing compliance with existing orders;

(c) a child who is an abused child, neglected child, or dependent child, as those terms are defined in Section 78A-6-105;

(d) a protective order for a child pursuant to the provisions of Title 78B, Chapter 7, Part 2, Child Protective Orders, which the juvenile court may transfer to the district court if the juvenile court has entered an ex parte protective order and finds that:

(i) the petitioner and the respondent are the natural parent, adoptive parent, or step parent of the child who is the object of the petition;

(ii) the district court has a petition pending or an order related to custody or parent-time entered under Title 30, Chapter 3, Divorce, Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, or Title 78B, Chapter 15, Utah Uniform Parentage Act, in which the petitioner and the respondent are parties; and

(iii) the best interests of the child will be better served in the district court;

(e) appointment of a guardian of the person or other guardian of a minor who comes within the court's jurisdiction under other provisions of this section;

(f) the emancipation of a minor in accordance with Part 8, Emancipation;

(g) the termination of the legal parent-child relationship in accordance with Part 5, Termination of Parental Rights Act, including termination of residual parental rights and duties;

(h) the treatment or commitment of a minor who has an intellectual disability;

(i) a minor who is a habitual truant from school;

(j) the judicial consent to the marriage of a child under age 16 upon a determination of voluntariness or where otherwise required by law, employment, or enlistment of a child when consent is required by law;

(k) any parent or parents of a child committed to a secure youth corrections facility, to order, at the discretion of the court and on the recommendation of a secure facility, the parent or parents of a child committed to a secure facility for a custodial term, to undergo group rehabilitation therapy under the direction of a secure facility therapist, who has supervision of that parent's or parents' child, or any other therapist the court may direct, for a period directed by the court as recommended by a secure facility;

(l) a minor under Title 55, Chapter 12, Interstate Compact for Juveniles;

(m) the treatment or commitment of a child with a mental illness. The court may commit a child to the physical custody of a local mental health authority in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, but not directly to the Utah State Hospital;

(n) the commitment of a child to a secure drug or alcohol facility in accordance with Section 62A-15-301;

(o) a minor found not competent to proceed pursuant to Section 78A-6-1301;

(p) de novo review of final agency actions resulting from an informal adjudicative proceeding as provided in Section 63G-4-402; and

(q) adoptions conducted in accordance with the procedures described in Title 78B, Chapter 6, Part 1, Utah Adoption Act, ~~when the juvenile court has previously entered an order terminating the rights of a parent and finds that adoption is in the best interest of the child~~ if the child comes within the court's jurisdiction under other provisions of this section.

(2) Notwithstanding Section 78A-7-106 and Subsection 78A-5-102(9), the juvenile court has exclusive jurisdiction over the following offenses committed by a child:

(a) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(b) Section 73-18-12, reckless operation; and

(c) class B and C misdemeanors, infractions, or violations of ordinances that are part of a single criminal episode filed in a petition that contains an offense over which the court has jurisdiction.

(3) The juvenile court has jurisdiction over an ungovernable or runaway child who is referred to it by the Division of Child and Family Services or by public or private agencies that contract with the division to provide services to that child where, despite earnest and persistent efforts by the division or agency, the child has demonstrated that the child:

(a) is beyond the control of the child's parent, guardian, lawful custodian, or school authorities to the extent that the child's behavior or condition endangers the child's own welfare or the welfare of others; or

(b) has run away from home.

(4) This section does not restrict the right of access to the juvenile court by private agencies or other persons.

(5) The juvenile court has jurisdiction of all magistrate functions relative to cases arising under Section 78A-6-702.

(6) The juvenile court has jurisdiction to make a finding of substantiated, unsubstantiated, or without merit, in accordance with Section 78A-6-323.

(7) The juvenile court has jurisdiction of matters transferred to it by another trial court pursuant to Subsection 78A-7-106(7).

78A-6-504. Petition -- Who may file.

(1) Any interested party, including a foster parent, may file a petition for termination of the parent-child relationship with regard to a child. A petition to adopt the child may be joined with a petition to terminate parental rights.

(2) The attorney general shall file a petition for termination of parental rights under this part on behalf of the division.

78A-6-507. Grounds for termination of parental rights -- Findings regarding reasonable efforts.

(1) Subject to the protections and requirements of Section 78A-6-503, and if the court finds strictly necessary, the court may terminate all parental rights with respect to a parent if the court finds any one of the following:

(a) that the parent has abandoned the child;

(b) that the parent has neglected or abused the child;

(c) that the parent is unfit or incompetent;

(d)(i) that the child is being cared for in an out-of-home placement under the supervision of the court or the division;

(ii) that the parent has substantially neglected, wilfully refused, or has been unable or unwilling to remedy the circumstances that cause the child to be in an out-of-home placement; and

(iii) that there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care in the near future;

(e) failure of parental adjustment, as defined in this chapter;

(f) that only token efforts have been made by the parent:

(i) to support or communicate with the child;

(ii) to prevent neglect of the child;

(iii) to eliminate the risk of serious harm to the child; or

(iv) to avoid being an unfit parent;

(g)(i) that the parent has voluntarily relinquished the parent's parental rights to the child or that relinquishment is not required under Section 78B-6-110, 78B-6-110.1,

Section 78B-6-111, Section 78B-6-121, or Section 78B-6-122; and

(ii) that termination is in the child's best interest;

(h) that, after a period of trial during which the child was returned to live in the child's own home, the parent substantially and continuously or repeatedly refused or failed to give the child proper parental care and protection; or

(i) the terms and conditions of safe relinquishment of a newborn child have been complied with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child.

(2) The court may not terminate the parental rights of a parent because the parent has failed to complete the requirements of a child and family plan.

(3)(a) Except as provided in Subsection (3)(b), in any case in which the court has directed the division to provide reunification services to a parent, the court must find that the division made reasonable efforts to provide those services before the court may terminate the parent's rights under Subsection (1)(b), (c), (d), (e), (f), or (h).

(b) Notwithstanding Subsection (3)(a), the court is not required to make the finding under Subsection (3)(a) before terminating a parent's rights:

(i) under Subsection (1)(b), if the court finds that the abuse or neglect occurred subsequent to adjudication; or

(ii) if reasonable efforts to provide the services described in Subsection (3)(a) are not required under federal law, and federal law is not inconsistent with Utah law.

78A-6-514. Voluntary relinquishment -- Irrevocable.

(1) Voluntary relinquishment ~~or consent for termination of parental rights~~ shall be signed ~~or confirmed under oath either:~~ as provided in Section 78B-6-124.

~~(a) before a judge of any court that has jurisdiction over proceedings for termination of parental rights in this state or any other state, or a public officer appointed by that court for the purpose of taking consents or relinquishments; or~~

~~(b) except as provided in Subsection (2), any person authorized to take consents or relinquishments under Subsections 78B-6-124(1) and (2).~~

~~(2) Only the juvenile court is authorized to take consents or relinquishments from a parent who has any child who is in the custody of a state agency or who has a child who is otherwise under the jurisdiction of the juvenile court.~~

~~(3) The court, appointed officer, or other authorized person shall certify to the best of that person's information and belief that the person executing the consent or relinquishment has read and understands the consent or relinquishment and has signed it freely and voluntarily.~~

~~(4) A voluntary relinquishment or consent for termination of parental rights is effective when it is signed and may not be revoked.~~

~~(5)-(2)~~ The requirements and processes described in Sections 78A-6-503 through 78A-6-510 do not apply to a voluntary relinquishment ~~or consent for termination of~~ parental rights. The court need only find that the relinquishment ~~or termination is~~ in the child's best interest.

~~(6)~~ There is a presumption that voluntary relinquishment or consent for termination of parental rights is not in the child's best interest where it appears to the court that the primary purpose is to avoid a financial support obligation. The presumption may be rebutted, however, if the court finds the relinquishment or consent to termination of parental rights will facilitate the establishment of stability and permanency for the child.

~~(7)~~ Upon granting a voluntary relinquishment the court may make orders relating to the child's care and welfare that the court considers to be in the child's best interest.

78A-6-1111. Right to counsel -- Appointment of counsel for indigent -- Cost -- Court hearing to determine compelling reason to appoint a noncontracting attorney.

(1)(a) The parents, guardian, custodian, and the minor, if competent, shall be informed that they have the right to be represented by counsel at every stage of the proceedings. They have the right to employ counsel of their own choice and, except in a private petition to terminate parental rights under Section 78A-6-504(1), if any of them requests an attorney and is found by the court to be indigent, counsel shall be appointed by the court, subject to the provisions of this section. The court may appoint counsel without a request if it considers representation by counsel necessary to protect the interest of the minor or of other parties.

(b) The cost of appointed counsel for an indigent minor or other indigent party, including the cost of counsel and expense of appeal, shall be paid by the county in which the trial court proceedings are held. Counties may levy and collect taxes for these purposes.

(c) The court shall take into account the income and financial ability to retain counsel of the parents or guardian of a child in determining the indigency of the child.

(2) If the state or county responsible to provide legal counsel for an indigent under Subsection (1)(b) has arranged by contract to provide services, the court if it has

received notice or a copy of such contract shall appoint the contracting attorney as legal counsel to represent that indigent.

(3) In the absence of contrary contractual provisions regarding the selection and appointment of parental defense counsel, the court shall select and appoint the attorney or attorneys if:

(a) the contract for indigent legal services is with multiple attorneys; or

(b) the contract is with an additional attorney or attorneys in the event of a conflict of interest.

(4) If the court considers the appointment of a noncontracting attorney to provide legal services to an indigent despite the existence of an indigent legal services contract and the court has a copy or notice of such contract, before the court may make the appointment, it shall:

(a) set the matter for a hearing;

(b) give proper notice to the attorney general and the Child Welfare Parental Defense Program created in Section 63A-11-103; and

(c) make findings that there is a compelling reason to appoint a noncontracting attorney before it may make such appointment.

(5) The indigent's mere preference for other counsel may not be considered a compelling reason justifying the appointment of a noncontracting attorney.

(6) The court may order a minor, parent, guardian, or custodian for whom counsel is appointed and the parents or guardian of any child for whom counsel is appointed to reimburse the county for some or all of the cost of appointed counsel.

(7)(a) Except as provided in Subsections (7)(b) and (c), the court shall order a minor, parent, guardian, or custodian for whom counsel is appointed and the parents or guardian of any child for whom counsel is appointed to reimburse the county for the cost of appointed counsel arising from any work of counsel that is not primarily directed at the state or the guardian ad litem.

(b) The court may not order reimbursement of the county pursuant to Subsection (7)(a) for the cost of appointed counsel arising from any work of counsel:

(i) that is specifically undertaken to defend against the filing of a petition to terminate parental rights, regardless of who filed the petition; and

(ii) that is undertaken after the petition to terminate parental rights has been filed.

(c) The state, or an agency of the state, may not be ordered to reimburse the county pursuant to Subsection (7)(a).

78B-6-103. Definitions.

As used in this part:

(1) "Adoptee" means a person who:

(a) is the subject of an adoption proceeding; or

(b) has been legally adopted.

(2) "Adoption" means the judicial act that:

(a) creates the relationship of parent and child where it did not previously exist; and

(b) except as provided in Subsection 78B-6-138(2), terminates the parental rights of any other person with respect to the child.

(3) "Adoption service provider" means a:

(a) child-placing agency; or

(b) licensed counselor who has at least one year of experience providing professional social work services to:

(i) adoptive parents;

(ii) prospective adoptive parents; or

(iii) birth parents.

(4) "Adoptive parent" means a person who has legally adopted an adoptee.

(5) "Adult" means a person who is 18 years of age or older.

(6) "Adult adoptee" means an adoptee who is 18 years of age or older.

(7) "Adult sibling" means a brother or sister of the adoptee, who is 18 years of age or older and whose birth mother or father is the same as that of the adoptee.

(8) "Birth mother" means the biological mother of a child.

(9) "Birth parent" means:

(a) a birth mother;

(b) a man whose paternity of a child is established;

(c) a man who:

(i) has been identified as the father of a child by the child's birth mother; and

(ii) has not denied paternity; or

(d) an unmarried biological father.

(10) "Child-placing agency" means an agency licensed to place children for adoption under Title 62A, Chapter 4a, Part 6, Child Placing.

(11) "Cohabiting" means residing with another person and being involved in a sexual relationship with that person.

(12) "Division" means the Division of Child and Family Services, within the Department of Human Services, created in Section 62A-4a-103.

(13) "Extra-jurisdictional child-placing agency" means an agency licensed to place children for adoption by a district, territory, or state of the United States, other than Utah.

(14) "Genetic and social history" means a comprehensive report, when obtainable, on an adoptee's birth parents, aunts, uncles, and grandparents, which contains the following information:

(a) medical history;

(b) health status;

(c) cause of and age at death;

(d) height, weight, and eye and hair color;

(e) ethnic origins;

(f) where appropriate, levels of education and professional achievement; and

(g) religion, if any.

(15) "Health history" means a comprehensive report of the adoptee's health status at the time of placement for adoption, and medical history, including neonatal, psychological, physiological, and medical care history.

(16) "Identifying information" means the name and address of a pre-existing parent or adult adoptee, or other specific information which by itself or in reasonable conjunction with other information may be used to identify that person.

(17) "Licensed counselor" means a person who is licensed by the state, or another state, district, or territory of the United States as a:

- 266 (a) certified social worker;
267 (b) clinical social worker;
268 (c) psychologist;
269 (d) marriage and family therapist;
270 (e) professional counselor; or
271 (f) an equivalent licensed professional of another state, district, or territory of the
272 United States.
- 273 (18) "Man" means a male individual, regardless of age.
- 274 (19) "Office" means the Office of Vital Records and Statistics within the Department
275 of Health operating under Title 26, Chapter 2, Utah Vital Statistics Act.
- 276 (20) "Parent," for purposes of Section 78B-6-119, means any person described in
277 ~~Subsections~~ Section 78B-6-120(1)(b) through (f) from whom ~~consent for adoption or~~
278 ~~relinquishment for adoption is required under Sections 78B-6-120 through 78B-6-122.~~
- 279 (21) "Potential birth father" means a man who:
280 (a) is identified by a birth mother as a potential biological father of the birth mother's
281 child, but whose genetic paternity has not been established; and
282 (b) was not married to the biological mother of the child described in Subsection
283 (21)(a) at the time of the child's conception or birth.
- 284 (22) "Pre-existing parent" means:
285 (a) a birth parent; or
286 (b) a person who, before an adoption decree is entered, is, due to an earlier
287 adoption decree, legally the parent of the child being adopted.
- 288 (23) "Prospective adoptive parent" means a person who seeks to adopt an adoptee.
- 289 (24) "Relinquishment" means relinquishment of parental rights conforming to the
290 requirements of Section 78B-6-124.
- 291 ~~(24)-(25)~~ "Unmarried biological father" means a person who:
292 (a) is the biological father of a child; and
293 (b) was not married to the biological mother of the child described in Subsection
294 ~~(24)(a)-(25)(a)~~ at the time of the child's conception or birth.

78B-6-105. District court venue -- Jurisdiction of juvenile court -- Jurisdiction over nonresidents -- Time for filing.

(1) Adoption proceedings shall be commenced by filing a petition with the clerk of the district court either:

(a) district court in the district county where the prospective adoptive parent resides;

(b) district court if the prospective adoptive parent is not a resident of this state, in the district county where:

(i) the adoptee was born;

(ii) the adoptee resides on the day on which the petition is filed; or

(iii) a parent of the proposed adoptee resides on the day on which the petition is filed; or

(c) ~~with the juvenile court~~ as provided in Subsection 78A-6-103(1).

(2) All orders, decrees, agreements, and notices in the proceedings shall be filed with the clerk of the court where the adoption proceedings were commenced under Subsection (1).

(3) A petition for adoption:

(a) may be filed before or after the adoptee is placed in the home of the petitioner for the purpose of adoption; and

(b) shall be filed no later than 30 days after the day on which the adoptee is placed in the home of the petitioners for the purpose of adoption, unless:

(i) the time for filing has been extended by the court; or

(ii) the adoption is arranged by a child-placing agency in which case the agency may extend the filing time.

(4)(a) If a person whose consent for the adoption or relinquishment of parental rights is required under Section 78B-6-120 ~~or 78B-6-121~~ through Section 78B-6-122 cannot be found within the state, the fact of the minor's presence within the state shall confer jurisdiction on the court in proceedings under this chapter as to such absent person, provided that due notice has been given in accordance with the Utah Rules of Civil Procedure.

(b) The notice may not include the name of:

(i) a prospective adoptive parent; or

(ii) an unmarried mother without her consent.

(5) Service of notice as provided in Subsection (6) shall vest the court with jurisdiction over the person served in the same manner and to the same extent as if the person served was served personally within the state.

(6) In the case of service outside the state, service completed not less than five days before the time set in the notice for appearance of the person served shall be sufficient to confer jurisdiction.

(7) Computation of periods of time not otherwise set forth in this section shall be made in accordance with the Utah Rules of Civil Procedure.

78B-6-110. Notice of adoption proceedings.

(1)(a) An unmarried biological father, by virtue of the fact that he has engaged in a sexual relationship with a woman:

(i) is considered to be on notice that a pregnancy and an adoption proceeding regarding the child may occur; and

(ii) has a duty to protect his own rights and interests.

(b) An unmarried biological father is entitled to actual notice of a birth or an adoption proceeding with regard to his child only as provided in this section.

(2) Notice of an adoption proceeding shall be served on each of the following persons:

(a) any person or agency whose consent or relinquishment is required under Section 78B-6-120 or 78B-6-121 through Section 78B-6-122, unless that right has the person consents to the adoption or parental rights have been relinquished or terminated by:

(i) waiver;

(ii) relinquishment;

(iii) consent; or

(iv) judicial action;

(b) any person who has initiated a paternity proceeding and filed notice of that action with the state registrar of vital statistics within the Department of Health, in accordance with Subsection (3);

- (c) any legally appointed custodian or guardian of the adoptee;
- (d) the petitioner's spouse, if any, only if the petitioner's spouse has not joined in the petition;
- (e) the adoptee's spouse, if any;
- (f) any person who, prior to the time the mother executes her ~~consent for adoption or relinquishes the child for adoption~~ relinquishment, is recorded on the birth certificate as the child's father, with the knowledge and consent of the mother;
- (g) a person who is:
- (i) openly living in the same household with the child at the time the ~~consent is executed or relinquishment is~~ made; and
- (ii) holding himself out to be the child's father; and
- (h) any person who is married to the child's mother at the time she executes her ~~consent to the adoption or relinquishes the child for adoption~~ relinquishment, unless the court finds that the mother's spouse is not the child's father under Section 78B-15-607.
- (3)(a) In order to preserve any right to notice, an unmarried biological father shall, consistent with Subsection (3)(d):
- (i) initiate proceedings in a district court of Utah to establish paternity under Title 78B, Chapter 15, Utah Uniform Parentage Act; and
- (ii) file a notice of commencement of the proceedings described in Subsection (3)(a)(i) with the office of vital statistics within the Department of Health.
- (b) If the unmarried, biological father does not know the county in which the birth mother resides, he may initiate his action in any county, subject to a change in trial pursuant to Section 78B-3-307.
- (c) The Department of Health shall provide forms for the purpose of filing the notice described in Subsection (3)(a)(ii), and make those forms available in the office of the county health department in each county.
- (d) The action and notice described in Subsection (3)(a):
- (i) may be filed before or after the child's birth; and
- (ii) shall be filed prior to the mother's:
- ~~(A) execution of consent to adoption of the child; or~~

~~(B) relinquishment of the child for adoption.~~

(4) Notice provided in accordance with this section need not disclose the name of the mother of the child who is the subject of an adoption proceeding.

(5) The notice required by this section:

(a) may be served at any time after the petition for adoption is filed, but may not be served on a birth mother before she has given birth to the child who is the subject of the petition for adoption;

(b) shall be served at least 30 days prior to the final dispositional hearing;

(c) shall specifically state that the person served shall fulfill the requirements of Subsection (6)(a), within 30 days after the day on which the person receives service if the person intends to intervene in or contest the adoption;

(d) shall state the consequences, described in Subsection (6)(b), for failure of a person to file a motion for relief within 30 days after the day on which the person is served with notice of an adoption proceeding;

(e) is not required to include, nor be accompanied by, a summons or a copy of the petition for adoption; and

(f) shall state where the person may obtain a copy of the petition for adoption.

(6)(a) A person who has been served with notice of an adoption proceeding and who wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:

(i) within 30 days after the day on which the person was served with notice of the adoption proceeding;

(ii) setting forth specific relief sought; and

(iii) accompanied by a memorandum specifying the factual and legal grounds upon which the motion is based.

(b) ~~A~~ If a person who fails to fully and strictly comply with all of the requirements described in Subsection (6)(a) within 30 days after the day on which the person was served with notice of the adoption proceeding:

~~(i) waives any right to further notice in connection with the adoption;~~

~~(ii) forfeits all rights in relation to the adoptee; and~~

415 (i) the person's consent or relinquishment is not required in any adoption of the child;
416 (ii) the person has no right to contest any adoption proceeding;
417 (iii) the person has no right to notice of any adoption proceeding; and
418 ~~(iii)-(iv)~~ is barred from thereafter bringing or maintaining any action to assert any
419 interest in the adoptee.

420 (7) Service of notice under this section shall be made as follows:

421 (a)(i) Subject to Subsection (5)(e), service on a person whose consent or
422 relinquishment is necessary under Section 78B-6-120 ~~or 78B-6-121~~ through Section
423 78B-6-122 shall be in accordance with the provisions of the Utah Rules of Civil
424 Procedure.

425 (ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court
426 shall designate the content of the notice regarding the identity of the parties.

427 (iii) The notice described in this Subsection (7)(a) may not include the name of a
428 person seeking to adopt the adoptee.

429 (b)(i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice
430 is required under this section, service by certified mail, return receipt requested, is
431 sufficient.

432 (ii) If the service described in Subsection (7)(b)(i) cannot be completed after two
433 attempts, the court may issue an order providing for service by publication, posting, or
434 by any other manner of service.

435 (c) Notice to a person who has initiated a paternity proceeding and filed notice of
436 that action with the state registrar of vital statistics in the Department of Health in
437 accordance with the requirements of Subsection (3), shall be served by certified mail,
438 return receipt requested, at the last address filed with the registrar.

439 (8) The notice required by this section may be waived in writing by the person
440 entitled to receive notice.

441 (9) Proof of service of notice on all persons for whom notice is required by this
442 section shall be filed with the court before the final dispositional hearing on the adoption.

(10) Notwithstanding any other provision of law, neither the notice of an adoption proceeding nor any process in that proceeding is required to contain the name of the person or persons seeking to adopt the adoptee.

(11) Except as to those persons whose consent to an adoption or relinquishment of parental rights is required under Section 78B-6-120 ~~or 78B-6-121~~ through Section 78B-6-122, the sole purpose of notice under this section is to enable the person served to:

(a) intervene in the adoption; and

(b) present evidence to the court relevant to the best interest of the child.

78B-6-110.1. Prebirth notice to presumed father of intent to place a child for adoption.

(1) As used in this section, "birth father" means:

(a) a potential biological father; or

(b) an unmarried biological father.

(2) Before the birth of a child, the following individuals may notify a birth father of the child that the mother of the child is considering an adoptive placement for the child:

(a) the child's mother;

(b) a licensed child placing agency;

(c) an attorney representing a prospective adoptive parent of the child; or

(d) an attorney representing the mother of the child.

(3) Providing a birth father with notice under Subsection (2) does not obligate the mother of the child to proceed with an adoptive placement of the child.

(4) The notice described in Subsection (2) shall include the name, address, and telephone number of the person providing the notice, and shall include the following information:

(a) the mother's intent to place the child for adoption;

(b) that the mother has named the person receiving this notice as a potential birth father of her child;

(c) the requirements to contest the adoption, including taking the following steps within 30 days after the day on which the notice is served:

(i) initiating proceedings to establish or assert paternity in a district court of Utah within 30 days after the day on which notice is served, including filing an affidavit stating:

(A) that the birth father is fully able and willing to have full custody of the child;

(B) the birth father's plans to care for the child; and

(C) that the birth father agrees to pay for child support and expenses incurred in connection with the pregnancy and birth; and

(ii) filing a notice of commencement of paternity proceedings with the state registrar of vital statistics within the Utah Department of Health;

(d) the consequences for failure to comply with Subsection (4)(c), including that:

~~(i) the birth father's ability to assert the right, if any, to consent or refuse to consent to the adoption is irrevocably lost~~ his relinquishment of parental rights will not be required in any adoption of the child;

~~(ii) the birth father he will lose the ability to assert the right to contest any future adoption of the child; and~~

~~(iii) the birth father he will lose the right, if any, to notice of any adoption proceedings related to the child;~~

(e) that the birth father may ~~consent to the adoption~~ relinquish his parental rights, if any, within 30 days after the day on which the notice is received, and that his ~~consent~~ relinquishment is irrevocable; and

(f) that no communication between the mother of the child and the birth father changes the rights and responsibilities of the birth father described in the notice.

(5) If the recipient of the notice described in Subsection (2) does not fully and strictly comply with the requirements of Subsection (4)(c) within 30 days after the day on which he receives the notice, ~~he will lose:~~

~~(a) the ability to assert the right to consent or refuse to consent to an~~ his relinquishment of parental rights is not required in any adoption of the child described in the notice;

~~(b) the ability to assert the~~ he has no right to contest any future adoption of the child described in the notice; and

(c) ~~the he~~ has no right to notice of any adoption proceedings relating to the child described in the notice.

(6) If an individual described in Subsection (2) chooses to notify a birth father under this section, the notice shall be served on a birth father in a manner consistent with the Utah Rules of Civil Procedure or by certified mail.

78B-6-111. Criminal sexual offenses.

~~A biological father is not entitled to notice of an adoption proceeding, nor is the consent of a biological father required in connection with an adoption proceeding, in cases where it is shown that the~~ If a child who is the subject of the an adoption proceeding was conceived as a result of conduct which would constitute any sexual offense described in Title 76, Chapter 5, Part 4, regardless of whether the biological father is formally charged with or convicted of a criminal offense:

(1) the biological father's relinquishment of parental rights is not required in any adoption of the child;

(2) the biological father has no right to contest any adoption proceeding;

(3) the biological father has no right to notice of any adoption proceeding; and(i) the person's consent or relinquishment is not required in any adoption of the child.

78B-6-112. District court jurisdiction over certain termination of parental rights proceedings.

(1) A district court has jurisdiction to hear and decide a petition to terminate parental rights in a child ~~if the party who filed the petition is seeking to terminate parental rights in the child for the purpose of facilitating the adoption of the child~~ in an adoption proceeding.

(2) A petition to terminate parental rights ~~under this section may~~ shall be:

(a) ~~joined with a proceeding on an adoption petition to adopt the child; or~~

~~(b) filed as a separate proceeding before or after a petition to adopt the child is filed.~~

~~(3) A court may enter a final order terminating parental rights before a final decree of adoption is entered.~~

(4)(a) Nothing in this section limits the jurisdiction of a juvenile court relating to proceedings to terminate parental rights as described in Section 78A-6-103.

(b) This section does not grant jurisdiction to a district court to terminate parental rights in a child if the child is under the jurisdiction of the juvenile court in a pending abuse, neglect, dependency, or termination of parental rights proceeding.

(5) ~~The district~~ Following the procedures of Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, the court may shall, as part of the adoption decree, terminate a person's parental rights in a child if:

~~(a) the person executes a voluntary consent to adoption, or relinquishment for adoption, of the child, in accordance with:~~

~~(i) the requirements of this chapter; or~~

~~(ii) the laws of another state or country, if the consent is valid and irrevocable;~~

~~(b) the person is an unmarried biological father who is not entitled to consent to adoption, or relinquishment for adoption, under Section 78B-6-120 or 78B-6-121;~~

~~(c) the person:~~

~~(i) received notice of the adoption proceeding relating to the child under Section 78B-6-110; and~~

~~(ii) failed to file a motion for relief, under Subsection 78B-6-110(6), within 30 days after the day on which the person was served with notice of the adoption proceeding;~~

~~(d) the court finds, under Section 78B-15-607, that the person is not a parent of the child; or~~

~~(e) the person's parental rights are terminated on grounds described in Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, if terminating the person's parental rights is in the best interests of the child Section 78A-6-507.~~

(6) If a district court determines that an evidentiary hearing is necessary to resolve any material issue under Section 78A-6-507, the district court, as promptly as circumstances allow, may transfer the case to the juvenile court for further proceedings and entry of the final order judgment or decree.

78B-6-117. Who may adopt -- Adoption of minor.

(1) A minor child may be adopted by an adult person, in accordance with the provisions and requirements of this section and this part.

(2) A child may be adopted by:

(a) adults who are legally married to each other in accordance with the laws of this state, including adoption by a stepparent; or

(b) subject to Subsection (4), any single adult, except as provided in Subsection (3).

(3) A child may not be adopted by a person who is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state.

(4) In order to provide a child who is in the custody of the division with the most beneficial family structure, when a child in the custody of the division is placed for adoption, the division or child-placing agency shall place the child with a man and a woman who are married to each other, unless:

(a) there are no qualified married couples who:

(i) have applied to adopt a child;

(ii) are willing to adopt the child; and

(iii) are an appropriate placement for the child;

(b) the child is placed with a relative of the child;

(c) the child is placed with a person who has already developed a substantial relationship with the child;---

(d) the child is placed with a person who:

(i) is selected by a parent or former parent of the child, if the parent or former parent ~~consented to the adoption of the child~~ relinquished parental rights; and

(ii) the parent or former parent described in Subsection (4)(d)(i):

(A) knew the person with whom the child is placed before the parent consented to the adoption; or

(B) became aware of the person with whom the child is placed through a source other than the division or the child-placing agency that assists with the adoption of the child; or

(e) it is in the best interests of the child to place the child with a single person.

78B-6-119. Counseling for parents.

(1) Subject to Subsection (2)(a), before relinquishing a child to a child-placing agency, or consenting to the adoption of a child, a parent of the child has the right to participate in counseling:

(a) by a licensed counselor or an adoption service provider selected by the parent participating in the counseling;

(b) for up to three sessions of at least 50 minutes per session; and

(c) subject to Subsection (2)(b), at the expense of the:

(i) child-placing agency; or

(ii) prospective adoptive parents.

(2)(a) Notwithstanding Subsection (1), a parent who has the right to participate in the counseling described in this section may waive that right.

(b) Notwithstanding Subsection (1)(c), the total amount required to be paid by a child-placing agency or the prospective adoptive parents for the counseling described in Subsection (1) may not exceed \$400, unless an agreement for a greater amount is signed by:

(i) the parent who receives the counseling; and

(ii) the child-placing agency or prospective adoptive parents.

(3) Before a parent relinquishes a child to a child-placing agency, or consents to the adoption of a child parental rights, the parent shall be informed of the right described in Subsection (1) by the:

(a) child-placing agency;

(b) prospective adoptive parents; or

(c) representative of a person described in Subsection (3)(a) or (b).

(4)(a) Subject to Subsections (4)(b) and (c), before the day on which a final decree of adoption is entered, a statement shall be filed with the court that:

(i) is signed by each parent who:

(A) relinquishes the parent's parental rights; or

~~(B) consents to the adoption;~~ and

(ii) states that, before the parent took the action described in Subsection (4)(a)(i)(A) ~~or (B)~~, the parent was advised of the parent's right to participate in the counseling described in this section at the expense of the:

(A) child-placing agency; or

(B) prospective adoptive parents.

(b) The statement described in Subsection (4)(a) may be included in the document that:

- (i) relinquishes the parent's parental rights; or
- (ii) ~~consents to the adoption.~~

(c) Failure by a person to give the notice described in Subsection (3), or pay for the counseling described in this section:

(i) shall not constitute grounds for invalidating a:

- (A) relinquishment of parental rights; or
- (B) ~~consent to adoption;~~ and

(ii) shall give rise to a cause of action for the recovery of damages suffered, if any, by the parent or guardian who took the action described in Subsection (4)(c)(i)(A) or (B) against the person required to:

- (A) give the notice described in Subsection (3); or
- (B) pay for the counseling described in this section.

78B-6-120. Necessary consent to adoption or relinquishment ~~for adoption of~~ parental rights.

(1) ~~Except as provided in Subsection (2), consent~~ Consent to adoption of a child, or ~~relinquishment of a child for adoption,~~ minor is required from:

- (a) the adoptee, if the adoptee is more than 12 years of age, unless the adoptee does not have the mental capacity to consent; and
- (b) the person or agency that is placing the minor for adoption.

(2) Except as provided in Subsection (3) relinquishment of parental rights for the adoption of a minor is required from:

- (~~b~~)(a) a man who:
 - (i) by operation of law under Section 78B-15-204, is recognized as the father of the proposed adoptee, unless:
 - (A) the presumption is rebutted under Section 78B-15-607; or
 - (B) the man was not married to the mother of the proposed adoptee until after the ~~mother consented to adoption, or relinquishment for adoption, of the proposed adoptee~~ mother's execution of her relinquishment; or

(ii) is the father of the adoptee by a previous legal adoption;
~~(e)(b)~~ the mother of the adoptee;
~~(d)(c)~~ a biological parent who has been adjudicated to be the child's biological father by a court of competent jurisdiction prior to the mother's execution of ~~consent to adoption or her relinquishment of the child for adoption~~;

~~(e)(d)~~ consistent with Subsection ~~(3)~~ (4), a biological parent who has executed and filed a voluntary declaration of paternity with the state registrar of vital statistics within the Department of Health in accordance with Title 78B, Chapter 15, Utah Uniform Parentage Act, prior to the mother's execution of ~~consent to adoption or her relinquishment of the child for adoption~~;

~~(f)(e)~~ an unmarried biological father of an adoptee, only if he fully and strictly complies with the requirements of Sections 78B-6-121 and 78B-6-122; and

~~(g) the person or agency to whom an adoptee has been relinquished and that is placing the child for adoption.~~

~~(2)(a) (3)~~ The consent-relinquishment of a person described in Subsections ~~(1)(b)~~ through ~~(g)~~ (2) is not required if: ~~the adoptee is 18 years of age or older.~~

~~(b) The consent of a person described in Subsections (1)(b) through (f) is not required if (a) if the person's parental rights relating to the adoptee have been terminated;~~

(b) if the person is the minor's parent and married to the adoptive parent; or

(c) under the conditions of Section 78B-6-110, Section 78B-6-110.1, Section 78B-6-111, Section 78B-6-121, Section 78B-6-122, and Section 78B-6-127.

~~(3)(4)~~ (2)(d) For purposes of Subsection ~~(1)(e)~~ (2)(d), a voluntary declaration of paternity is considered filed when it is entered into a database that:

(a) can be accessed by the Department of Health; and

(b) is designated by the state registrar of vital statistics as the official database for voluntary declarations of paternity.

78B-6-121. Consent Relinquishment of unmarried biological father.

(1) Except as provided in Subsections (2)(a) and 78B-6-122(1), and subject to Subsection (5), with regard to a child who is placed with prospective adoptive parents

more than six months after birth, ~~consent of~~ relinquishment from an unmarried biological father is not required unless the unmarried biological father:

(a)(i) developed a substantial relationship with the child by:

(A) visiting the child monthly, unless the unmarried biological father was physically or financially unable to visit the child on a monthly basis; or

(B) engaging in regular communication with the child or with the person or authorized agency that has lawful custody of the child;

(ii) took some measure of responsibility for the child and the child's future; and

(iii) demonstrated a full commitment to the responsibilities of parenthood by financial support of the child of a fair and reasonable sum in accordance with the father's ability;

or

(b)(i) openly lived with the child:

(A)(I) for a period of at least six months during the one-year period immediately preceding the day on which the child is placed with prospective adoptive parents; or

(II) if the child is less than one year old, for a period of at least six months during the period of time beginning on the day on which the child is born and ending on the day on which the child is placed with prospective adoptive parents; and

(B) immediately preceding placement of the child with prospective adoptive parents; and

(ii) openly held himself out to be the father of the child during the six-month period described in Subsection (1)(b)(i)(A).

(2)(a) If an unmarried biological father was prevented from complying with a requirement of Subsection (1) by the person or authorized agency having lawful custody of the child, the unmarried biological father is not required to comply with that requirement.

(b) The subjective intent of an unmarried biological father, whether expressed or otherwise, that is unsupported by evidence that the requirements in Subsection (1) have been met, shall not preclude a determination that the father failed to meet the requirements of Subsection (1).

(3) Except as provided in Subsections (6) and 78B-6-122(1), and subject to Subsection (5), with regard to a child who is six months of age or less at the time the child is placed with prospective adoptive parents, ~~consent of relinquishment from an~~ unmarried biological father is not required unless, prior to the time the mother ~~executes her consent for adoption or~~ relinquishes the child for adoption, the unmarried biological father:

(a) initiates proceedings in a district court of Utah to establish paternity under Title 78B, Chapter 15, Utah Uniform Parentage Act;

(b) files with the court that is presiding over the paternity proceeding a sworn affidavit:

(i) stating that he is fully able and willing to have full custody of the child;
(ii) setting forth his plans for care of the child; and
(iii) agreeing to a court order of child support and the payment of expenses incurred in connection with the mother's pregnancy and the child's birth;

(c) consistent with Subsection (4), files notice of the commencement of paternity proceedings, described in Subsection (3)(a), with the state registrar of vital statistics within the Department of Health, in a confidential registry established by the department for that purpose; and

(d) offered to pay and paid, during the pregnancy and after the child's birth, a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his financial ability, unless:

(i) he did not have actual knowledge of the pregnancy;
(ii) he was prevented from paying the expenses by the person or authorized agency having lawful custody of the child; or

(iii) the mother refuses to accept the unmarried biological father's offer to pay the expenses described in this Subsection (3)(d).

(4) The notice described in Subsection (3)(c) is considered filed when it is entered into the registry described in Subsection (3)(c).

~~(5) Unless his ability to assert the right to consent has been lost for failure to comply with Section 78B-6-110.1, or lost under another provision of Utah law, an~~ An unmarried

biological father shall have at least one business day after the child's birth to fully and strictly comply with the requirements of Subsection (3) unless:

(a) he has not fully and strictly complied with Subsection 78B-6-110.1(4) after receiving a pre-birth notice to place a child for adoption under Section 78B-6-110.1;

(b) he has not fully and strictly complied with Section 78B-6-122 and this section; or

(c) Section 78B-6-111 applies.

~~(6) Consent of Relinquishment from~~ an unmarried biological father is not required under this section if:

(a) the court determines, in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, that the unmarried biological father's rights should be terminated, based on the petition of any interested party;

(b)(i) a declaration of paternity declaring the unmarried biological father to be the father of the child is rescinded under Section 78B-15-306; and

(ii) the unmarried biological father fails to comply with Subsection (3) within 10 business days after the day that notice of the rescission described in Subsection (6)(b)(i) is mailed by the Office of Vital Records within the Department of Health as provided in Section 78B-15-306; or

(c) the unmarried biological father is notified under Section 78B-6-110.1 and fails to preserve his rights in accordance with the requirements of that section.

(7) Unless the adoptee is conceived or born within a marriage, the petitioner in an adoption proceeding shall, prior to entrance of a final decree of adoption, file with the court a certificate from the state registrar of vital statistics within the Department of Health, stating:

(a) that a diligent search has been made of the registry of notices from unmarried biological fathers described in Subsection (3)(c); and

(b)(i) that no filing has been found pertaining to the father of the child in question; or

(ii) if a filing is found, the name of the putative father and the time and date of filing.

78B-6-122. Qualifying circumstance.

(1)(a) For purposes of this section, "qualifying circumstance" means that, at any point during the time period beginning at the conception of the child and ending at the time the mother executed a ~~consent to adoption or relinquishment of the child for~~ adoption:

(i) the child or the child's mother resided, on a permanent or temporary basis, in the state;

(ii) the mother intended to give birth to the child in the state;

(iii) the child was born in the state; or

(iv) the mother intended to execute a ~~consent to adoption or relinquishment of the~~ child for adoption:

(A) in the state; or

(B) under the laws of the state.

(b) For purposes of Subsection (1)(c)(i)(C) only, when determining whether an unmarried biological father has demonstrated a full commitment to his parental responsibilities, a court shall consider the totality of the circumstances, including, if applicable:

(i) efforts he has taken to discover the location of the child or the child's mother;

(ii) whether he has expressed or demonstrated an interest in taking responsibility for the child;

(iii) whether, and to what extent, he has developed, or attempted to develop, a relationship with the child;

(iv) whether he offered to provide and, if the offer was accepted, did provide, financial support for the child or the child's mother;

(v) whether, and to what extent, he has communicated, or attempted to communicate, with the child or the child's mother;

(vi) whether he has filed legal proceedings to establish his paternity of, and take responsibility for, the child;

(vii) whether he has filed a notice with a public official or agency relating to:

(A) his paternity of the child; or

(B) legal proceedings to establish his paternity of the child; or

(viii) other evidence that demonstrates that he has demonstrated a full commitment to his parental responsibilities.

(c) Notwithstanding the provisions of Section 78B-6-121, the ~~consent~~relinquishment of an unmarried biological father is required with respect to an adoptee who is under the age of 18 if:

(i)(A) the unmarried biological father did not know, and through the exercise of reasonable diligence could not have known, before the time the mother executed a ~~consent to adoption or relinquishment of the child for adoption~~, that a qualifying circumstance existed;

(B) before the mother executed a ~~consent to adoption or relinquishment of the child for adoption~~, the unmarried biological father fully complied with the requirements to establish parental rights in the child, and to preserve the right to notice of a proceeding in connection with the adoption of the child, imposed by:

(I) the last state where the unmarried biological father knew, or through the exercise of reasonable diligence should have known, that the mother resided in before the mother executed the ~~consent to adoption or relinquishment of the child for adoption~~; or

(II) the state where the child was conceived; and

(C) the unmarried biological father has demonstrated, based on the totality of the circumstances, a full commitment to his parental responsibilities, as described in Subsection

(1)(b); or

(ii)(A) the unmarried biological father knew, or through the exercise of reasonable diligence should have known, before the time the mother executed a ~~consent to adoption or relinquishment of the child for adoption~~, that a qualifying circumstance existed; and

(B) the unmarried biological father complied with the requirements of Section 78B-6-121 before the later of:

(I) 20 days after the day that the unmarried biological father knew, or through the exercise of reasonable diligence should have known, that a qualifying circumstance existed; or

(II) the time that the mother executed a ~~consent to adoption or relinquishment of the~~
~~child for adoption.~~

(2) ~~An~~ If an unmarried biological father ~~who does not fully and strictly comply with~~
the requirements of Section 78B-6-121 and this section ~~is considered to have waived~~
~~and surrendered any right in relation to the child, including the right to:~~

~~(a) notice of any judicial proceeding in connection with the adoption of the child; and~~

~~(b) consent, or refuse to consent, to the adoption of the child.~~

(1) his relinquishment of parental rights is not required in any adoption of the child;

(2) he has no right to contest any adoption proceeding; and

(3) he has no right to notice of any adoption proceeding.

**78B-6-122.5. Effect of out-of-state paternity adjudication, declaration, or
acknowledgment.**

Unless a person who is an unmarried biological father has fully and strictly complied
with the requirements of Sections 78B-6-120 through 78B-6-122, an out-of-state order
that adjudicates paternity, or an out-of-state declaration or acknowledgment of paternity:

(1) only has the effect of establishing that the person ~~is an unmarried biological~~
father of the child to whom the order, declaration, or acknowledgment relates; and

~~(2) does not entitle the person to:~~

~~(a) (2) he has no right to~~ notice of any judicial proceeding related to the adoption of
the child;

~~(b) the right to consent, or refuse to consent, to the adoption of the child~~ (3) his
relinquishment of parental rights is not required in any adoption of the child; or and

~~(c) the (4) he has no~~ right to custody of, control over, or visitation with the child.

78B-6-123. Power of a minor to consent or relinquish.

(1) A minor parent has the power to:

~~(a) consent to the adoption of the minor's child; and~~

~~(b) relinquish the minor's control or custody of the child for adoption~~ parental rights.

(2) The ~~consent or relinquishment~~ described in Subsection (1) is valid and has the
same force and effect as a ~~consent or relinquishment~~ executed by an adult parent.

(3) A minor parent, having executed a ~~consent or~~ relinquishment, cannot revoke that ~~consent~~ relinquishment upon reaching the age of majority or otherwise becoming emancipated.

78B-6-124. Persons who may take consents and relinquishments.

(1) A ~~consent or~~ relinquishment by a birth mother ~~or an adoptee~~ shall be signed before:

(a) a judge of any court that has jurisdiction over adoption proceedings;

(b) ~~subject to Subsection (6), a person appointed by the judge described in~~ Subsection (1)(a) to take consents or relinquishments and witnessed by two individuals who are not members of the birth mother's immediate family; or

(c) ~~subject to Subsection (6), a person who is authorized by a child-placing agency~~ to take consents or relinquishments, if the consent or relinquishment grants legal custody of the child to a child-placing agency or an extra-jurisdictional child-placing agency and witnessed by two individuals who are not members of the birth mother's immediate family;

(2) ~~If the consent or relinquishment of a birth mother or adoptee is taken out of state it shall be signed before:~~

(a) ~~subject to Subsection (6), a person who is authorized by a child-placing agency to take consents or relinquishments, if the consent or relinquishment grants legal custody of the child to a child-placing agency or an extra-jurisdictional child-placing agency;~~

(b) ~~subject to Subsection (6), a person authorized or appointed to take consents or relinquishments by a court of this state that has jurisdiction over adoption proceedings;~~

(c) ~~(d)~~ a court that has jurisdiction over adoption proceedings in the state where the ~~consent or~~ relinquishment is taken; or

(d) ~~(e)~~ a person authorized, under the laws of the state where the ~~consent or~~ relinquishment is taken, to take ~~consents or~~ relinquishments of a birth mother ~~or~~ adoptee.

1064 filed, the appeal shall be dismissed. It shall be accompanied by proof of service. The
1065 petition shall be deemed filed on the date of the postmark if first-class mail is utilized.
1066 The appellant shall serve a copy on counsel of record of each party, including the
1067 Guardian ad Litem, or, if the party is not represented by counsel, then on the party at
1068 the party's last known address, in the manner prescribed in Rule 21(c).

1069 (b) Preparation by trial counsel. The petition on appeal shall be prepared by
1070 appellant's trial counsel. Trial counsel may only be relieved of this obligation by the
1071 juvenile-trial court upon a showing of extraordinary circumstances. Claims of ineffective
1072 assistance of counsel do not constitute extraordinary circumstances but should be
1073 raised by trial counsel in the petition on appeal.

1074 (c) Format. All petitions on appeal shall substantially comply with the Petition on
1075 Appeal form that accompanies these rules. The petition shall not exceed 15 pages,
1076 excluding the attachments required by Rule 55(d)(6). The petition shall be typewritten,
1077 printed or prepared by photocopying or other duplicating or copying process that will
1078 produce clear, black and permanent copies equally legible to printing, on opaque,
1079 unglazed paper 8 ½ inches wide and 11 inches long. ~~Paper may be recycled paper, with~~
1080 or without deinking. The printing must be double spaced, except for matter customarily
1081 single spaced and indented. Margins shall be at least one inch on the top, bottom and
1082 sides of each page. Page numbers may appear in the margins. Either a proportionally
1083 spaced or monospaced typeface in a plain, roman style may be used. A proportionally
1084 spaced typeface must be 13-point or larger for both text and footnotes. Examples are
1085 CG Times, Times New Roman, New Century, Bookman and Garamond. A monospaced
1086 typeface may not contain more than ten characters per inch for both text and footnotes.
1087 Examples are Pica and Courier.

1088 (d) Contents. The petition on appeal shall include all of the following elements:

1089 (d)(1) A statement of the nature of the case and the relief sought.

1090 (d)(2) The entry date of the judgment or order on appeal.

1091 (d)(3) The date and disposition of any post-judgment motions.

1092 (d)(4) A concise statement of the material adjudicated facts as they relate to the
1093 issues presented in the petition on appeal.

(d)(5) A statement of the legal issues presented for appeal, how they were preserved for appeal, and the applicable standard of review. The issue statements should be concise in nature, setting forth specific legal questions. General, conclusory statements such as "the ~~juvenile~~ court's ruling is not supported by law or the facts" are not acceptable.

(d)(6) The petition should include supporting statutes, case law, and other legal authority for each issue raised, including authority contrary to appellant's case, if known.

(d)(7) The petition on appeal shall have attached to it:

(d)(7)(A) a copy of the order, judgment, or decree on appeal;

(d)(7)(B) a copy of any rulings on post-judgment motions.

Rule 57. Record on Appeal; transmission of record.

(a) The record on appeal shall include the legal file, any exhibits admitted as evidence, and any transcripts.

(b) The record shall be transmitted by the ~~juvenile-trial~~ court clerk to the clerk of the Court of Appeals upon completion of the transcript or, if there is no transcript, within 20 days after the filing of the notice of appeal.

Rule 58. Ruling.

(a) After reviewing the petition on appeal, any response, and the record, the Court of Appeals may rule by opinion or memorandum decision. The Court of Appeals may issue a decision or may set the case for full briefing under rule 24. The Court of Appeals may order an expedited briefing schedule and specify which issues shall be briefed. If the issue to be briefed is ineffective assistance of counsel, the Court of Appeals may order the ~~juvenile-trial~~ court to appoint conflict counsel within 15 days for briefing and argument.

(b) If the Court of Appeals affirms, reverses, or remands the ~~juvenile-trial~~ court order, judgment, or decree, further review pursuant to Rule 35 may be sought, but refusal to grant full briefing shall not be a ground for such further review.

Rule 59. Extensions of time.

(a) Extension of time to appeal. The ~~juvenile-trial~~ court, upon a showing of good cause or excusable neglect, may extend the time for filing a notice of appeal upon

1124 motion filed prior to the expiration of time prescribed by Rule 52. No extension shall
1125 exceed 10 days past the prescribed time or 10 days from the date of entry of the order
1126 granting the motion, whichever occurs later.

1127 (b) Extension of time to file petition on appeal or response. The Court of Appeals for
1128 good cause shown may extend the time for filing a petition on appeal or a response to
1129 the petition on appeal upon motion filed prior to the expiration of the time for which the
1130 extension is sought. No extension shall exceed 10 days past the original due date or 10
1131 days from the date of entry of the order granting the motion, whichever occurs later. The
1132 motion shall comply with Rule 22(b)(4).
1133

BOARD OF JUVENILE

COUNT JUDGES MEMO

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Daniel J. Becker
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

November 14, 2012

Judge Doug Thomas, Co-Chair
Judge Thomas Higbee, Co-Chair
Standing Committee on Children and Family Law
Salt Lake City, Utah

Dear Judges Thomas and Higbee:

Enclosed you will find a memo from the Board of Juvenile Court Judges outlining our position on the adoption jurisdiction questions that you addressed with us in our September, 2012 Board meeting. Thank you for your time and attention to this matter.

Sincerely,



Judge Mark W. May

Chair, Board of Juvenile Court Judges

cc: Dan Becker, Ray Wahl, Tim Shea

Chief Justice Matthew Durrant, Chair, Judicial Council

Juvenile Court Judges

Judge Scott Hadley, Chair, Board of District Court Judges

The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.

450 South State Street / P.O. Box 140241 / Salt Lake City, UT 84114-0241 / 801-578-3800 / FAX: 801-578-3843

MEMORANDUM

To: Utah Judicial Council Standing Committee on Children and Family Law
From: Board of Juvenile Court Judges
Date: October 31, 2012
Re: Concurrent Jurisdiction of District and Juvenile Courts in Adoption Cases

BACKGROUND

The Board of Juvenile Court Judges has received the following documents: (1) An undated draft Report on Concurrent Jurisdiction from the Standing Committee on Child and Family Law; (2) A Memorandum addressed to the Board of District Court Judges, dated March 13, 2012, from Judge Doug Thomas outlining objections to the proposal of concurrent jurisdiction on all adoption cases; and (3) A Memorandum addressed to the Standing Committee on Children and Family Law, dated July 10, 2012, from Tim Shea regarding termination of parental rights and adoption with attached proposed statutory changes.

It is our understanding that some or all of these documents have been presented to the Judicial Council and that the Council has had some preliminary discussions of the topics. The Juvenile Board's concern is that its position may have been inaccurately represented to the Judicial Council. In the Summary section of the draft report from the Standing Committee, it states: "The Board of Juvenile Court Judges approved all of theses recommended changes." Additionally, in the opening paragraph of Judge Thomas' Memorandum, it states: "I was not invited to present the opposing position to the juvenile board and they heard only from Judge

Higbee before they approved all of the proposals.” Both of these statements are incorrect.

The current Juvenile Board has not previously taken a position on the issues surrounding concurrent jurisdiction in adoptions. A review of the past three years of Board minutes also revealed no vote or position taken on the adoption issues. Given that preliminary discussions have already occurred at the Judicial Council, the Juvenile Board believed it was appropriate to take a position on the proposals and communicate the Board’s positions to the Judicial Council.

In addition to a thorough review of the previously mentioned documents, the Juvenile Board invited Judge Thomas and Judge Higbee to make a presentation of their positions to the Board at its September 2012 meeting. Mr. Shea’s Memorandum outlined eight proposals from the Standing Committee. We discussed and voted on each proposal separately at our October Board meeting.

DISCUSSION OF PROPOSALS

1. Amend the Juvenile Court Act to allow the adoption petition to be included in the termination petition.

In a split vote, the Board rejected this proposal. The Board recognized that a change in the statute could save private parties an additional filing fee. The Board, however, felt a less complicated way to address the issue was for the Court to waive the duplicate filing fees. Given that there are few of these petitions filed in Juvenile Court, this solution seemed easier than changing the statute.

2. Amend the Adoption Act to allow a termination petition to be filed in District Court without the adoption petition if the child is placed out of state.

The Juvenile Board discussed the proposal but took no position as this does not impact the Juvenile Court.

3 & 4. Have the Juvenile Court handle all terminations when a juvenile is under our jurisdiction on any ground, and allow the Juvenile Court to grant adoptions by consent of the parents when the child is under our jurisdiction for any reason.

In a unanimous vote, the Board rejected these proposals. First, the Juvenile Board sees little benefit in obtaining jurisdiction just because the Court may have seen the child once or twice for minor truancy or possession charges. ~~When the Juvenile Court sees a child more~~ frequently, it has a better understanding of the child and family dynamics. This is largely due to the involvement of JJS or DCFS and the information they provide to the Court. In reality, the children we see often and know well tend to end up being placed in the custody of JJS or DCFS, as opposed to an adoptive placement. There is little clamor by anyone insisting on adopting a severely delinquent teenager. If parents insist on relinquishing their parental rights, they could always file such a petition in the Juvenile Court. If the voluntary relinquishment was granted, the Juvenile Court would oversee the adoption.

5. If the District Court determines that an evidentiary hearing is necessary the case can be transferred to Juvenile Court.

In a unanimous vote, the Juvenile Board rejected this proposal. The Juvenile Board acknowledged the argument that Juvenile Courts have more trials involving termination of parental rights, and thereby may have more experience handling such trials. This does not mean, however, that District Courts are somehow less capable or that parties are prejudiced if the trial occurs in District Court.

The reality is that the Juvenile Board can foresee that only the difficult, nasty and unwanted hearings would be transferred to the Juvenile Court. Additionally, the Board does not believe the proposed "shift in resources" from the District Court to the Juvenile Court would take place.

6. Parents should not get appointed counsel if it is a private petition for termination of parental rights.

In a split vote, the Juvenile Board rejected this proposal. The Board believed it was the better practice to provide an attorney for an indigent parent when such a fundamental right is at stake. The Board acknowledged that certain financial realities may prohibit extension of the Juvenile Court Act's requirements for counsel to District Court proceedings.

The Juvenile Board is not advocating for counsel for indigent parents in District Court. The Board, however, does not want the District Court practice of not appointing counsel for

indigent parents in private termination petitions, to be imposed upon the Juvenile Court.

7. Change the appeal time for termination of parental rights cases in District Court to 15 days, as it currently is in Juvenile Court.

The Board discussed this proposal but took no position as this does not impact the Juvenile Court.

8. Change the relinquishment of parental rights procedures so they are the same in the Juvenile Court and the District Court.

In a unanimous vote, the Board rejected this proposal. It is not that the Board believes two separate standards are appropriate. As recognized in the Standing Committee's Report, taking a relinquishment for fathers is vastly different in the two courts. The primary difference is that in District Court, a father's relinquishment can be taken by any Notary Public, without a certification of voluntariness that the document was read and understood. In Juvenile Court, the father must appear before the Court or someone appointed by the Court. The new proposal is that the Juvenile and District Courts accept a father's relinquishment through a Notary Public, provided a certificate of reading, understanding and voluntariness is added.

The Juvenile Board believes the court has a duty to ensure the father has read and understood the relinquishment petition and that it is signed freely and voluntarily. *State in re: A.G.*, 27 P.3d 562 (Utah Ct. App. 2001). Relinquishing in front of a Notary Public does not meet this standard. Especially since the Notary is usually someone associated with the mother's

attorney, or perhaps someone at the Bank. The proposal to add a certificate is simply the illusion of assurance, since it suffers the same deficiencies as the relinquishment.

To be clear, the Juvenile Board is not advocating that the District Court adopt the Juvenile Court standard. Rather, the Juvenile Board objects to the District Court standard - whether or not it requires a certificate - being imposed upon the Juvenile Court.

CONCLUSION

The purpose of this Memorandum is to inform the Judicial Council of the positions of the Board of Juvenile Judges on the proposals surrounding the issues of concurrent jurisdiction in adoption proceedings. Our positions are based on the information currently in our possession. If the Standing Committee on Child and Family Law changes its positions or reasoning on any of the above proposals, as a Board we would like the opportunity to respond.

Sincerely.



Mark W. May
Chair, Board of Juvenile Court Judges

cc: Standing Committee on Child and Family Law
Board of District Court Judges
Tim Shea

MEMORANDUM

To: Utah Judicial Council

From: Board of Juvenile Court Judges

Date: October 31, 2012

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In a unanimous vote, the Board rejected these proposals. First, the Juvenile Board sees little benefit in obtaining jurisdiction just because the Court may have seen the child once or twice for minor truancy or possession charges. When the Juvenile Court sees a child more frequently, it has a better understanding of the child and family dynamics. This is largely due to the involvement of JJS or DCFS and the information they provide to the Court. In reality, the children we see often and know well tend to end up being placed in the custody of JJS or DCFS, as opposed to an adoptive placement. There is little clamor by anyone insisting on adopting a severely delinquent teenager. If parents insist on relinquishing their parental rights, they could always file such a petition in the Juvenile Court. If the voluntary relinquishment was granted, the Juvenile Court would oversee the adoption.

5. If the District Court determines that an evidentiary hearing is necessary the case can be transferred to Juvenile Court.

In a unanimous vote, the Juvenile Board rejected this proposal. The Juvenile Board acknowledged the argument that Juvenile Courts have more trials involving termination of parental rights, and thereby may have more experience handling such trials. This does not mean, however, that District Courts are somehow less capable or that parties are prejudiced if the trial occurs in District Court.

The reality is that the Juvenile Board can foresee that only the difficult, nasty and unwanted hearings would be transferred to the Juvenile Court. Additionally, the Board does not believe the proposed "shift in resources" from the District Court to the Juvenile Court would take place.

6. Parents should not get appointed counsel if it is a private petition for termination of parental rights.

In a split vote, the Juvenile Board rejected this proposal. The Board believed it was the better practice to provide an attorney for an indigent parent when such a fundamental right is at stake. The Board acknowledged that certain financial realities may prohibit extension of the Juvenile Court Act's requirements for counsel to District Court proceedings.

The Juvenile Board is not advocating for counsel for indigent parents in District Court. The Board, however, does not want the District Court practice of not appointing counsel for

indigent parents in private termination petitions, to be imposed upon the Juvenile Court.

7. Change the appeal time for termination of parental rights cases in District Court to 15 days, as it currently is in Juvenile Court.

The Board discussed this proposal but took no position as this does not impact the Juvenile Court.

8. Change the relinquishment of parental rights procedures so they are the same in the Juvenile Court and the District Court.

In a unanimous vote, the Board rejected this proposal. It is not that the Board believes two separate standards are appropriate. As recognized in the Standing Committee's Report, taking a relinquishment for fathers is vastly different in the two courts. The primary difference is that in District Court, a father's relinquishment can be taken by any Notary Public, without a certification of voluntariness that the document was read and understood. In Juvenile Court, the father must appear before the Court or someone appointed by the Court. The new proposal is that the Juvenile and District Courts accept a father's relinquishment through a Notary Public, provided a certificate of reading, understanding and voluntariness is added.

The Juvenile Board believes the court has a duty to ensure the father has read and understood the relinquishment petition and that it is signed freely and voluntarily. *State in re: A.G.*, 27 P.3d 562 (Utah Ct. App. 2001). Relinquishing in front of a Notary Public does not meet this standard. Especially since the Notary is usually someone associated with the mother's

attorney, or perhaps someone at the Bank. The proposal to add a certificate is simply the illusion of assurance, since it suffers the same deficiencies as the relinquishment.

To be clear, the Juvenile Board is not advocating that the District Court adopt the Juvenile Court standard. Rather, the Juvenile Board objects to the District Court standard - whether or not it requires a certificate - being imposed upon the Juvenile Court.

CONCLUSION

The purpose of this Memorandum is to inform the Judicial Council of the positions of the Board of Juvenile Judges on the proposals surrounding the issues of concurrent jurisdiction in adoption proceedings. Our positions are based on the information currently in our possession. If the Standing Committee on Child and Family Law changes its positions or reasoning on any of the above proposals, as a Board we would like the opportunity to respond.

Sincerely,

Mark W. May
Chair, Board of Juvenile Court Judges

cc: Standing Committee on Child and Family Law
Board of District Court Judges
Tim Shea

TAB 7

Standing Education Committee Report to the Judicial Council: July 22, 2013

Year in Review Highlights:

Greater community collaborations: The UEN, the U law school, the NJC, Michigan State University

Begin creating a distance learning capacity: Early emphasis on new judge orientation, interpreters

Revised and enhanced the new judge orientation process for District, Juvenile and Appellate judges

NJO offered twice each calendar year

Online resources and one on one training immediately after Senate confirmation to “fill the gap”

Individually tailored NJO curriculum, e.g., those lacking criminal, civil, delinquency, welfare

Re-engineered and emphasized interpreter training for all court segments: Create civil glossary

Developed a “Train the Faculty” curriculum: Begin creating self-sustainable cadre of internal trainers

Partnered with Michigan State’s “Judicial Administration Certificate Program”:

Mandatory 10 core course curriculum for TCE’s, Clerks of Court, Chief Probation Officers

To be treated as analogous to a Bachelor’s degree for Utah courts’ purposes

“Blend” of ten in person and online courses to be completed within 5 years

Restructured probation officer education committee: Responsibility for professional development and career development placed with the Chief Probation Officers

Migrating to “paperless” judicial conferences: Must specifically “opt in” to receive hard copy materials

Developed audit “course observer evaluation” form for state judicial and clerks’ conferences/classes

Offered for first time a joint Justice Court Judge and Clerk “Leadership Institute”

Delivered a very high volume of educational and professional development opportunities:

Over 100 individual half day and full day courses were offered (over 1,000 students)

Conduct at least 26 major statewide conferences (over 2,100 students)

Over 125 individual learning events reaching approximately 3,100 students¹

¹ The 3,100 student figure includes students who have attended more than one learning event in the last FY

TAB 8

Roy Justice Court

5051 South 1900 West
Roy, Utah 84067
(801) 774-1051
Fax (801) 774-1060
www.royutah.org

July 1, 2013

Utah Judicial Council
P.O. Box 140241
Salt Lake City, Utah 84114-0241

Re: Request for Court Hours Waiver


Dear Judicial Council,

Roy City is the sponsoring municipality for justice courts serving Hooper, Huntsville, Roy, West Haven, and unincorporated Weber County. For the summer only, June through August, Roy determined that the public and employees would be better served by adjusting the open hours of the city offices from the standard Monday-Friday, 8:00 am to 5:00 pm (40 hours) to Monday-Thursday 7:30 am to 5:30 pm and Friday 7:30 am to 11:30 am (44 hours).

Statute requires Class I justice courts to be open "(a) five days per week; or (b) no less than four days per week for at least 11 hours per day." UCA 78A-7-213. The court is one of the several Roy City departments. Concurrent with court business, the public may also need contact with other city departments: prosecutor, traffic school, code enforcement, dog license, city attorney, etc. It may be problematic if the court operates hours differently than the other city departments.

The Roy City Justice Court respectfully requests a waiver of the statutory four or five day open requirement to a modified four and one-half day schedule for the three summer months, consistent with the general Roy City office schedule as shown above.

Sincerely,


Judge Scott Waterfall

c: Christopher Davis, Roy City Manager

Court Services for: Hooper • Huntsville • Roy City • Weber County • West Haven

Roy Justice Court

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Sincerely,


Judge Scott Waterfall

c: Christopher Davis, Roy City Manager

Court Services for: Hooper • Huntsville • Roy City • Weber County • West Haven

**ADDITIONAL COUNCIL
MEETING HANDOUTS**

CIVIL TERMINOLOGY FOR UTAH INTERPRETERS

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Parol evidence rule (Regla de la prueba oral) – if there is evidence in writing (such as a signed contract) the terms of the contract cannot be altered by evidence of oral (parol) agreements purporting to change, explain or contradict the written document.

Specific performance (Cumplimiento específico) – the right of a party to a contract to demand that the defendant (the party who it is claimed breached the contract) be ordered in the judgment to perform the contract. Specific performance may be ordered instead of (or in addition to) a judgment for money if the contract can still be performed and money cannot sufficiently reward the plaintiff. Example: when a defendant was to deliver some unique item such as an art-work and did not, a judge may order the defendant to actually deliver the artwork.

Statute of frauds (La ley de fraudes) – law in every state which requires that certain documents be in writing, such as real property titles and transfers (conveyances), leases for more than a year, wills and some types of contracts. The original statute was enacted in England in 1677 to prevent fraudulent title claims.

Unclean hands (Manos sucias) – a legal doctrine which is a defense to a complaint, which states that a party who is asking for a judgment cannot have the help of the court if he/she has done anything unethical in relation to the subject of the lawsuit. Thus, if a defendant can show the plaintiff had “unclean hands,” the plaintiff’s complaint will be dismissed or the plaintiff will be denied judgment. Unclean hands is a common “affirmative defense” pleaded by defendants and must be proved by the defendant. Example: Hank Hardnose sues Grace Goodenough for breach of contract for failure to pay the full amount for construction of an addition to her house. Goodenough proves that Hard nose had shown her faked estimates from subcontractors to justify his original bid to Goodenough.

Undue influence (Influencia indebida/Coacción) – the amount of pressure which one uses to force someone to execute a will leaving assets in a particular way, to make a direct gift while alive or to sign a contract. The key element is that the influence was so great that the testator (will writer), donor (gift giver) or party to the contract had lost the ability to exercise his/her judgment and could not refuse to give in to the pressure. Evidence of such dominance of another’s mind may result in invalidation of the will, gift or contract by a court if the will, gift or contract is challenged. Participation in preparation of the will, excluding other relatives being present when the testator and the attorney meet, are all evidence of undue pressure, and an imbalance or change in language which greatly favors the person exercising the influence is a factor in finding undue influence. Example: Pete Pounder constantly visits his aunt Agnes while she is ill and always urges her to leave her mansion to him instead of to her son. Pounder threatens to stop visiting the old lady, who is very lonely, tells her she is ungrateful for his attention, finally brings over an attorney who does not know Agnes and is present while she tells the attorney to write a new will in favor of Pounder.

Void (Nulo/Cancelado) – referring to a statute, contract, ruling or anything which is null and of no effect. A law or judgment found by an appeals court to be unconstitutional is void, a rescinded (mutually cancelled) contract is void, and a marriage which has been annulled by court judgment is void.

Voidable (Cancelable/Derogable) – capable of being made void. Example: a contract entered into by a minor under 18 is voidable upon his/her reaching majority, but the minor may also affirm the contract at that time “Voidable” is distinguished from “void” in that it means only that a thing can become void but is not necessarily void.

Conservatorship (Curaduría) – the court proceeding to appoint a conservator and any subsequent proceedings. A conservatorship exists when the court has appointed a conservator for a person in need of protection.

Court visitor (Ayudante profesional del tribunal) – a person who is trained in law, nursing, or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings. The judge may appoint a visitor to inquire about and observe a protected person's circumstances to provide a more complete and nuanced picture of that person's life.

Emergency guardianship (Designación temporal de un custodio) – an extraordinary court proceeding that may result in the appointment of a temporary guardian to provide for the immediate care and custody of a person for a specified period not longer than 30 days. If a temporary guardian is appointed, the court must hold a hearing within five days. Until the full hearing and order of the court, the temporary guardian is charged with the care and custody of the protected person and must not permit the protected person to be removed from the state. The authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority. A temporary guardian may be removed at any time, and must obey the court's orders.

Estate (Patrimonio) – all of the protected person's assets and liabilities, including all real property (land) and personal property (things).

Evidence (Pruebas) – testimony, records, documents, material objects, or other things presented at a hearing to prove the existence or nonexistence of a fact.

Fiduciary (Fiduciario) – 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/conservator. The fiduciary must exercise the highest degree of care to maintain and preserve the person's rights and/or property which are within his/her charge.

Final accounting (Rendición final de cuentas) – the last financial accounting that must be filed with the court by the guardian or conservator upon the death of the protected person, resignation of the guardian or conservator, or termination of the guardianship/conservatorship.

Guardian (Custodio) – a person or institution appointed by a court to make decisions about the care of another person who is in need of continuing care and protection, such as a minor child or an incapacitated adult. A conservator is a person or institution appointed by the court to manage the property and financial affairs ("estate") of a protected person. Sometimes the same person is appointed to both roles. If no conservator is appointed, the guardian has some of the responsibility of a conservator.

Guardian ad litem (Abogado de los niños) – a lawyer appointed by a court to look after the interests of a minor child during court proceedings, or to look after the interests of an adult in conservatorship proceedings.

Guardianship (Custodia) – the court proceedings to appoint a guardian and any subsequent proceedings. A guardianship exists when the court has appointed a guardian for an incapacitated person.

Incapacitated person (Persona con discapacidad) – as defined in the Utah Uniform Probate Code, an "incapacitated person" means any adult who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, except minority, to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions.

can view and copy the record. Records in guardianship and conservatorship proceedings are private, except that the court's orders and letters of appointment are public.

Protected person (Persona protegida) – the person in a guardianship proceeding who has been determined by the court to be legally incapacitated and in need of a guardian. Also, the person in a conservatorship proceeding who has been determined by the court to be in need of a conservator. Representative payee if an agency, such as the Veteran's Administration or the Social Security Administration, pays benefits to the protected person who has been found by the court to be incapacitated, the agency must appoint a representative payee to receive the payments. This appointment is separate from the court-appointed guardian and conservator. Any person wishing to serve as the representative payee must apply to the agency that provides the benefits. In most cases, the agency will appoint the court-appointed guardian or conservator as representative payee. However, the agency providing the benefits has the authority to appoint any person it chooses to be the protected person's representative payee. Once appointed by the agency, the representative payee has the authority to receive and handle the benefits for the protected person.

Respondent (Demandado/Parte demandada) – the person who responds to a petition. In a guardianship/conservatorship proceeding, the person who is alleged to be incapacitated and in need of protection.

Serving papers (Entrega formal de documentos) – serving papers—also called service of process—means delivering a copy of the papers filed with the court to the other parties and interested persons. Court rules require that all parties and interested persons be served with a copy of all papers filed and be given time to respond.

Standard of proof (Grado de certeza) – there are three standards of proof in most court proceedings: *Beyond a reasonable doubt* (the highest standard) means that the evidence must be firmly convincing about the truth of the fact to be proved. This standard applies in all criminal and juvenile delinquency cases.

Preponderance of the evidence (the lowest standard) means that the evidence must show that the fact to be proved is more likely true than not true. This standard applies in most civil cases.

Clear and convincing evidence (a middle standard) means that the evidence must leave no serious doubt about the truth of the fact to be proved. This standard applies in some civil cases, including deciding whether a person is incapacitated.

Statute (Ley) – a law passed by the Utah state legislature.

Temporary guardian (Custodio temporal) – a person or entity appointed by the court to have temporary decision-making authority for a person if an emergency exists, or if an appointed guardian is not effectively performing his or her duties and the protected person's welfare requires immediate action. The appointment of temporary guardian is for a specified time not to exceed 30 days. The court must hold a hearing within five days.

Trust (Fiduciario) – a transaction in which the owner (called the trustor or settlor) of real property (land) or personal property (things) gives ownership to a trustee, to hold and to manage for the benefit of a third party (called the "beneficiary").

Trustee (Fideicomisario) – a fiduciary in whom an estate, interest, or power is vested, under an express or implied agreement, to hold and to manage for the benefit of another.

LANDLORD – TENANT (Arrendador – Arrendatario)

Assignment (Traspaso) and sub-lease (sub-arrendamiento):

Assignment (Traspaso) – when tenant transfers the entire lease term to an assignee and retaining no interest or rights in the leased property such as the tenant's right to enter the or the right to inspect the property.

Sub-lease (Sub-arrendamiento) - where tenant retains some interest or right in the leased premises upon sub-letting.

Commit waste (Daños a la propiedad) – when tenant neglects the leased premises so as to deteriorate its value (for which tenant can be accountable).

Constructive eviction (Desalojo putativo) – when landlord's acts, while not actually depriving the premises from tenant, they prevent the tenant from enjoying the beneficial use of the premises.

Default (Incumplimiento) – when one of the parties fails to meet their contractual obligations. That person is said to be "in default".

Distress (Embargo/Secuestro de Bienes) – the law permitting landlords to enter the tenant's property and seize all the tenant's personal property until tenant pays back owed rent.

Escrow (Depósito en Garantía) – (see also "escrow agent") n. a form of account held by an "escrow agent" (an individual, escrow company or title company) into which is deposited the documents and funds in a transfer of real property, including the money, a mortgage or deed of trust, an existing promissory note secured by the real property, escrow "instructions" from both parties, an accounting of the funds and other documents necessary to complete the transaction by a date ("closing") agreed to by the buyer and seller. When the funding is complete and the deed is clear, the escrow agent will then record the deed to the buyer and deliver funds to the seller. The escrow agent or officer is an independent holder and agent for both parties who receives a fee for his/her/its services. 2) n. originally escrow meant the deed held by the escrow agent. 3) n. colloquially, the escrow agent is called an "escrow," while actually the escrow is the account and not a person. 4) v. to place the documents and funds in an escrow account, as in: "we will escrow the deal."

Fixtures (Accesorios fijos) – those items that tenants, especially long term and commercial tenants, affix to or improve upon the leased premises. It is often disputed as to whether an item affixed is of such a permanent nature that it becomes a "fixture". "Fixtures cannot be removed by the tenant if the court . . .

Forcible detainer (Ocupación forzada) – (a) holding and keeping by force, or by menaces and threats of violence, the possession of any real property, whether acquired peaceably or otherwise; or (b) unlawfully entering real property during the absence of the occupants or at night, and, after demand is made for the surrender of the property, refusing for a period of three days to surrender the property to the former occupant.

Frustration of tenant's use - See "Quiet enjoyment":

Holdover (Retención del inmueble) – a tenant who is violating the lease agreement by refusing to leave upon lease termination.

Rent escrow (Renta en depósito) – amount of monies paid up front by the future tenant to the future landlord which is to be held by landlord until the end of the lease term.

Security Deposit (Depósito en caso de daños) – n. a payment required by a landlord from a tenant to cover the expenses of any repairs of damages to the premises greater than normal "wear and tear." The security deposit must be returned within a short time (varying by states) after the tenant vacates, less the cost of repairing any unusual damage. Unfortunately for tenants, these damages are usually subject to the judgment of the landlord, who may desire to paint and refinish on the tenant's money, which results in many small claims suits. In a few states the security deposit must be kept in a separate bank account, and some states require payment of interest on the amount held as a deposit. A security deposit is sometimes confused with a deposit of the "last month's rent," which may be credited to the tenant for the final month's rent. A security deposit cannot be used legally as a rent credit.

Statute of frauds (Ley contra fraudes) – the statute followed in all states requiring that voluntary transfers of land, including leaseholds, be in writing or otherwise be considered void (or with leaseholds, an "at will" tenancy).

Summary possession by landlord (Procedimiento conciso de desalojo) – a judicial procedure which hastens landlord's possession of the premises when there is a holdover tenant.

Surrender (Abandono) – usually a case of tenant abandoning the leased premises thereby amount of his surrendering the property and his rights under the lease contract.

Tenancy at will (Arrendamiento sin duración determinada) – occupation of real property owned by another until such time as the landlord gives notice of termination of the tenancy (usually 30 days by state law or agreement), which may be given at any time.

Bond – Probate (Garantía de Homologación de Testamento) - Insurance that the court may require, which is paid for by and covers the ward's or decedent's estate.

Other (Letra) – a formal certificate or evidence of a debt.

Calendar-Probate (Agenda de Sucesiones Testamentarias) – Law and motion (Consent) Calendar where formal probate/estate matters, guardian and conservator matters are heard. Name changes, Minor settlements and Adoptions are NOT heard on this calendar.

Other (Calendario) – a court's list of cases for arraignment, hearing, trial or arguments.

Cause of Action (Causal de la Demanda) – a claim in law in fact sufficient to justify a legal right to file petition or complaint.

Certified copy (Copia Certificada) – is a true, accurate or genuine copy of the original. A clerk may certify any court document that is not confidential or in a sealed envelope. Distinguished from a plain copy by a court stamp and an original signature by a court officer stating the certified copy is a true and correct copy of the original document retained by the court.

Change of name (Cambio de nombre) – (42-1-1 UCA) Changing one's name to another name.

Change of Venue (Cambio de Jurisdicción) – the removal of a case begun on one county or district to another for trial, or from one court to another in the same county or district. In probate for example, if all the parties in a guardianship have moved out of the county, they may want to file a change of venue. In criminal cases, a change of venue will be permitted if the court feels the defendant cannot receive a fair trial where the court is located.

Charitable Trust (Fideicomiso Caritativo) – a trust having a charitable organization as a beneficiary.

Charitable Remainder Trust ("CRT") (Fideicomiso Caritativo Restante) – an irrevocable trust into which the grantor converts highly appreciated assets (e.g., investment real estate, stocks, etc.) into a lifetime income without paying capital gains tax when the asset is sold. Utilizing a CRT reduces income and estate taxes while letting you benefit your favored charity.

Child Abuse (Maltrato a Menores) – any form of cruelty to a child's physical, moral or mental well-being.

Claims (Reclamos) – a debt the decedent owed on the date of death.

Claimant (Demandante) – an entity making a demand for money or property.

Costs of Administration (Gastos de Administración) – the actual costs of administering an estate (as opposed to costs of paying the debts of decedent), eg, filing fees, appraiser fees, sales commissions, storage expenses, delivery charges, and the personal representative's commissions and his/her attorney's fees.

Codicil (Codicillo) – a supplement or an addition to a will. It may explain, modify, add to, subtract from, qualify, alter, restrain or revoke provisions in the existing will.

Consent to Adopt (Consentimiento a la Adopción) – allowing or agreeing to have a child adopted.

Distributee (Beneficiario de una Herencia) – an heir entitled to a share of an intestate estate.

Distribution (División Hereditaria) – a division of estate assets, pursuant to authority of the court, to those legally entitled to a share of the decedent's estate.

Domicile (Domicilio/Dirección) – a person's usual place of dwelling and shall be synonymous with "residence."

Durable Power of Attorney for health care (Poder Permanente para Atención Médica) – a legal document by which one person gives another power to make health care decisions. This power of attorney is effective even after the giver no longer has legal capacity.

Elective Share (Participación/Parte/Porción/Acción Optativo) – a spouse's statutory share of a deceased spouse's estate.

Encumbrance (Derecho de Terceros/Gravamen) – a lien or claim, such as a mortgage, on property.

Equitable Interest (Interés Equitativo) – the interest held by a beneficiary of a trust, ie, the right to use or receive property held by the trust according to its terms.

Estate (Herencia) – the whole of the decedent's assets, real and personal.

- **Probate estate (Patrimonio de una Sucesión Testamentaria)** – assets in the decedent's name alone.
- **Non-probate estate (Bienes Excluidos de la Sucesión Testamentaria)** – assets with a named beneficiary, "in trust for" designation, joint tenancy, "payable on death" (POD), or "transfer on death" (TOD) designation.

Et al (y otro(a)s) – all others.

Exemplified Copy (Copia Legalizada) – an authenticated copy of a certified copy. The exemplified copy is authenticated by a judge and clerk of court, not a deputy clerk.

Ex Parte (A Instancia de Parte) – by or for one party only. Ordinarily courts are not allowed to engage in communications with one party only. Both parties must be heard from.

Ex Parte Order (Orden a Instancia de Parte) – an order secured without notice to the opposing party or parties.

Family Allowance (Asignación Familiar) – a portion of a decedent's estate set aside by statute for a surviving spouse, children, or parents, regardless of any testamentary disposition or competing claims.

Formal Probate (Sucesión Testamentaria Formal) – a court proceeding overseen by a referee or judge to probate a will and/or appoint a personal representative of an estate. The administration of a formally probated estate may be either supervised or unsupervised by the court depending on the complexity of the estate to be probated, and may include determining testacy of the estate or validity of a will and determination of heirs. Less complex and uncontested probate cases may be filed in front of a court registrar and are termed Informal Probate.

Fiduciary (Fiduciario) – a special relationship of trust between two people; a person having legal responsibilities for another person or another person's property, such as a trustee, administrator, executor,

Inter vivos (Entre vivos/En vida) – a type of trust created during one's lifetime to hold property for the benefit of another person.

Interest (Derecho) – any right or ownership in property.

Interested Person or Interested Party (Persona con Derecho o Parte con Derecho) – an heir or devisee, or any other person having a right to, or a claim against, a deceased person's estate. Creditors and the state, as well as state and county agencies, in certain circumstances, are interested persons.

Intestate (Intestado) – the term applied when an individual dies without a will.

Intestate Estate (Herencia Intestada) – property that is held (1) solely in the name of an intestate person (a person who dies without a will) or (2) as a tenant in common by an intestate person. In the absence of a will, the intestate laws determine who inherits which shares of an intestate estate.

Irrevocable (Irrevocable) – can't be changed or revoked.

Issue (Descendencia) – all descendants, of all generations, of a deceased person.

In Re (En Referencia a) – in the affair; in the matter of; concerning; regarding. This is the usual method of entitling a judicial proceeding in which there are not adversary parties, but merely some res concerning which judicial action is to be taken.

Intestate (Intestado) – the decedent did not have a will; they are unable to locate any will. Intestate administration and distribution applies.

Joint Ownership (Dominio en Conjunto/Titularidad Conjunta) – the ownership of property by two or more people, usually with the right of survivorship.

Joint property (Bienes Comunes) – property owned jointly with another person or persons.

Joint Tenancy with Right of Survivorship (Coproiedad de un Inmueble) – a form of ownership by two or more persons such that upon one owner's death, the other owner automatically inherits the entire asset. A will provision cannot give the asset to someone other than the joint owner.

Joint Will (Testamento Conjunto) – a single will that is signed by two or more persons (usually spouses) as their separate wills, and is to be probated after the death of each testator. Joint wills are not favored by law and may result in a finding of intestacy by the court. They often result in litigation for breach of contract when the survivor executes a new will following the first party's death.

Jurisdiction (Jurisdicción) – the authority for a court to act on a matter. The authority of the court to hear and decide an action. The legal authority of a court to hear a case or conduct other proceedings; power of the court over persons involved in a case and the subject matter of the case.

Law and Motion (Calendario de Asuntos Legales y Mociones) – a setting before a judge at which time a variety of matters, motions, petitions or procedural requests may be presented.

Letters of Administration (Cartas de Administración) – the court document which shows the appointed person or institution is authorized to handle the estate of the decedent and administration of the estate is Intestate.

Power of Attorney (Poder) – a signed document that authorizes another person on someone's behalf. A power of attorney expires upon the death of the person who granted the power of attorney. The fact that a person had power of attorney does not give that person priority for appointment as personal representative.

Prayer (Moción Petitoria) – the request that the court grant the process, or relief in the petition (now more commonly known as the “wherefore”

Private Case Type (Asunto de Tipo Confidencial) – only the parties who filed the case and the attorneys of record may have access to the pleadings in the case.

Probate (Sucesión Testamentaria/Homologación de Testamento) – the process of proving the validity of a will. The court process of settling an estate (the “probate estate”) of a deceased person and transferring property to the heirs or beneficiaries of the estate.

Probate Court (Tribunal de Sucesiones Testamentarias) – a court having general powers over probate of wills, administration of estates, and in some states, empowered to appoint guardians and conservators or approve the adoption of minors and adults. (In Utah the court also handles name changes and all trust matters.) Court with similar functions is called Surrogate or Orphan's Court in certain states.

Probate estate (Herencia sujeta a legalización) – the property of a decedent that is subject to administration by the executor or administrator of an estate. It encompasses totality of assets and liabilities of decedent, including all manner of property, real and personal.

Pro bono (Gratuitamente) – Latin phrase for work or services done or performed by an attorney, free of charge.

Pro se (Por Derecho Propio) – Latin phrase for acting without an attorney. Reference to persons who present their own case to the court without a lawyer. For him or herself – in his own behalf. Appears in front for him/herself in court.

Protected Person (Persona Protegida por una Norma) – a person who cannot make or communicate responsible personal decisions because of mental illness, mental deficiency, physical illness or disability, chronic uses of drugs, chronic intoxication, or any other cause except being a minor. (*Preferred over incapacitated*): A person who is under a guardian's charge or protection.

Real Property (Bienes Inmuebles) – all real estate, including land, fixed improvements (buildings), and growing things thereon: excludes personal property

Residual Devise (Legado Residual) – a devise of the assets of the estate which remain after the provision for any devise which is to be satisfied by reference to a specific property or type of property, fund, sum, or statutory amount.

Representative Payee (Acreedor Representante) – a person named by a federal agency, such as the Veteran's Administration or Social Security Administration, to receive and account for another person's benefits.

Residuary Estate (Herencia Residual) – the estate that remains after all specific bequests are made.

Respondent (Apelado/Demandado) – the person who is the subject of a petition.
Revocable: Capable of being changed or revoked.

Waiver (Renuncia) – the act of intentionally abandoning a right, claim or privilege.

Ward (Pupilo) – a person for whom a guardian has been appointed.

Wherefore (Por lo cual) – what the Judge has ordered; It usually is the same or what was asked for in the Petition in the “Therefore” or the “Prayer”

Will (Testamento) – a legally executed document that directs how and to whom a person’s property is to be distributed after death. Also called a testament, a will is a document that deals with the disposition of one’s property upon death. Wills generally cannot dispose of property held as tenants by the entirety, joint tenants with rights of survivorship, or retirement plan benefits or life insurance proceeds (unless made payable to the estate). The person who has a will is a “testator”.

Witness (Testigo) – as it pertains to a will, a person who is present at the time the other witnesses, the notary, and the testator are all also present in his or her company and, with proof of identification, signs the will and watches all the others signing at the same time.

Sublease (Subarrendar) – the lease to another of all or a portion of premises by a tenant who has leased the premises from the owner. A sublease may be prohibited by the original lease, or require written permission from the owner. In any event, the original tenant (lessee) is still responsible for paying the rent to the owner (landlord/lessor) through the term of the original lease and sublease.

Tenancy at will (Ocupación de inmueble sin un plazo establecido) – occupation of real property owned by another until such time as the landlord gives notice of termination of the tenancy (usually 30 days by state law or agreement), which may be given at any time. A tenancy at will is created by agreement between the tenant and the landlord, but it cannot be transferred by the tenant to someone else since the landlord controls the right to occupy.

Defamation (Difamación) – the act of making untrue statements about another which damages his/her reputation. If the defamatory statement is printed or broadcast over the media is libel and, if only oral, it is slander.

False imprisonment (Encarcelamiento ilegal) – depriving someone of freedom of movement by holding a person in a confined space or by physical restraint including being locked in a car, driven about without opportunity to get out, being tied to a chair or locked in a closet. It may be the follow-up to a false arrest (holding someone in the office of a department store, for example), but more often it resembles a kidnapping with no belief or claim of a legal right to hold the person. Therefore, false imprisonment is often a crime and if proved is almost always the basis of a lawsuits for damages.

See also: false arrest

Foreseeability (Previsibilidad) – reasonable anticipation of the possible results of an action, such as what may happen if one is negligent or consequential damages resulting from breach of a contract.

See also: foreseeable risk negligence

Immunity (Inmunidad/Excensión) – exemption from penalties, payments or legal requirements, granted by authorities or statutes. Generally there are three types of immunity at law: a) a promise not to prosecute for a crime in exchange for information or testimony in a criminal matter, granted by the prosecutors, a judge, a grand jury or an investigating legislative committee; b) public officials' protection from liability for their decisions (like a city manager or member of a public hospital board); c) governmental (or sovereign) immunity, which protects government agencies from lawsuits unless the government agreed to be sued; d) diplomatic immunity which excuses foreign ambassadors from most U.S. criminal laws.

Implied warranty (Garantía implícita) – an assumption at law that products are “merchantable”, meaning they work and are useable as normally expected by consumers, unless there is a warning that they are sold “as is” or second-hand without any warranty. A grant deed of real property carries the implied warranty of good title, meaning the grantor (seller) had a title (ownership) to transfer.

Indemnity (Indemnización) – the sharing of a loss by each of several persons who may have been jointly responsible for injury to a third party, who entered into a business which lost money or who owe a debt jointly. Quite often this arises when one responsible party pays more than his share and then demands contribution from the others in proportion to their share of the obligation. Example: three partners own equal shares in a building from which a cornice falls and injures Bobby Hardhat. One partner pays the demand of \$9,000 for Hardhat's injury; he is entitled to a contribution of \$3,000 from each of his partners.

Inherently dangerous (Inherentemente peligroso) – an act or activity that is so dangerous that negligence need not be proven.

Invitee (invitado) – one who is granted permission to enter the land or property.

Joint tortfeasor (Coautores de acto ilícito) – two or more persons whose negligence in a single accident or event causes damages to another person. In many cases the joint tortfeasor are jointly and severally liable for the damages, meaning that any of them can be responsible to pay the entire amount, no matter how unequal the negligence of each party was. Example: Harry Hotrod is doing 90 miles an hour along a two-lane road in the early evening, Adele Aimster has stopped her car to study a map with her car sticking out into the lane by six inches. Hotrod swings out a couple of feet to miss Aimster's vehicle, never touches the brake, and hits Victor Victim, driving from the other direction, killing him. While Hotrod is grossly negligent for the high speed and failure to slow down, Aimster is also negligent for her car's

nuisance and an order (injunction) against continuing the noxious (offensive) activity or condition. Examples: fumes from a factory above the legal limit, loud noises well above the norm, directing rain water onto another person's property, operating an auto repair business in a neighborhood zoned residential, or numerous barking dogs.

Proximate cause (Causa próxima) – a happening which results in an event, particularly injury due to negligence or an intentional wrongful act. In order to prevail (win) in a lawsuit for damages due to negligence or some other wrong, it is essential to claim (plead) proximate cause in the complaint and to prove in trial that the negligent act of the defendant was the proximate cause (and not some other reason) of the damages to the plaintiff (person filing the lawsuit). Sometimes there is an intervening cause which comes between the original negligence of the defendant and the injured plaintiff, which will either reduce the amount of responsibility or, if this intervening cause is the substantial reason for the injury, then the defendant will not be liable at all. In criminal law, the defendant's act must have been the proximate cause of the death of a victim to prove murder or manslaughter.

Public nuisance (Alterar el orden público) – a nuisance which affects numerous members of the public or the public at large (how many people it takes to make a public is unknown), as distinguished from a nuisance which only does harm to a neighbor or a few private individuals. Example: a factory which spews out clouds of noxious fumes is a public nuisance but playing drums at three in the morning is a private nuisance bothering only the neighbors.

Res ipse loquitur (Doctrina de Ley que define Negligencia) – Latin, meaning “the thing speaks for itself.”

Respondeat superior (Superior responsable) – (reh-s-pond-dee-at superior) n. Latin for “let the master answer, a key doctrine in the law of agency, which provides that a principal (employer) is responsible for the actions of his/her/its agent (employee) in the “course of employment.” Thus, an agent who signs an agreement to purchase goods for his employer in the name of the employer can create a binding contract between the seller and the employer. Another example: if a delivery truck driver negligently hits a child in the street, the company for which the driver works will be liable for the injuries. See also: negligence principal agency agent.

Slander (Difamación hablada) – spoken defamatory comment.

Strict liability (Responsabilidad objetiva) – automatic responsibility (without having to prove negligence) for damages due to possession and/or use of equipment, materials or possessions which are inherently dangerous, such as explosives, wild animals, poisonous snakes or assault weapons. This is analogous to the doctrine of res ipsa loquitur in which control, ownership and damages are sufficient to hold the owner liable.

Trespass (Entrada ilícita) – entering another person's property without permission of the owner or his/her agent and without lawful authority (like that given to a health inspector) and causing any damage, no matter how slight.

Uniform Commercial Code (Código Uniforme de Comercio) – a set of statutes governing the conduct of business, sales, warranties, negotiable instruments, loans secured by personal property and other commercial matters, which has been adopted with minor variations by all states except Louisiana.

as a result of alcohol, drugs, stroke, or medical disorders, such as diabetes.

Prognosis: In most comatose states the person may recover from the coma with treatment and may then have an essentially normal life. Some comas, such as seen in terminal liver disease, are fatal.

Contributing to incapacity: Persistent comas eliminate the possibility of the patient making any decisions and a surrogate is required. In temporary comas, the individual usually will return to normal function.

Confusion (Confusión) – confusion is a state in which the person experiences loss of memory, as well as diminished awareness of environment, time (of day, year, or month), and presence or absence of friends or relatives. May result from multiple causes, many of which are reversible.

Prognosis: Varies widely, depending on cause.

Contributing to incapacity: Severe confusion indicates lack of capacity; but it is important to be alert to temporary or reversible causes of confusion, such as urinary tract infections, effects of medication, or delirium.

Congestive heart failure (Insuficiencia cardíaca congestiva) – congestive heart failure is a term that physicians use any time the heart is not functioning adequately to take care of normal or even excessive physical activity. The condition is common in older individuals, but in most instances can be well controlled with medication, and does not always indicate a serious problem. In a severe state it is quite serious. Congestive failure should be described indicating whether it is mild, moderate, or severe. The physician should explain the extent of the disability.

Prognosis: Mild to moderate congestive heart failure carries a good prognosis with adequate treatment. Severe congestive heart failure may be fatal.

Contributing to incapacity: The severe congestive heart failure patient will be totally incapacitated physically and mentally, and in need of round-the-clock support to take care of daily activities. Mental function is not affected in the mild to moderate condition.

Delirium (Delirio) – delirium indicates a state of temporary total confusion frequently associated with agitation, restlessness, and, at times, hallucinations. Older people on medications, using alcohol, or following surgery are particularly susceptible to delirium. Delirium also may be triggered by an illness associated with fever and by extreme anxiety.

Prognosis: Delirium is usually temporary and does not produce a permanent problem.

Contributing to incapacity: States of delirium can be misinterpreted to indicate a serious mental disorder when, in reality, the condition is usually temporary.

Delusion (Ilusión, idea delirante) – a delusion implies a belief in something that is contrary to fact or reality. Delusions are misconceptions in which people may believe things are happening that are not. Delusions can be frightening or they can be fantasies such as delusions of grandeur.

Prognosis: Delusions may occur with serious mental illness and, as such, the prognosis is not good.

Delusions without other symptoms may not be a serious problem.

Contributing to incapacity: Delusions may contribute to diminished capacity, especially when associated with other problems and when they are obvious to other people.

Dementia (Demencia) – dementia is caused by various diseases and conditions that result in damaged brain cells or connections between brain cells. When making a diagnosis of dementia, of Mental Disorders, Fourth Edition (DSM-IV). To meet DSM-IV criteria for dementia, the following are required:

□ Symptoms must include decline in memory and in at least one of the following cognitive abilities:

- (1) Ability to generate coherent speech or understand spoken or written language;
- (2) Ability to recognize or identify objects, assuming intact sensory function;
- (3) Ability to execute motor activities, assuming intact motor abilities, sensory function and comprehension of the required task; and

Global cognitive impairment (Déficit en la función cognitiva) – global cognitive impairment indicates disturbance of total brain function, including memory deficit, inability to understand, lack of judgment, and lack of ability to recognize or understand one's surroundings.

Prognosis: Global cognitive impairment usually indicates a very severe progressive mental disorder.

Contributing to incapacity: Global cognitive impairment invariably leads to total loss of judgment capability. There is loss of ability to compare or make decisions, or of being able to understand situations. This condition usually is associated with total incapacity.

Hallucination (Alucinación) – hallucination is an apparent perception of sights, sounds, and/or smells that are not actually present. Hallucinations may occur in a delirium, but they may also occur with certain functional disorders, especially schizophrenia, and organic disorders of the brain. Hallucinations are commonly associated with drugs, excessive use of alcohol and, especially in the elderly, illnesses associated with fever.

Prognosis: The prognosis depends on the condition associated with the hallucination and may be serious when present with mental illness or organic disorders of the brain.

Contributing to incapacity: Observers of individuals having hallucinations will usually associate the hallucinations with serious mental impairment, which may be correct, or the hallucinations may be associated with a temporary condition.

Immobility (Inmovilidad) – immobility indicates the lack of an individual to utilize the extremities in meaningful movement. Immobility may mean a lack of ability to walk or the lack of the ability to do things with the arms and hands. The most common cause of immobility is stroke, but other problems, such as severe arthritis, can immobilize an individual.

Prognosis: Most such problems are permanent and often progressive.

Contributing to incapacity: Immobility is a very significant cause of incapacity and, when severe, causes problems in the ability of the individual to survive without considerable support.

Incontinence (Incontinencia) – incontinence is the loss of the ability to control the urine output and sometimes the bowel control is lost.

Prognosis: Newer techniques have helped patients to learn the control of bladder and bowel, but the presence of incontinence associated with mental problems adds to a poor prognostic outcome.

Contributing to incapacity: Incontinence is probably the most significant abnormality that leads to institutionalization of the older protected person and, when associated with mental deterioration, the condition is a serious problem.

Intellectual disability¹⁸ (Discapacidad intelectual, retraso mental [menores de 18]) – intellectual disability is a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior, which covers many everyday social and practical skills. This disability originates before the age of 18. Intellectual functioning refers to general mental capacity, such as learning, reasoning, problem solving, and so on. One measurement of intellectual functioning is an IQ test. Generally, an IQ test score of around 70 or as high as 75 indicates a limitation in intellectual functioning. See American Association on Intellectual and Development Disabilities, www.aaidd.org.

Memory deficit (Déficit de la memoria) – memory deficits occur in normal aging. Benign memory loss of aging implies minor memory changes, such as forgetting where one leaves keys or glasses. Serious memory loss is forgetting what they are used for, getting lost, etc. Older people with memory deficit may still retain reasonably good judgment abilities. Judgment enables persons to make rational decisions.

Prognosis: Memory loss does not necessarily imply a poor prognosis and many individuals who have primary memory deficit may retain judgment ability and make reasonable decisions.

Contributing to incapacity: Paranoid individuals can often be very difficult to evaluate and to deal with. They can be so suspicious that they will not trust even their closest companions.

Parkinson's disease (Enfermedad de Parkinson) – Parkinson's Disease is a disorder that usually has its onset in late life, but can begin in the second and third decades. It is primarily a disease of the nerves and muscles producing a severe tremor and muscle rigidity, which flattens the facial features and causes disturbance in walking. The mental function is not affected until the disease is very far advanced. Most individuals with Parkinson's disorders seem to be unusually bright.

Prognosis: With new treatment methods (drug therapy) the outlook in Parkinson's has improved tremendously, both in relation to function and life expectancy. Now individuals with Parkinson's can look forward to a normal life expectancy and maintain function for many years.

Contributing to incapacity: Even with good treatment Parkinson's disorders can sometimes be totally disabling. Individuals may end up in wheelchairs or in nursing homes. In the far advanced stages mental capacity may be decreased.

Pernicious anemia (Anemia perniciosa) – pernicious Anemia (PA) is a specific type of anemia that is related to a deficiency in vitamin B12 and folic acid. Pernicious anemia was previously a fatal disorder until the discovery of liver extract and, eventually, vitamin B12, which now can control the disorder completely. When not controlled, PA causes the person to have a markedly deficient amount of iron and red blood in the system. The disease can affect the nervous system, producing changes in the ability to walk and producing numbness in the extremities, especially the feet.

Prognosis: With treatment, the condition should be well controlled.

Contributing to incapacity: If treated, there should be no incapacity related to pernicious anemia.

Schizophrenia (Esquizofrenia) – schizophrenia is a mental disorder associated with dramatic personality changes characterized by withdrawal, indifference, and at times delusions, hallucinations, and paranoia. Sometimes a person with schizophrenia presents symptoms of multiple personalities. Schizophrenia, when associated with paranoia, may create a dangerous situation, and may result in very bizarre behavior. Such patients should be under the care of a psychiatrist.

Prognosis: The prognosis of schizophrenia has improved in recent years with the use of antipsychotic medications, which sometimes help to relieve some of the severe symptoms of schizophrenia.

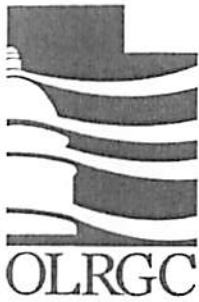
Contributing to incapacity: Persons with severe schizophrenia can present very severe management problems for family and caretakers. Their behavior can be so strange that one is not sure whether the patient's decisions are accurate or inaccurate.

Sensory changes in the body (Cambios sensoriales por envejecimiento) – sensory changes are the most common physical changes that occur with aging. Sensory changes may involve hearing, vision, the olfactory sense (the sense of smell), inability to recognize thirst, changes in taste and touch, and, frequently, loss of sense of equilibrium. Older individuals do not have loss of all of these functions. Some may not lose any. Some may lose one or two of these functions, but such losses can affect health. For example, if one has loss of taste and smell, appetite is impaired. If one does not recognize thirst, one can easily become dehydrated.

Prognosis: Sensory changes are common in aging, and unless severe, do not seriously incapacitate an individual and are not progressive.

Contributing to incapacity: They usually do not contribute to incapacity.

Stress (Estrés) – stress is a condition in which the body and the mind of the individual can be affected by events in one's life which can be either pleasant or extremely difficult. Constructive stress occurs in the lives of most of us, and most individuals react favorably by performing well under stress, e.g., actors and athletes perform better as a result of stress. On the other hand, stress can be disabling. Among the most stressful situations causing problems are the stresses resulting from the loss of spouse, or, especially for



INTERIM HIGHLIGHTS

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LEGISLATIVE INTERIM MEETINGS

Meetings were held July 17, 2013, or as noted.

Business and Labor

Alcoholic Beverage Control

Received public comment regarding certain alcohol-related legislation introduced during the 2013 General Session, including discussing:

- The transfer of retail licenses issued by the Department of Alcoholic Beverage Control; and
- Whether the Legislature should create a new category of retail licenses for certain hotels.

Practicing Law Without a License

Action: Voted to recommend 2013 First Special Session H.B. 1002, "Practicing Law Without a License Amendments," which provides that provisions of court rule that authorize the practice of law without a license are, under certain circumstances, an exception to the statutory prohibition on the unauthorized practice of law.

Private Investigator Regulation Act Amendments

Action: Voted to recommend 2013 First Special Session H.B. 1003, "Private Investigator Regulation Act Amendments," which provides for a limited-use license for a person to provide private investigator or private detective services to a legislative body under certain circumstances.

Sunset Review — Utah Injured Worker Reemployment Act

Action: Approved as a committee bill, draft legislation "Injured Worker Reemployment Amendments," which repeals the Utah Injured Worker Reemployment Act, establishes reemployment objectives, and makes technical and conforming changes.

Sunset Review — Notice of Trustee Sale and Posting of Notice

Action: Voted to open a priority bill file under committee sponsorship to extend for two years the sunset date of Subsections 57-1-25 (1)(c) and (3)(b), which concern a trust deed given as security to finance residential property.

*Chairs: Rep. James A. Dunnigan / Sen. Curtis S. Bramble
Staff: Bryant R. Howe (Assistant Director) / Christine R. Gilbert (Attorney) / Patricia Owen (Attorney) / Jennifer K. Christopherson (Secretary)*

Commission on Federalism

July 02, 2013

Committees of Correspondence and the Tenth Amendment

Received a presentation by Congressman Rob Bishop regarding historical use of committees of correspondence and the need for states to act in order to retain powers that were granted to the states by the United States Constitution.

Legislative Intent

Received a presentation from two legislators regarding the intended mission of the commission. The legislators encouraged commission members to study and discuss state powers and areas of jurisdiction, identify areas in which states' powers might have eroded over time, and report any findings to the full body of the Legislature.

Outreach with other States

Discussed ways that the commission can engage and interact with representatives of other states.

Action: Recommended that the commission chairs work with staff to prepare correspondence to be sent out to legislative leaders of other states. The letter should identify the purpose of the commission and invite other states to form their own commissions to study issues of federalism.

State Sovereignty and Federal Preemption

Received a report from committee staff regarding research conducted at the committee's request regarding the separation of state and federal powers.

*Chairs: Speaker Rebecca D. Lockhart / President Wayne L. Niederhauser
Staff: Jerry D. Howe (Managing Policy Analyst) / Nathan W. Brady (Policy Analyst) / Robert H. Rees (Attorney) / Cathy J. Dupont (Attorney) / Samantha Coombs (Secretary)*

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Summaries of Legislative Meetings

Overview of Education Data

Received a presentation from committee staff indicating how Utah students may potentially perform on internationally administered tests of reading, math, or science achievement.

Perspectives on Student Achievement

Received comments from education stakeholders on the key elements contributing to high student achievement and how to design an education system that promotes or enhances those elements.

State Education Funding Effort and Student Achievement in Utah and Peer States

Received a report from the Utah Foundation on its studies on Utah student achievement compared to student achievement of peer states and Utah's public education funding effort. Utah's rank among states with similar demographic characteristics has trended downward since 1992. The state's funding effort, as measured by public education revenues per \$1,000 of personal income, has also declined since 1992.

*Chairs: Speaker Rebecca D. Lockhart / President Wayne L. Niederhauser
Staff: Allison M. Nicholson (Policy Analyst) / Constance C. Steffen (Policy Analyst) / Angela Oakes Stallings (Attorney) / Debra Hale (Secretary)*

Federal Funds Commission

July 16, 2013

Committee Business

Action: Approved a motion to create:

- Informal working groups to work with community stakeholders to examine the potential loss of federal funds related to education, health and human services, public safety and corrections, and local government; and
- A general risk assessment working group.

Natural Resources and Public Lands

Received a presentation from the Division of Forestry, Fire, and State Lands related to federal and state funding for fighting wildfires. Also received information from commission staff on federal funding for the Payment In Lieu of Taxes program and federal mineral royalty payments.

Risk Management

Received a presentation from a commission member on how public entities deal with a significant reduction in funding.

*Chair & Vice Chair: Sen. Deidre M. Henderson / Rep. Ken Ivory
Staff: Phillip V. Dean (Policy Analyst) / Shannon C. Halverson (Attorney) / Sara J. Thomas (Secretary)*

Government Communications Task Force

July 11, 2013

911 Fees in Other States

Received a presentation from the Utah Communication Agency Networks Executive Committee regarding how other states fund emergency communication services and the amount of any fees assessed.

Current and Future Funding Options

Discussed funding options and potential cost-sharing methods.

(Continued next column)

Telephone Fees in Utah

Received a presentation from task force staff explaining the statutory history of and revenue generated by the following four charges that are collected with a telephone bill:

- State 911 fee of \$0.08 per access line;
- Local 911 fee of \$0.61 per access line;
- Telecommunication Relay Service Fund fee of \$0.06 per access line; and
- Utah Poison Control Center Surcharge of \$0.07 per access line.

Salt Lake Metro 911 Study

Received a presentation from the Ogden City Fire Department on the April 2012 Salt Lake Metro 911 Assessment and Feasibility Study.

*Chairs: Rep. Brad L. Dee / Sen. Wayne A. Harper
Staff: Joseph T. Wade (Policy Analyst) / Victoria Ashby (Attorney) / Tracey Fredman (Secretary)*

Government Operations

Campaign Contribution Limitations

Received a presentation from two legislators regarding campaign contribution limitations.

Free Market and Public Services

Received a presentation from a legislator on how to allow the free market to play a more significant role in providing public services.

Free Market Protection and Privatization Board

Received a report from the Free Market Protection and Privatization Board regarding its activities. During 2012, the board did not recommend privatizing any function provided by a government agency.

Government Records Ombudsman

Received a report from the Government Records Ombudsman regarding the work performed by the ombudsman during FY 2013. Of the 585 public consultations provided by the records ombudsman during FY 2013, 75% were for members of the public, 18% were for representatives of the media, and 7% were for other entities. The records ombudsman provided 515 consultations to government employees responding to requests, of which 42% were for state government entities and 58% were for local government entities.

Legislative Investigative Committee Amendments

Action: Voted to recommend 2013 First Special Session H.B. 1001, "Legislative Investigative Committee Amendments."

State Surplus Property Request for Proposals

Received a report from the Department of Administrative Services regarding the status of an RFP for administering the state surplus property program as required by 2013 General Session S.B. 68, "State Surplus Property Program Amendments."

(Continued next page)

Sunset Review — Air Conservation Act

Received a report from the Division of Air Quality on the need for Utah's Air Conservation Act.

Action: Recommended that Title 19, Chapter 2, Air Conservation Act, be reauthorized for five years.

Chairs: Rep. Michael E. Noel / Sen. Scott K. Jenkins

Staff: J Brian Allred (Policy Analyst) / RuthAnne Frost (Attorney) / Anna M. Allen (Secretary)

Political Subdivisions**Eminent Domain — Licensed Agents**

Received a report from a study group of parties interested in eminent domain issues. The group was facilitated by the state property ombudsman under the direction of the study sponsor.

The group met twice and discussed the issue of whether a party initiating a condemnation proceeding should be required to hold a real estate license. The study sponsor reported the group's recommendations to the committee.

Eminent Domain

Received a brief overview from the state property ombudsman on eminent domain process and requirements.

Law Enforcement Modifications

Action: Voted to recommend 2013 First Special Session H.B. 1004, "Law Enforcement Modifications," regarding federal and state agencies.

Vacating a Plat

Discussed issues relating to when a plat should be vacated as opposed to being amended.

Wasatch Choice for 2040

Received a presentation from the Davis County Commissioners and the Wasatch Front Regional Council on the Wasatch Choice for 2040's vision for growth and development along the Wasatch Front.

Chairs: Rep. R. Curt Webb / Sen. Daniel W. Thatcher

Staff: Joseph T. Wade (Policy Analyst) / Victoria Ashby (Attorney) / Samantha Coombs (Secretary)

Public Utilities and Technology**Natural Gas Station Infrastructure**

Received an update from the Public Service Commission on developing a natural gas station infrastructure across the state.

Extension of Natural Gas Lines

Received an update from the sponsor of 2013 General Session S.B. 202, "Extension of Natural Gas Lines," about the negotiation process between Emery and Millard Counties and Questar Gas for extending natural gas lines in rural Utah. A Millard County commissioner and the county's economic development director also addressed the issue, outlining funding process proposals.

INTERIM HIGHLIGHTS • July 2013

Questar Gas presented the company's position on the process and identified certain changes, such as 50/50 funding by developers, that are key to making the gas extension financially viable.

Interstate Transmission Lines

Received presentations from TransWest and Zephyr about the construction of interstate high-voltage transmission lines from Wyoming to Nevada, through Utah. These are 3000KV lines, with both AC and DC currents.

Utah may benefit from these transmission lines in the following ways:

- Centrally assessed property taxes;
- Construction jobs; and
- Ongoing maintenance of approximately 435 miles of high-voltage lines that will be constructed across Utah by 2017.

Rural Telephone Company Competitiveness

Received presentations from the Utah Rural Telecom Association, independent rural telephone companies, and the Public Service Commission about federal and state universal service funds and the continued viability of rural telephone companies.

The presentations emphasized how the change in the way federal and state universal service funds are allocated will affect the ability of rural telephone companies to continue to provide services at competitive rates. The reallocation of universal service funds centers around broadening the use of funds to include the provision of broadband services.

Chairs: Rep. Roger E. Borrus / Sen. David P. Hinkins

Staff: Richard C. North (Policy Analyst) / Rebecca L. Rockwell (Attorney) / Tracey Fredman (Secretary)

Revenue and Taxation**Tax Commissioner Qualifications**

Discussed the current qualifications for state tax commissioners and a proposal to change those requirements, including a constitutional amendment to remove the partisan makeup of the commission.

Chairs: Rep. Ryan D. Wilcox / Sen. Deidre M. Henderson

Staff: Bryant R. Howe (Assistant Director) / Phillip V. Dean (Policy Analyst) / Rebecca L. Rockwell (Attorney) / Samantha Coombs (Secretary)

Senate Judicial Confirmation Committee

July 12, 2013

The committee met on July 12, 2013, and recommended to the full body of the Senate the confirmation of Paul B. Parker as a judge for the Third District Court.

The Senate met on July 17, 2013, and confirmed Mr. Parker.

Chair: Sen. Scott K. Jenkins

Staff: Michael E. Christensen (Director) / Susan Creager Allred (Associate General Counsel) / Jennifer Christopherson (Legislative Secretary)