JUDICIAL COUNCIL MEETING

AGENDA Monday, November 21, 2016 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)
		Oath of Office
2.	9:05 a.m.	Chair's Report Chief Justice Matthew B. Durran
3.	9:10 a.m.	Administrator's Report
4.	9:20 a.m.	Reports: Management Committee Chief Justice Matthew B. Durrant Liaison Committee
5.	9:30 a.m.	Council Committee Assignment Chief Justice Matthew B. Durrant (Tab 3 - Action)
6.	9:35 a.m.	2017 Council Calendar
7.	9:40 a.m.	Civil Jury Instruction Committee Update Juli Blanch (Tab 5 - Information) Nancy Sylvester
8.	10:00 a.m.	Rule for Final Action
9.	10:05 a.m.	Legislative and Interim Highlights
10.	10:15 a.m.	Fourth District Local Rule Debra Moore (Tab 8 – Action)
	10:20 a.m.	Break

11.	10:30 a.m.	Juvenile Indigent Representation Committee - Justice John Pearce Initial Report (Tab 9 – Information)
12.	11:00 a.m.	CCJJ/PEW Recommendations on Judge Michele Heward Juvenile Justice. Judge James Miche (Tab 10 – Information) Judge Ryan Evershed
	11:30 a.m.	Council Photo
	11:50 a.m.	Lunch
13.	12:20 p.m.	Arnold Foundation Pre-Trial Assessment Tool
14.	12:30 p.m.	Senior Judge Certifications
15.	12:35 p.m.	Executive Session
16.	1:05 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.

1.	Committee Appointments (Tab 12)	Ron Bowmaster Stacey Snyder Keisa Williams Nancy Sylvester Brent Johnson
2.	Tax Judge Appointment (Tab 13)	Debra Moore
3.	Appointment to the Utah Retirement Membership Council (Tab 14)	Daniel J. Becker
4.	Rules for Public Comment (Tab 15)	Keisa Williams Nancy Sylvester

TAB 1

JUDICIAL COUNCIL MEETING

Minutes
Tuesday, October 4, 2016
Silver Mine A
Park City Marriott
Park City, Utah

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:

Chief Justice Matthew B. Durrant

Justice Thomas Lee

Hon. Marvin Bagley

Hon. Ann Boyden

Hon. Mark DeCaria

Hon. Paul Farr

Hon. Thomas Higbee

Hon. David Marx

Hon. Mary Noonan

Hon. Reed Parkin

Hon. Derek Pullan

Hon. Randall Skanchy

Hon. Kate Toomey

John Lund, esq.

EXCUSED:

STAFF PRESENT:

Daniel J. Becker

Ray Wahl

Jody Gonzales

James Ishida

Debra Moore

Jim Peters

Dawn Marie Rubio

Rick Schwermer

Ron Bowmaster

Brent Johnson

Tom Langhorne

Nancy Sylvester

GUESTS:

Justice Christine Durham

Jennifer Yim

Nate Alder

Justice John Pearce

Judge Reuben Renstrom

Judge James Brady

Judge Mark Kouris

Judge Brent West

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting.

<u>Motion:</u> Judge Toomey moved to approve the minutes from the September 12, 2016 Judicial Council meeting. Justice Lee seconded the motion, and it passed unanimously.

As an outgoing member, Chief Justice recognized Judge Randall Skanchy for his service and contribution to the Council.

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

He reported that he and Mr. Becker recently met with Ms. Jennifer Yim and Mr. John Ashton of the Judicial Performance Evaluation Commission (JPEC).

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

Mr. Becker reported on the following items:

<u>Judicial Appointment</u>. Mr. Robert Neill has been appointed to fill the judicial vacancy in the Second District Juvenile Court, pending confirmation.

<u>Finance Director</u>. Mr. John Bell has been appointed as the Finance Director. Mr. Becker provided his background and work experience. His start date is November 11.

<u>Presiding Judge Lunch</u>. The presiding judge lunch will be held tomorrow with discussion of the following topics: 1) new mentoring program, 2) presiding judge handbook, and 3) professional development plan and strategy to address poor JPEC scores.

<u>CIP Program</u>. Mr. Becker informed the Council that federal funding for the Court Improvement Program (CIP) was not approved before the Congressional recess. The CIP program in Utah is funded through September 2017, but the failure to act could have ramifications on future funding.

State Court Administrator. Mr. Becker announced his upcoming retirement, effective May 1. He reviewed the selection process and timetable for filling his vacancy. He expressed his appreciation for the opportunity to work for the Utah court system and the support he has received.

Chief Justice Durrant expressed his gratitude for Mr. Becker's contributions to the Utah courts during his tenure.

Justice Durham expressed her gratitude for all Mr. Becker has done for and on behalf of the Utah court system.

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.

Liaison Committee Report:

No meeting was held in October.

Policy and Planning Meeting:

Judge Parkin mentioned that the committee continues to work on a number of issues that will be brought to the Council at a later date.

Bar Commission Report:

Mr. Lund reported on the following items:

- > Emphasis is being directed on promoting the licensed lawyer directory
- A decision was made by the Bar Commission to include on the licensing form for lawyers the various non-profits that may be seeking contributions, to allow inactive lawyers to serve on committees of the Bar, and look at implementing the ABA Free Legal Answers program locally.

5. STANDING COMMITTEE ON EDUCATION UPDATE: (Justice Christine M. Durham and Mr. Tom Langhorne)

Chief Justice Durrant welcomed Justice Durham and Mr. Langhorne to the meeting.
Justice Durham recognized Mr. Langhorne for all he does on behalf of the Standing
Committee on Education, specifically regarding incorporation of evidence-based practice areas
where appropriate, and development of a depth of expertise and talent in the programs offered.

Mr. Langhorne highlighted the following in his update of the Standing Committee on Education:

- > 133 days of classes held across the state
- > 33 major statewide conferences held
- > Development of a district judges long-term curriculum
- > Formalized mentoring guidelines adopted by the Judicial Council
- > Developing a presiding judge manual
- > Conducted a two-day law clerk workshop
- > Development of a Court Skills Academy (for non-supervisory employees); two sessions have been conducted
- > Development of a Middle Management Leadership Academy; two sessions have been conducted
- ➤ 33 students graduated from the MSU Judicial Administration Program in August, with the second round of students slated to graduate in December 2017
- New judge orientation has been revised and enhanced, with the week-long orientation being offered twice yearly
- A two-day "train the faculty" workshop was held
- > Rewrite of the probation case planning curriculum was completed, with pilot testing being done in November

Chief Justice Durrant thanked Justice Durham and Mr. Langhorne for all they do regarding judicial and staff education, and he particularly thanked Justice Durham for her years of service as a committee chair.

6. LEGISLATIVE UPDATE AND INTERIM HIGHLIGHTS: (Rick Schwermer)

Mr. Schwermer highlighted the following in his legislative update: 1) Crime Victims Reparations and Assistance Board; 2) court surcharge with focus on the "35/90 surcharge"; 3) expedited jury trials report, 4) family law as it relates to alimony amendments, divorce education program summary, and divorce orientation program summary; 5) offenses based on victim selection; 6) a meeting is scheduled for October 20 to discuss the judicial weighted caseload process; and 7) recommendations, observations and conclusions are being prepared relative to JRI and drug courts.

7. JUDICIAL PERFORMANCE EVALUATION COMMISSION UPDATE: (Jennifer Yim and Nate Alder)

Chief Justice Durrant welcomed Ms. Yim and Mr. Alder to the meeting.

Ms. Yim introduced Mr. Alder to the Council, and she provided Mr. Alder's background and work experience. She mentioned that he is serving his second term as a commissioner of the Judicial Performance Evaluation Commission (JPEC).

Ms. Yim and Mr. Alder highlighted the following in their update: 1) JPEC's new website design is up and running; 2) a few minor changes have been done to the courtroom observations; 3) engaged in courtroom observation recruitment and training; 4) launching of the justice court

mid-level observations will take place soon; 5) a new mid-level justice court evaluator has been hired by JPEC; 6) JPEC's November meeting has been cancelled; training on implicit bias will take its place; 7) for new judges who missed a mid-term evaluation cycle, some kind of evaluation information prior to the retention election in 2016 will be provided; and 8) a proposed statutory change relative to judicial discipline.

Clarification was provided on questions asked of Ms. Yim.

Chief Justice Durrant thanked Ms. Yim and Mr. Alder for their update.

8. STANDING COMMITTEE ON TECHNOLOGY UPDATE: (Justice John Pearce and Ron Bowmaster)

Chief Justice Durrant welcomed Justice Pearce and Mr. Bowmaster to the meeting. Justice Pearce highlighted the following areas being addressed by the Standing Committee on Technology: 1) remaining conversion to mandatory electronic filing, 2) software improvement, 3) improvement of video capabilities in remote courthouses, and 4) cyber security.

Chief Justice Durrant thanked them for their update.

9. BOARD OF JUSTICE COURT JUDGES UPDATE: (Judge Reuben Renstrom and Jim Peters)

Chief Justice Durrant welcomed Judge Renstrom and Jim Peters to the meeting.

Judge Renstrom highlighted the following in his update: 1) continued work on small claims, 2) new justice court administrator. 3) outreach to local government, 4) efforts of subcommittee on justice court reform, 5) the importance of judicial independence at the justice court level, and 6) technological changes.

Chief Justice Durrant thanked Judge Renstrom for his update.

10. REPORT FROM THE UNIFORM FINE AND BAIL COMMITTEE: (Judge James Brady)

Chief Justice Durrant welcomed Judge Brady to the meeting.

Judge Brady highlighted the following regarding the progress of the Uniform Fine and Bail Committee as they address the following three categories of concern:

- > Study and recommend changes to the current Uniform Fine and Bail Schedule
- > Study and recommend changes in the current rules and/or statutes necessary to separate a Uniform Bail Schedule from a Uniform Fine Schedule
- > Study and recommend alternatives for obtaining Offense Tracking Numbers (OTNs) for defendants that are not arrested, which do not create a conflict between BCIs purposes, and the operations of the Committee, or create constitution issues for the courts.

The following areas have been addressed by the Uniform Fine and Bail Committee:

- ➤ Identify all crimes with minimum mandatory and minimum maximum fines established by the Legislature and confirm that they reflect the proper amount
- > Treat similar types of crimes with similar fine recommendations
- > Significantly reduce the number of different recommended fine amounts within each category of crime
- ➤ Recommend fine levels that would demonstrably result in no, or minimal deviation of the total amount of fines ordered by the courts in 2015 and 2016

Chief Justice Durrant thanked Judge Brady for his update.

11. BOARD OF DISTRICT COURT JUDGES UPDATE: (Judge Mark Kouris)

Chief Justice Durrant welcomed Judge Kouris to the meeting.

Judge Kouris highlighted the following in his update to the Council: 1) judicial weighted caseload revision, 2) numbering and association of documents, 3) post-relief conviction bench book, 4) law clerk study and implementation of the recommendations resulting from the study, and 5) college degrees for team managers, case manager, and judicial assistant positions.

Discussion took place relative to the matter of college degrees for team managers, case manager, and judicial assistant positions.

Mr. Becker provided background information on the hiring practice and policies relative to this matter.

Chief Justice Durrant thanked Judge Kouris for his update.

12. COMMISSIONER NOMINEE APPROVAL: (Judge Brent West)

Judge West was welcomed to the meeting.

Ms. Christina Micken was recommended for appointment to fill the vacancy for a court commissioner in the First and Second Districts due to the retirement of Commissioner Daniel Garner. Her background and work experience was included with the Council material.

<u>Motion</u>: Judge Skanchy moved to approve the appointment of Ms. Christina Micken as the commissioner for the First and Second Districts. Judge Toomey seconded the motion, and it passed unanimously.

13. SENIOR JUDGE AND COURT COMMISSIONER CERTIFICATIONS: (Judge Nancy Sylvester)

Chief Justice Durrant welcomed Ms. Sylvester to the meeting.

Ms. Sylvester reminded the Council that they deferred action on certification of the court commissioners at their September meeting to allow for the appropriate information to be prepared and available for consideration at today's meeting. Commissioner Joshua Faulkner and Commissioner Kim Luhn's terms of offices will expire on December 31, 2016, and they are up for certification. Both commissioners meet all of the performance standards.

The following senior judges terms will expire on December 31, 2016 and have requested to be certified: 1) Judge Wayne Cooper, active senior justice court judge; 2) Judge L.A. Dever, active senior judge; 3) Judge Roger Dutson, active senior judge; 4) Judge Donald Eyre, active senior judge; 5) Judge Ben Hadfield, active senior judge; 6) Judge Pamela Heffernan, active senior judge; 7) Judge James Shumate, active senior judge; 8) Judge Darold Butcher, active senior justice court judge; 9) Judge Timothy Haveron, active senior justice court judge; 10) Judge Douglas Cornaby, inactive senior judge; 11) Judge Timothy Hanson, inactive senior judge; 12) Judge Holly Barringham, inactive senior justice court judge; 13) Judge Dennis Barker, inactive senior justice court judge; 14) Judge Lee Osborn, inactive senior justice court judge; 15) Judge Darwin Poulsen, inactive senior justice court judge; and Judge Elayne Storrs, inactive senior justice court judge.

<u>Motion</u>: Judge Skanchy moved to enter into an executive session to discuss a matter of professional competence. Judge Toomey seconded the motion, and it passed unanimously.

Members of the Council exited an executive session and went back on the record.

<u>Motion</u>: Judge Higbee moved to forward the recommendations for senior judge certification to the Supreme Court, on behalf of the Council, with the exception of Judge Timothy Haveron who was recommended to apply for inactive status and active certification for him was declined. Justice Lee seconded the motion, and it passed unanimously.

<u>Motion</u>: Judge Skanchy moved to forward the following recommendations for court commissioner certification to the Supreme Court, on behalf of the Council: 1) Commissioner Joshua Faulkner, and 2) Commissioner Kim Luhn. The motion was seconded, and it passed unanimously.

<u>Motion</u>: Judge Skanchy moved to forward a matter of judicial performance to the Judicial Conduct Commission for review, and to ask Mr. Johnson to prepare a corrective action plan relative to other concerns relating to the judge in question that will be reviewed with the Management Committee for approval before implementing. Judge Toomey seconded the motion, and it passed unanimously.

14. EXECUTIVE SESSION

An executive session was held at this time.

15. ADJOURN

The meeting was adjourned.

Administrative Office of the Courts

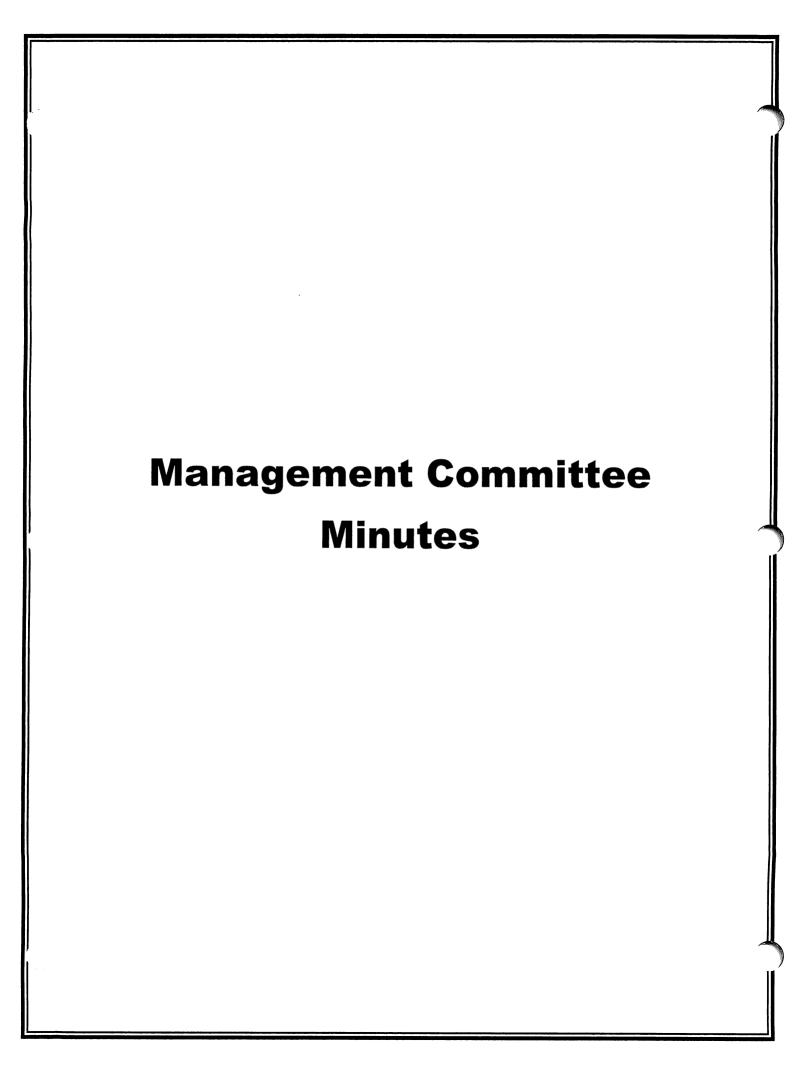
Chief Justice Matthew B. Durrant Utah Supreme Court Chair, Utah Judicial Council Daniel J. Becker
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

Sworn Statement under Rule 2-103(4)(B) of the Utah Code of Judicial Administration Regarding Judicial Council Meeting Closure

Regarding Judicial Council Meeting Closure								
I, Justice Matthew B. Durrant, state as follows:								
1. On 10-Y-16 (date), the Judicial Council closed its meeting. The meeting was closed only to discuss:								
the character, competence, or physical or mental health of an individual; litigation; the deployment of security personnel, devices, or systems:								
 the deployment of security personnel, devices, or systems; allegations of criminal misconduct; consideration of a private, protected, sealed, juvenile court legal, or safeguarded record; 								
the purchase, or exchange or lease of real property because public discussion would prevent the Council from completing the transaction on the best possible terms; or								
the sale of real property because public discussion would prevent the Council from completing the transaction on the best possible terms.								
2. For the reason(s) noted above, a recording and minutes were not kept during the closed portion of the meeting.								
I declare under penalty of perjury that the statements made in this document are true and correct.								
Date Justice Matthew B. Durrant Chair, Utah Judicial Council								

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.

TAB 2



JUDICIAL COUNCIL MANAGEMENT COMMITTEE MINUTES

Tuesday, November 8, 2016 Matheson Courthouse 450 South State Street Salt Lake City, Utah 84111

MEMBERS PRESENT:

Chief Justice Matthew B. Durrant, Chair

Hon. Thomas Higbee Hon. David Marx

Hon. Todd Shaughnessy

Hon. Kate Toomey

EXCUSED:

GUESTS:

Roger Bryner (by phone)

STAFF PRESENT:

Daniel J. Becker

Ray Wahl Jody Gonzales James Ishida Debra Moore

Jim Peters

Rick Schwermer Ron Bowmaster Stacey Snyder Keisa Williams

Brent Johnson Nancy Sylvester

Heather Mackenzie-Campbell

John Bell

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

Chief Justice Durrant welcomed everyone to the meeting. He extended a special welcome to Mr. John Bell, the new Finance Director.

Mr. Bell provided his background and work experience.

After reviewing the minutes, the following motion was made:

<u>Motion</u>: Judge Toomey moved to approve the September 12, 2016 Management Committee meeting minutes. Judge Marx seconded the motion, and it passed unanimously.

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

Mr. Becker provided the following update:

<u>Fourth District Juvenile Court TCE</u>. Mr. James Bauer has been appointed as the Fourth District Juvenile Court TCE. Mr. Becker provided his background and work experience. He will begin working in his new capacity on November 28.

Arnold Foundation Visit. An advanced team from the Arnold Foundation met with judges, visited jails, met with the Pretrial Release Standing Committee and court staff November 2-4 during a site visit. The purpose of the site visit was to assess whether the Utah courts would be designated as an approved site to use the Arnold pre-trial release assessment tool designed to assist judges in making release/detention determinations.

Mr. Becker mentioned that a representative from the Harvard Law School was also in attendance during the site visit to determine whether Utah might be designated as a participant in a controlled study using the Arnold Foundation's pre-trial release assessment tool.

A response from the Arnold Foundation as to whether or not the Utah Courts will be designated as a an approved site for use of their pre-trial release assessment tool is expected in 3-4 weeks.

Meeting with the Governor. Chief Justice Durrant, Mr. Becker, and Mr. Schwermer met with the Governor on November 2. Mr. Becker highlighted the following discussion points: 1) FY 2018 budget requests, 2) juvenile representation recommendations, 3) licensed paralegal practitioner program, and 4) online dispute resolution.

3. RECORDS ACCESS APPEAL: (Keisa Williams and Roger Bryner)

Chief Justice Durrant welcomed Ms. Williams to the meeting.

Mr. Becker, as a party to Mr. Bryner's appeal, delegated his duties to Ms. Nancy Sylvester, associate general counsel. She is representing Mr. Becker in this capacity. Mr. Becker and Ms. Sylvester were excused from discussion of this matter and left the meeting.

Ms. Williams provided background information on Mr. Bryner's records access requests to Ms. Kodi Nelson, of the Clearfield City Justice Court. She highlighted the following regarding Mr. Bryner's records access appeal: 1) information was provided to Mr. Bryner relative to emails classified as public with no redactions; 2) information was provided to Mr. Bryner relative to emails classified as public with no readactions, but without the associated attachments because Mr. Bryner already had access to them; and 3) information was provided to Mr. Bryner relative to emails with readactions of private and/or protected information.

Mr. Bryner appealed the information redacted, and he requested disclosure of the readacted information.

<u>Motion</u>: Judge Higbee moved to enter into an executive session. Judge Toomey seconded the motion, and it passed unanimously.

An executive session was entered into at this time.

Members of the Management Committee exited the executive session and went back on the record.

Chief Justice Durrant welcomed Mr. Bryner to the meeting (by phone).

Members of the Management Committee and all staff attending the meeting introduced themselves to Mr. Bryner.

Mr. Bryner requested disclosure of the information sent to him that was readacted and the justification for the redaction.

Chief Justice Durrant informed Mr. Bryner that the Management Committee would take his matter under advisement and inform him of their decision at a future date.

<u>Motion</u>: Judge Higbee moved to enter into an executive session. Judge Toomey seconded the motion, and it passed unanimously.

An executive session was entered into at this time.

Members of the Management Committee exited the executive session and went back on the record.

<u>Motion</u>: Judge Marx moved to approve that the redacted portions of the documents already provided to Mr. Bryner be disclosed in full to him. Judge Toomey seconded the motion, and it passed unanimously.

4. COMMITTEE APPOINTMENTS: (Ron Bowmaster, Stacey Snyder, Keisa Williams, Nancy Sylvester, and Brent Johnson)

The Language Access Committee has a vacancy for a defense attorney. Ms. Bebe Vanek expressed interest in filling the vacancy. The Language Access Committee approved recommending the appointment of Ms. Vanek to fill the defense attorney vacancy.

<u>Motion</u>: Judge Toomey moved to approve the appointment of Ms. Vanek to fill the defense attorney vacancy on the Language Access Committee and place it on the November Judicial Council consent calendar. Judge Marx seconded the motion, and it passed unanimously.

The Standing Committee on Technology has the following recommendations for appointments to the committee: 1) Mr. Adam Richards to fill the vacancy for a Bar Association representative due to the resignation of Mr. Blake Miller, 2) Mr. John Bell to fill the vacancy for an AOC staff member, and 3) the reappointment of Ms. Dawn Marie Rubio.

<u>Motion</u>: Judge Toomey moved to approve the appointments/reappointment of the following committee members and place it on the November Judicial Council consent calendar: 1) Mr. Adam Richards as the Bar Association representative, 2) Mr. John Bell as an AOC staff member, and 3) reappointment of Ms. Dawn Marie Rubio. Judge Marx seconded the motion, and it passed unanimously.

The Guardian ad Litem Oversight Committee has a vacancy on the committee for an attorney representative due to the resignation of Ms. Karen Flynn. The following individuals have expressed interest in serving on the committee as the attorney representative: 1) Ms. Mollie McDonald and Ms. Meghann Mills.

Ms. Snyder reviewed their background and work experience.

<u>Motion</u>: Judge Toomey moved to approve the appointment of Ms. Mollie McDonald to fill the vacancy for an attorney representative on the Guardian ad Litem Oversight Committee and place it on the November Judicial Council consent calendar. Judge Higbee seconded the motion, and it passed unanimously.

The Committee on Resources for Self-Represented Parties has a vacancy on the committee for a committee chair and a justice court judge representative.

Judge Barry Lawrence has agreed to fill the vacancy on the committee as the committee chair.

The Board of Justice Court Judges recommended the appointment of Judge Catherine Roberts to serve on the Committee on Resources for Self-Represented Parties as the justice court judge representative.

Motion: Judge Toomey moved to approve the following appointments on the Committee on Resources for Self-Represented Parties and place it on the November Judicial Council consent calendar: 1) Judge Barry Lawrence to fill the vacancy as the committee chair, and 2) Judge Catherine Roberts to fill the vacancy as the justice court judge representative. Judge Marx seconded the motion, and it passed unanimously.

The Ethics Advisory Committee recommended the reappointment of Judge Renee Jimenez to serve a second term on the Ethics Advisory Committee.

<u>Motion</u>: Judge Marx moved to reappoint Judge Renee Jimenez to serve a second term on the Ethics Advisory Committee and place it on the November Judicial Council consent calendar. Judge Toomey seconded the motion, and it passed unanimously.

5. TAX JUDGE APPOINTMENTS: (Debra Moore)

An informational meeting was held at the Annual Judicial Conference in October to solicit interested judges to volunteer as tax judges. The following judges expressed interest in volunteering as tax judges: 1) Judge Samuel Chiara, Eighth District Court; 2) Judge Noel Hyde, Second District Court; and 3) Judge Keith Kelly, Third District Court.

It was recommended to approve all three judges.

Discussion took place.

<u>Motion</u>: Judge Toomey moved to approve the following judges as volunteer tax judges and place it on the November Judicial Council consent calendar: 1) Judge Samual Chiara, 2) Judge Noel Hyde, and 3) Judge Keith Kelly. Judge Marx seconded the motion, and it passed unanimously.

6. COUNCIL VICE CHAIR AND COMMITTEE APPOINTMENTS: (Chief Justice Matthew B. Durrant)

Chief Justice Matthew B. Durrant recommended the following appointments: 1) Judge Kate Toomey to fill the vacancy on the Council for a vice chair, replacing Judge Randall Skanchy, and 2) Judge Todd Shaughnessy to fill the vacancy on the Management Committee, replacing Judge Randall Skanchy.

7. 2017 MANAGEMENT COMMITTEE/COUNCIL CALENDARS: (Ray Wahl)

Mr. Wahl reviewed the proposed 2017 Management Committee and Judicial Council meeting dates.

He noted that the 2017 Management Committee dates are straightforward with the exception of the following meetings: 1) the January meeting will be held on January 9 due to a legislative meeting being scheduled on January 10, 2) the March Management Committee meeting being held on February 27 due to the earlier March Council meeting date to be held in St. George in conjunction with the Utah State Bar's Spring Conference, and 3) the September

meeting will be held on September 11 due to the earlier October Council meeting to be held in Midway in conjunction with the Annual Judicial Conference.

He highlighted the following relative to the 2017 Judicial Council meeting dates: 1) the State of the Judiciary address will follow the January 23 Council meeting; 2) the March meeting will be held in St. George in conjunction with Utah State Bar's Spring Conference; 3) the June meeting is scheduled to be held in Duchesne; 4) a decision will need to be made on the date of the July meeting as the Utah State Bar's Summer Conference will be held in July in Sun Valley, Idaho; 5) the August meeting will be held in conjunction with the Council's budget and planning session; and 6) the October meeting will be held in conjunction with the Annual Judicial Conference, dates to be determined.

Discussion took place.

<u>Motion</u>: Judge Toomey moved to approve the 2017 Judicial Council calendar as proposed, and selecting the July 17 date for that month's meeting to be held at the Matheson Courthouse and recommend approval of the proposed 2017 calendar by the Judicial Council at their November meeting. Judge Higbee seconded the motion, and it passed unanimously.

8. ANNUAL CONFERENCE – EXCUSAL: (Rick Schwermer)

Mr. Schwermer mentioned that Senior Judge Dennis Fuchs had scheduled another commitment during the Annual Judicial Conference in October. He wasn't aware of the rule requirement that required approval to be excused from attending the Annual Conference was to be sought from the Management Committee. As this pertains to his future eligibility to serve as an active senior judge, Judge Fuchs requested his attendance at the 2016 Annual Judicial Conference be excused.

<u>Motion</u>: Judge Higbee moved to approve Judge Fuchs request for his attendance at the 2016 Annual Judicial Conference be excused. Judge Toomey seconded the motion, and it passed unanimously.

9. FOURTH DISTRICT - PROVO DISTRICT COURT - FINAL AUDIT REPORT AND THE FIFTH DISTRICT LIMITED AUDIT REPORT: (Heather Mackenzie-Campbell)

Chief Justice Durrant welcomed Ms. Heather Mackenzie-Campbell to the meeting. A full-scope audit was completed of the Fourth District, Utah County, Provo District Court. Ms. Mackenzie-Campbell highlighted the following regarding the audit: 1) the management and judicial support staff were recognized for implementing 28 commendable procedures, 2) three of 14 observations were deemed as significant weaknesses, and 3) all recommendations resulting from the audit have been addressed.

A limited audit of the Fifth District, Beaver, Iron and Washington Counties, District and Juvenile Courts Trust Accounts and Follow-up Review of the 2013 Special Request Audit was completed. The audit was prompted by the appointment of a new clerk of court in May 2016.

Ms. Mackenzie-Campbell reported that the trust fund accounting reviewed for the audit period was performed per state law, judicial rules, and accounting policies and procedures. In addition, the audit recommendations from the 2013 Special Request Audit were implemented.

<u>Motion</u>: Judge Higbee moved to accept the audit reports as presented by Ms. Mackenzie-Campbell. Judge Marx seconded the motion, and it passed unanimously.

10. PROPOSED CHANGE TO HOW RULES ARE PROCESSED: (Brent Johnson) Chief Justice Durrant welcomed Mr. Johnson to the meeting.

Mr. Johnson mentioned that the current practice in the rules process is to use the Council minutes as verification that a rule has been finalized and approved. However, this results in a one-month delay from the time the Council approves a rule to the time the Council minutes are approved. When publishing deadlines are approaching, it would be helpful to have more immediate verification that a rule has been approved.

The Legal Department proposed that an order be prepared immediately following the Council meeting stating a rule was approved for signature by the Chief Justice to officially approve the rule as the presiding officer of the Council, instead of waiting for the approved Council minutes.

The Management Committee directed legal counsel to implement the recommended process.

11. NEW STANDING COMMITTEE PROPOSAL: (Brent Johnson)

Mr. Johnson provided background information on the forms process currently taking place in the Utah court system. The following groups currently are involved with the forms process: 1) Supreme Court Advisory Committees, 2) Legal Department, 3) OCAP Policy Board, and 4) Courts Forms Committee.

The Supreme Court recommended consolidation of the forms process to be considered by one committee. It was recommended to create a standing committee to develop and implement a process for the proposed standing committee to draft, review and approve all court forms.

Discussion took place.

<u>Motion</u>: Judge Toomey moved to forward the recommended proposal of creating a standing committee to manage and address issues relating to court forms to the Policy and Planning Committee, and request the committee to give this proposal expedited consideration. Judge Marx seconded the motion, and it passed unanimously.

12. APPOINTMENT TO THE UTAH RETIREMENT ADVISORY COUNCIL: (Daniel J. Becker)

Mr. Becker mentioned that Judge Kimberly K. Hornak currently serves as the Judicial Council's appointee to the Utah Retirement Advisory Council. Judge Hornak is unable to continue serving in this capacity, and she has asked to be replaced.

Mr. Becker noted that an appointee to this Council has typically been chosen from former or current Council members. Judge David Mortensen has been recommended to fill the vacancy on the Utah Retirement Advisory Council as the Judicial Council's appointment, and he has agreed to serve in this capacity.

<u>Motion</u>: Judge Toomey moved to approve the appointment of Judge David Mortensen to serve on the Utah Retirement Advisory Council. Judge Marx seconded the motion, and it passed unanimously.

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

Chief Justice Durrant reviewed the proposed Judicial Council agenda for the November 21 Council meeting.

<u>Motion:</u> Judge Toomey moved to approve the agenda for the November 21 Judicial Council meeting as amended. Judge Marx seconded the motion, and it passed unanimously.

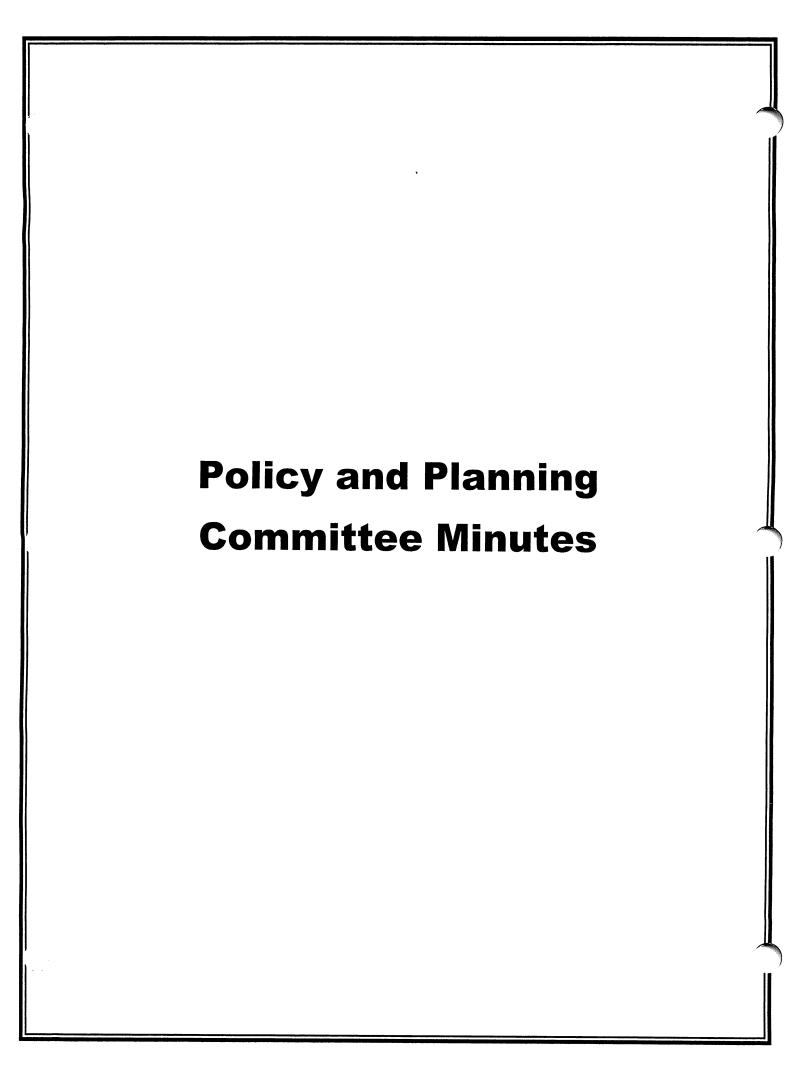
<u>Motion</u>: Judge Higbee moved to enter into an executive session. Judge Marx seconded the motion, and it passed unanimously.

14. EXECUTIVE SESSION

An executive session was held at this time.

15. ADJOURN

The meeting was adjourned.



Policy and Planning Committee

Park City Marriott 1895 Sidewinder Drive Park City, Utah 84060

October 4, 2016

Members Present

Members Excused

Hon. Marvin Bagley Hon. Ann Boyden Hon. Mark DeCaria Hon. Mary Noonan Hon. Reed S. Parkin - Chair John Lund

Staff

Guests

Nancy J. Sylvester Keisa L. Williams Clayson Quigley Rick Schwermer

(1) Approval of minutes.

Judge Reed Parkin welcomed the members as well as guests, Rick Schwermer and Clayson Quigley, to the meeting. The committee then addressed the September 9, 2016 minutes. There being no changes to the minutes, Mr. Lund moved to approve the September 9, 2016 minutes. Judge Pullan seconded the motion and it passed unanimously.

(2) CJA 4-503. Mandatory electronic filing (District court civil cases). CJA 4-603. Mandatory electronic filing (District court criminal cases). CJA 9-302. Mandatory electronic filing (Justice court criminal cases).

Mr. Quigley introduced the topic, stating that the Board of District Court Judges requested some time ago that the efiling program allow for the numbering and association of documents. This would allow clerks, judges, and attorneys to group and act on documents that relate to each other. Ms. Sylvester noted that the federal courts already do this in their ECF system. The committee discussed whether this should be in a rule or whether the system should just require it. Addressing the committee's concerns, Mr. Quigley stated that although the language in the rule might eventually have to be modified, this initial change to the rule is to get the system set up so that the attorneys will learn to recognize that this should be done at the time of filing. This will eventually save time for the courts and is to the benefit of the attorneys and parties. A member asked whether the system will require this step or if it would simply be an option. Mr. Quigley explained that within the system there are 277 document types. They are working on adding an alert to certain types of documents that will pop up and

force the attorney to link the document, such as a memorandum to a motion. Mr. Quigley said one large problem they have currently is many attorneys are efiling documents under the "other" category, therefore the alert wouldn't pop up because it is such a broad category. This is in part the reason for the rule. A member noted that many clerks are trained in correcting this issue and redesignating the document type.

The committee wondered if a rule could be created or amended to require an attorney to be more specific when selecting the document type. The committee discussed the incredible burden to clerks and judges in correcting these and noted that the filer should have the obligation to associate the correct documents. There was concern as to whether amending the rule would make this a substantive requirement for attorneys. If the rule is not followed, would this then affect the validity of the document? Mr. Quigley stated that in order to be able to associate documents with other pleadings the court had to create a numbering system, which would automatically number each document filed in a case. These numbers will be assigned in chronological order. Attorneys will be able to see the documents and numbers to associate them. Mr. Quigley said although there are 277 document types, as the efilers go through the system, each step pairs down that number. When the efiler states what type of case it is, the 277 documents are narrowed down to what is needed for that type of case. The designation will be based on the number of the filing; for example, document number 79 will be associated with document number 74. The docket number will not show on the document. Ms. Sylvester said in the federal court system the docket number shows on the document, which is incredibly helpful when there are documents that are similarly titled. Mr. Quigley said the attorneys would be able to see the documents and numbers when they are associating them. Mr. Quigley stated he will discuss with the Board the option of adding the docket number to the document.

The committee discussed a forced prompt and not just an alert that would not allow the efiler to proceed without associating the document. This would eliminate the need for the rule change. Mr. Quigley restated the biggest concern regarding the use of the "other" option. The committee wondered how this would affect the public versus private filings. Mr. Quigley said the options would be very limited. However, they can create a special type of document if needed.

The committee asked Mr. Schwermer for his opinion on this matter. Mr. Schwermer suggested asking IT if there is a way to force the prompt. If not, then perhaps a rule should be issued. Mr. Quigley said this is currently in the process with IT and should be completed no later than the end of this year. Mr. Quigley said the Board is still in the decision-making process on whether the prompt should require association or just allow it. Mr. Quigley said part of the issue is that association shouldn't be required on all documents because many filed are not going to be associated with something else.

Mr. Quigley noted the juvenile courts have not addressed this issue in their own system and the appellate courts are writing their efiling package now. The committee noted that if the rule change route was the way this should go, it should be consistent throughout the other courts: justice, juvenile, and appellate. At this time, the committee was leaning toward an IT route rather than a rule process. But if they choose to take the IT route instead, this could mean inconsistency throughout the courts. The committee asked Clayson to loop in the other court levels on this discussion.

After further discussion, the committee decided to have Mr. Quigley take the committee's questions back to the Board for further clarification. Mr. Quigley was thanked for his time.

(3) CJA 2-212. Communication with the Office of Legislative Research and General Counsel

Keisa Williams addressed this rule and said she spoke with Brent Johnson about his proposed change of removing the notice to the Judicial Rules Review Committee. The committee, although still active, hasn't done any work for approximately 10 years. Ms. Williams said she also discussed the proposed changes with Mr. Schwermer. Mr. Schwermer suggested that since notices are sent to the Office of Legislative Research, which staffs the committee, there is no harm in keeping everything status quo, especially where the Judicial Rules Review Committee is still technically active.

After brief discussion, the committee decided to accept the proposed changes with a few modifications to take out superfluous language.

Mr. Lund moved to approve the proposed changes to rule 2-212 and send the rule to the Judicial Council consent calendar for approval then public comment. Judge Noonan seconded the motion and it passed unanimously.

(4) CJA 3-201. Court commissioners.

Ms. Williams discussed Brent Johnson's proposed rule amendments in detail. Ms. Williams stated Mr. Johnson was looking to clarify existing practices on commissioner nominating committees. The committee reviewed changes they made to this rule at the last meeting to update those members who weren't present then. The committee made an additional revision to paragraph (3)(C) ("level and judicial district") and voted to approve that revision. Judge Noonan made the motion and Judge Boyden seconded. It passed unanimously. The committee asked to reset this rule to the November agenda to address the remaining proposed amendments as laid out in the executive summary.

(5) 4-202.02. Records classification and taxpayer confidentiality.

Ms. Sylvester discussed the request, made by Utah attorneys who are seeking to preserve tax payer confidentiality. Their focus is on their clients: large companies and wealthy individuals. Ms. Sylvester stated the records classification rule would need to be amended as well as Rule 6-103 (District court tax judges). Mr. Schwermer stated these tax attorneys are concerned about the "secret sauce" of their clients being made public, but noted there is already a process in place where a litigant can request that a specific document be considered private. The attorneys requesting this felt that was burdensome on their part and costly for their clients. The committee discussed what is considered private and public. Mr. Schwermer stated the general consensus among judges is to let the litigants request that specific documents be marked as private and that the rest of the case can be public.

Mr. Schwermer noted the second half of the request is that opinions get published only after the tax payers have the opportunity to review them. Mr. Schwermer asked the committee if they wanted to afford the attorneys a procedural avenue to be heard at a future Policy & Planning meeting or if the committee wanted to make a decision on this without hearing from the requestors. Mr. Schwermer's recommendation was that the committee extend an invitation to the attorneys to discuss this issue in person. Mr. Schwermer will attend the meeting as well. One of the concerns the committee had is that this could potentially open the door for every attorney who wants an audience with the committee.

Judge Parkin took a straw vote on whether the committee members would be in favor of, opposed to, or neutral about inviting attorneys to the meetings who want to discuss rule changes. The consensus was to allow it on a case-by-case basis.

The committee decided to allow these attorneys to come to a meeting to discuss their proposal. Mr. Schwermer will invite them to attend. The committee took no further action on the proposed rules.

Ms. Williams noted Judge McVey's suggestion to have John McGarry from the Attorney General's Office attend a meeting. Mr. Schwermer will contact Mr. McGarry to get a feel for his position on this issue.

(6) Other Business.

Pro se E-filing. CJA 4-503. Mandatory electronic filing (District court civil cases).

Ms. Sylvester asked Mr. Quigley to speak briefly on the CORIS rewrite and what pro se e-filing may look like in the future. Mr. Quigley noted that the CORIS rewrite is expected to be about a two year process. Several groups have been established to

address various issues around it. The CORIS rewrite is initially looking at high-level, more urgent needs, but is developing a process for pro se litigants to use CORIS, receive notifications, and manage their cases. Based on past committee discussions and this update, Ms. Sylvester said she would contact Tyler Felt, who requested pro se efiling, to let him know that the committee felt a rule on this would be premature or unnecessary.

For quorum purposes, Judge Parkin asked the committee members to let staff know ahead of time if they are not able to attend a meeting. The meeting adjourned at 11:20 am.

Policy and Planning Committee

November 4, 2016 Draft

Members Present

Hon. Reed S. Parkin - Chair Hon. Marvin Bagley - by phone

Hon. Ann Boyden

John Lund

Members Excused

Hon. Mary Noonan

Hon. Derek Pullan

Staff

Nancy J. Sylvester

Keisa L. Williams

Jeni Wood – recording secretary

Guests

Sue Willis

(1) Approval of minutes.

Judge Reed Parkin welcomed the members to the meeting. Judge Parkin addressed the October 4, 2016 minutes. Judge Parkin proposed an amendment to the minutes in section number 3 to clarify that the committee was leaning toward the IT route with Clayson Quigley's proposed rule changes. With that being the only change,

John Lund moved to approve the October 4, 2016 minutes. Hon. Reed Parkin seconded the motion and it passed unanimously.

(2) CJA 4-202.02(3)(A)(iv). Records classification.

Judge Parkin asked Nancy Sylvester to explain this rule. Ms. Sylvester stated this rule has gone out for public comment and was based on some 2016 legislation dealing with disease testing and the warrant system. With brief discussion and no further changes to the rule,

Mr. Lund moved to send this rule to the Judicial Council for final approval. Judge Ann Boyden seconded the motion and it passed unanimously.

(3) CJA 3-201. Court commissioners.

Ms. Sylvester discussed Brent Johnson's proposed changes to rule 3-201, starting with (4)(d)(ii) (where the committee had left off from the previous meeting), but expressed concerns based upon her experience with the commissioner certification process about a comment period for retention of commissioners. She noted that the commissioners are already subject to attorney surveys, so this seemed redundant, unnecessary, and never done. Judge Parkin asked staff to clarify with Brent Johnson the proposed rule changes.

(4) CJA 9-301. Enhancements in justice courts.

Judge Parkin discussed justice courts enhancement notification. Judge Parkin stated the enhancements have grown exponentially. Judge Parkin brought in a two page drug enhancement notification to show the committee. He said an attorney has expressed their desire to repeal the rule and said everyone agrees this is burdensome and seemingly unnecessary. Judge Parkin said the Board of Justice Courts has voted to repeal the rule. Judge Parkin said even with following through on the appropriate colloquies, there are still complaints on a regular basis from defendants. It has been suggested that colloquies should be given at the beginning of a case instead at the end as is current practice. The committee briefly discussed having the same policies for both the justice and district courts. John Lund suggested writing a new rule to clarify the procedures up front. Judge Parkin said he's found it is best at arraignment to deliver the enhancement information to defendants so they are fully aware early in the stages what can happen.

After further discussion, Judge Parkin's final recommendation is to abandon the majority of rule 9-301 and make the enhancements a best policy practice. Judge Parkin questioned whether the last section, paragraph (3) should be repealed. He asked staff to check with Brent Johnson on the necessity of keeping it.

Mr. Lund moved to approve repealing the enhancement portion of rule 9-301 (sections 1 and 2 only) and sending the rule to the Judicial Council. Judge Boyden seconded the motion and it passed unanimously. Ms. Sylvester will discuss with Brent Johnson as to what the best move will be for section 3.

(5) CJA 4-103(2). Dismissals "without prejudice."

Ms. Sylvester discussed the proposed changes to Rule 4-103(2) based on the Supreme Court case of *Cannon v. Holmes*, 2016 UT 42. The Supreme Court suggested that the tension between Civil Rule 41 and Rule 4-103 could be resolved but requiring that all dismissals entered pursuant to Rule 4-103 should explicitly state, "without prejudice." Judge Boyden said the changes have already been made in CORIS. After brief discussion, Judge Parkin recommended the rule changes pass the committee but also that staff discuss with Brent Johnson whether the rule should apply to justice courts.

Judge Boyden moved to approve the proposed changes to rule 4-103 and send the rule to the Judicial Council consent calendar for approval then to send the rule out for public comment, after staff receives approval from Brent Johnson regarding the rule applying to justice courts as well. John Lund seconded the motion and it passed unanimously.

(6) CJA 4-202.02(2)(C), (2)(F), (4)(A)(iv), (4)(B). Records classification.

Ms. Sylvester introduced Sue Willis from the appellate courts to the meeting. Ms. Sylvester explained the reasoning for the proposed changes to this rule, which was to deal with a more public appellate documents online interface. The committee discussed the rule changes. Sue Willis stated she believes the most important part of the changes

is protecting the juvenile cases. Ms. Sylvester noted it was both the appellate court and the IT department who requested the change. Judge Parkin said this seems to be a fairly simple change. John Lund, however, noted that the proposed amendments already appear in another section of the rule and that would need to be resolved.

After discussion, the committee agreed to have Ms. Sylvester confirm the proposed changes with James Ishida and work through some of the drafting issues. Ms. Sylvester will bring the rule back at the December meeting.

(7) Other Business.

The next meeting is December 2. There being no other business and the meeting was adjourned at 1:41 pm.

TAB 3

To:

Judicial Council

From:

Chief Justice Matthew Durrant

Subject:

Judicial Council Vice-Chair and Committee Appointments

The expiration of the term of Council member Randall Skanchy has created vacancies in the position of vice-chair of the Judicial Council and membership on the Management Committee. The following appointments have been reviewed by the Management Committee and are advanced for consideration by the Judicial Council:

Vice-Chair

Judge Kate Toomey, replacing Judge Randall Skanchy

Management Committee Membership

Judge Todd Shaughnessy, replacing Judge Randall Skanchy

Thank you for your attention to this.

TAB 4

JUDICIAL COUNCIL 2017 MEETING DATES

Meetings are generally scheduled on the fourth Monday of the month beginning at 9:00 a.m. Meetings will be held in the Council Room of the Matheson Courthouse unless otherwise noted.

Monday, January 23, 2017 (State of the Judiciary to follow the Council meeting)

Monday, February 27, 2017

Friday, March 10, 2017 (in conjunction with the Bar's Spring Convention in St. George)

Monday, April 24, 2017

Monday, May 22, 2017

Monday, June 26, 2017 (Duchesne)

Monday, July 17

Friday, August 18, 2017 (Council Budget and Planning Meeting - Matheson Courthouse)

Monday, September 11, 2017 (short Mgmt Comm after to set October agenda)

Tuesday, October 3, 2017 (in conjunction with the Annual Conference Oct 4-6 at the Zermatt)

Monday, November 20, 2017

Monday, December 18, 2017

Bar Conferences:

Spring Convention in St George - March 9-11, 2017 Summer Convention in Sun Valley, ID - July 26-29, 2017 Fall Forum – date not yet determined

COSCA/CCJ Meetings:

2017 CCJ Midyear Meeting – Jan 26 – Feb 2, 2017 in Scottsdale, AZ 2017 CCJ/COSCA Annual Meeting – Aug 5-9, 2017 in Philadelphia, PA 2017 COSCA Midyear Meeting – Nov 28-Dec 2, 2017 in New Orleans, LA

TAB 5



Administrative Office of the Courts

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

MEMORANDUM

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

To:

Judicial Council

Mary J Sylveter From: Nancy Sylvester

Date:

November 14, 2016

Re:

Annual Update on the Model Utah Civil Jury Instructions (MUJI-Civil)

Committee

Attached for your consideration is the MUJI-Civil Committee's subject matter timeline. This represents the committee's anticipated time frames for creating and reviewing new model civil jury instructions in the identified subject areas.

Priority	Subject	Sub-C in place?	Sub-C Members	Projected Starting Month	Projected Finalizing Month	Comments Back?
1	Emotional Distress	Yes	Dunn. Mark (D)(Chair); Combe, Steve (D); Katz, Mike (P); Waddoups, George (P)	May-16	November-16	
2	Civil Rights	Yes	Ferguson, Dennis (D); Mejia, John (P); Guymon, Paxton (P); Stavors, Andrew (P); Burnett, Jodi (D); Plane, Margaret (D); Porter, Karra (P); White, Heather (D)	September-16	February-17	
3	Economic Interference	Yes	Frazier, Ryan (D) (Chair); Shelton, Ricky (D); Stevenson, David (P). Simmons, Paul (P); Kuendig, Patricia (P)	January-17	March-17	
4	Injurious Falsehood	Yes	Dryer, Randy (Chair); Hoole, Greg; Hoole, Roger; Hunt, Jeff; Reymann, David; Stevens, Greg	March-17	May-17	
5	Directors and Officers Liability	Yes	Burbidge, Richard D.; Call, Monica; Von Maack, Christopher (chair); Larsen, Kristine; Talbot, Cory	June-17	September-17	
6	Sales Contracts and Secured Transactions	Yes	Cox, Matt (chair); Boley, Matthew; Maudsley, Ade	October-17	December-17	
7	Assault/False Arrest	Yes	Rice, Mitch (chair); Carter, Alyson; Wright, Andrew (D); Cutt, David (P)	January-18	March-18	
8	Trespass and Nuisance	Yes (more members needed)	Hancock, Cameron; Figueira, Joshua (researcher); Abbott, Nelson (P)	May-18	September-18	
9	Insurance	No (more members needed)	Johnson, Gary (chair); Pritchett, Bruce; Ryan Schriever, Dan Bertch, Andrew Wright, Rick Vazquez	October-18	December-18	
10	Wills/Probate	No	Barneck, Matthew (chair)	January-19	March-19	
11	Unjust Enrichment	No (instructions from David Reymann)	David Reymann	April-19	June-19	
12	Abuse of Process	No (instructions from David Reymann)	David Reymann	September-19	November-19	

TAB 6



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:

Judicial Council

From:

Nancy Sylvester

Date:

November 4, 2016

Re:

Rule for Final Action

The public comment period for rule 4-202.02(3)(A)(iv) of the Utah Code of Judicial Administration has now closed. The proposal received no public comments. Policy and Planning has recommended the rule and it is now ready for final action by the Judicial Council.

CJA 04-202.02 Amend. Classifies court records associated with actions for disease testing as sealed.

If the Council adopts the rule, it will be effective on May 1, 2017.

Encl. CJA 4-202.02

1	Rule 4-202.02. Records classification.
2	Intent:
3	To classify court records as public or non-public.
4	Applicability:
5	This rule applies to the judicial branch.
6	Statement of the Rule:
7	(1) Court records are public unless otherwise classified by this rule.
8	(2) Public court records include but are not limited to:
9	(2)(A) abstract of a citation that redacts all non-public information;
0	(2)(B) aggregate records without non-public information and without personal identifying
1	information;
2	(2)(C) appellate filings, including briefs;
3	(2)(D) arrest warrants, but a court may restrict access before service;
4	(2)(E) audit reports;
.5	(2)(F) case files;
6	(2)(G) committee reports after release by the Judicial Council or the court that requested the
7	study;
8	(2)(H) contracts entered into by the judicial branch and records of compliance with the terms of a
9	contract;
20	(2)(I) drafts that were never finalized but were relied upon in carrying out an action or policy;
21	(2)(J) exhibits, but the judge may regulate or deny access to ensure the integrity of the exhibit, a
22	fair trial or interests favoring closure;
23	(2)(K) financial records;
24	(2)(L) indexes approved by the Management Committee of the Judicial Council, including the
25	following, in courts other than the juvenile court; an index may contain any other index information:
6	(2)(L)(i) amount in controversy;
27	(2)(L)(ii) attorney name;
28	(2)(L)(iii) case number;
29	(2)(K)(iv) case status;
30	(2)(L)(v) civil case type or criminal violation;
31	(2)(L)(vi) civil judgment or criminal disposition;
32	(2)(L)(vii) daily calendar;
3	(2)(L)(viii) file date;
34	(2)(M) party name;
35	(2)(N) name, business address, business telephone number, and business email address of an
36	adult person or business entity other than a party or a victim or witness of a crime;

37 (2)(O) name, address, telephone number, email address, date of birth, and last four digits of the following: driver's license number; social security number; or account number of a party; 38 39 (2)(P) name, business address, business telephone number, and business email address of a 40 lawyer appearing in a case; (2)(Q) name, business address, business telephone number, and business email address of court 41 42 personnel other than judges: 43 (2)(R) name, business address, and business telephone number of judges; (2)(S) name, gender, gross salary and benefits, job title and description, number of hours worked 44 per pay period, dates of employment, and relevant qualifications of a current or former court personnel: 45 46 (2)(T) unless classified by the judge as private or safeguarded to protect the personal safety of 47 the jury or the jury's family, the name of a jury empaneled to try a case, but only 10 days after the jury 48 is discharged: 49 (2)(U) opinions, including concurring and dissenting opinions, and orders entered in open 50 hearings: 51 (2)(V) order or decision classifying a record as not public; 52 (2)(W) private record if the subject of the record has given written permission to make the record 53 public: (2)(X) probation progress/violation reports; . 5 (2)(Y) publications of the administrative office of the courts; 56 (2)(Z) record in which the judicial branch determines or states an opinion on the rights of the 57 state, a political subdivision, the public, or a person; 58 (2)(AA) record of the receipt or expenditure of public funds; 59 (2)(BB) record or minutes of an open meeting or hearing and the transcript of them; 60 (2)(CC) record of formal discipline of current or former court personnel or of a person regulated by the judicial branch if the disciplinary action has been completed, and all time periods for administrative 61 62 appeal have expired, and the disciplinary action was sustained; 63 (2)(DD) record of a request for a record; 64 (2)(EE) reports used by the judiciary if all of the data in the report is public or the Judicial Council 65 designates the report as a public record; 66 (2)(FF) rules of the Supreme Court and Judicial Council; 67 (2)(GG) search warrants, the application and all affidavits or other recorded testimony on which a 68 warrant is based are public after they are unsealed under Utah Rule of Criminal Procedure 40; 69 (2)(HH) statistical data derived from public and non-public records but that disclose only public 70 data; 71

(2)(II) Notwithstanding subsections (6) and (7), if a petition, indictment, or information is filed charging a person 14 years of age or older with a felony or an offense that would be a felony if committed

72

73	by an adult, the petition, indictment or information, the adjudication order, the disposition order, and the
74	delinquency history summary of the person are public records. The delinquency history summary shall
75	contain the name of the person, a listing of the offenses for which the person was adjudged to be within
76	the jurisdiction of the juvenile court, and the disposition of the court in each of those offenses.
77	(3) The following court records are sealed:
78	(3)(A) records in the following actions:
79	(3)(A)(i) Title 78B, Chapter 6, Part 1, Utah Adoption Act six months after the conclusion of
80	proceedings, which are private until sealed;
81	(3)(A)(ii) Title 78B, Chapter 15, Part 8, Gestational Agreement, six months after the
82	conclusion of proceedings, which are private until sealed; and-
83	(3)(A)(iii) Title 76, Chapter 7, Part 304.5, Consent required for abortions performed on
84	minors;
85	(3)(A)(iv) Title 78B, Chapter 8, Part 402, actions for disease testing; and
86	(3)(B) expunged records;
87	(3)(C) orders authorizing installation of pen register or trap and trace device under Utah Code
88	Section 77-23a-15;
89	(3)(D) records showing the identity of a confidential informant;
90	(3)(E) records relating to the possession of a financial institution by the commissioner of financial
11	institutions under Utah Code Section 7-2-6;
92	(3)(F) wills deposited for safe keeping under Utah Code Section 75-2-901;
93	(3)(G) records designated as sealed by rule of the Supreme Court;
94	(3)(H) record of a Children's Justice Center investigative interview after the conclusion of any
95	legal proceedings; and
96	(3)(I) other records as ordered by the court under Rule 4-202.04.
97	(4) The following court records are private:
98	(4)(A) records in the following actions:
99	(4)(A)(i) Section 62A-15-631, Involuntary commitment under court order;
100	(4)(A)(ii) Section 76-10-532, Removal from the National Instant Check System database;
101	(4)(A)(iii) Title 78B, Chapter 6, Part 1, Utah Adoption Act, until the records are sealed; and
102	(4)(A)(iv) Title 78B, Chapter 15, Part 8, Gestational Agreement, until the records are sealed;
103	and
104	(4)(B) records in the following actions, except that the case history; judgments, orders and
105	decrees; letters of appointment; and the record of public hearings are public records:
106	(4)(B)(i) Title 30, Husband and Wife, including qualified domestic relations orders, except that
107	an action for consortium due to personal injury under Section 30-2-11 is public;
108	(4)(B)(ii) Title 77, Chapter 3a, Stalking Injunctions;

109	(4)(B)(iii) Title 75, Chapter 5, Protection of Persons Under Disability and their Property;
110	(4)(B)(iv) Title 78B, Chapter 7, Protective Orders;
111	(4)(B)(v) Title 78B, Chapter 12, Utah Child Support Act;
112	(4)(B)(vi) Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement
113	Act;
114	(4)(B)(vii) Title 78B, Chapter 14, Uniform Interstate Family Support Act;
115	(4)(B)(viii) Title 78B, Chapter 15, Utah Uniform Parentage Act; and
116	(4)(B)(ix) an action to modify or enforce a judgment in any of the actions in this subparagraph
117	(B);
118	(4)(C) an affidavit supporting a motion to waive fees;
119	(4)(D) aggregate records other than public aggregate records under subsection (2);
120	(4)(E) alternative dispute resolution records;
121	(4)(F) applications for accommodation under the Americans with Disabilities Act;
122	(4)(G) jail booking sheets;
123	(4)(H) citation, but an abstract of a citation that redacts all non-public information is public;
124	(4)(I) judgment information statement;
125	(4)(J) judicial review of final agency action under Utah Code Section 62A-4a-1009;
126	(4)(K) the following personal identifying information about a party: driver's license number, social
. 1	security number, account description and number, password, identification number, maiden name and
128	mother's maiden name, and similar personal identifying information;
129	(4)(L) the following personal identifying information about a person other than a party or a victim
130	or witness of a crime: residential address, personal email address, personal telephone number; date of
131	birth, driver's license number, social security number, account description and number, password,
132	identification number, maiden name, mother's maiden name, and similar personal identifying information;
133	(4)(M) medical, psychiatric, or psychological records;
134	(4)(N) name of a minor, except that the name of a minor party is public in the following district and
135	justice court proceedings:
136	(4)(N)(i) name change of a minor;
137	(4)(N)(ii) guardianship or conservatorship for a minor;
138	(4)(N)(iii) felony, misdemeanor or infraction;
139	(4)(N)(iv) child protective orders; and
140	(4)((N)(v) custody orders and decrees;
141	(4)(O) nonresident violator notice of noncompliance;
142	(4)(P) personnel file of a current or former court personnel or applicant for employment;
143	(4)(Q) photograph, film or video of a crime victim;

144	(4)(R) record of a court hearing closed to the public or of a child's testimony taken
145	under URCrP 15.5:
146	(4)(R)(i) permanently if the hearing is not traditionally open to the public and public access
147	does not play a significant positive role in the process; or
148	(4)(R)(ii) if the hearing is traditionally open to the public, until the judge determines it is
149	possible to release the record without prejudice to the interests that justified the closure;
150	(4)(S) record submitted by a senior judge or court commissioner regarding performance
151	evaluation and certification;
152	(4)(T) record submitted for in camera review until its public availability is determined;
153	(4)(U) reports of investigations by Child Protective Services;
154	(4)(V) victim impact statements;
155	(4)(W) name of a prospective juror summoned to attend court, unless classified by the judge as
156	safeguarded to protect the personal safety of the prospective juror or the prospective juror's family;
157	(4)(X) records filed pursuant to Rules 52 - 59 of the Utah Rules of Appellate Procedure, except
158	briefs filed pursuant to court order;
159	(4)(Y) records in a proceeding under Rule 60 of the Utah Rules of Appellate Procedure; and
160	(4)(Z) other records as ordered by the court under Rule 4-202.04.
161	(5) The following court records are protected:
. ა2	(5)(A) attorney's work product, including the mental impressions or legal theories of an attorney or
163	other representative of the courts concerning litigation, privileged communication between the courts and
164	an attorney representing, retained, or employed by the courts, and records prepared solely in anticipation
165	of litigation or a judicial, quasi-judicial, or administrative proceeding;
166	(5)(B) records that are subject to the attorney client privilege;
167	(5)(C) bids or proposals until the deadline for submitting them has closed;
168	(5)(D) budget analyses, revenue estimates, and fiscal notes of proposed legislation before
169	issuance of the final recommendations in these areas;
170	(5)(E) budget recommendations, legislative proposals, and policy statements, that if disclosed
171	would reveal the court's contemplated policies or contemplated courses of action;
172	(5)(F) court security plans;
173	(5)(G) investigation and analysis of loss covered by the risk management fund;
174	(5)(H) memorandum prepared by staff for a member of any body charged by law with performing
175	a judicial function and used in the decision-making process;
176	(5)(I) confidential business records under Utah Code Section 63G-2-309;
177	(5)(J) record created or maintained for civil, criminal, or administrative enforcement purposes,
178	audit or discipline purposes, or licensing, certification or registration purposes, if the record reasonably
179	could be expected to:

180	(5)(J)(i) interfere with an investigation;
181	(5)(J)(ii) interfere with a fair hearing or trial;
182	(5)(J)(iii) disclose the identity of a confidential source; or
183	(5)(J)(iv) concern the security of a court facility;
184	(5)(K) record identifying property under consideration for sale or acquisition by the court or its
185	appraised or estimated value unless the information has been disclosed to someone not under a duty of
186	confidentiality to the courts;
187	(5)(L) record that would reveal the contents of settlement negotiations other than the final
188	settlement agreement;
189	(5)(M) record the disclosure of which would impair governmental procurement or give an unfair
190	advantage to any person;
191	(5)(N) record the disclosure of which would interfere with supervision of an offender's
192	incarceration, probation or parole;
193	(5)(O) record the disclosure of which would jeopardize life, safety or property;
194	(5)(P) strategy about collective bargaining or pending litigation;
195	(5)(Q) test questions and answers;
196	(5)(R) trade secrets as defined in Utah Code Section 13-24-2;
107	(5)(S) record of a Children's Justice Center investigative interview before the conclusion of any
8	legal proceedings;
199	(5)(T) presentence investigation report;
200	(5)(U) except for those filed with the court, records maintained and prepared by juvenile
201	probation; and
202	(5)(V) other records as ordered by the court under Rule 4-202.04.
203	(6) The following are juvenile court social records:
204	(6)(A) correspondence relating to juvenile social records;
205	(6)(B) custody evaluations, parent-time evaluations, parental fitness evaluations, substance
206	abuse evaluations, domestic violence evaluations;
207	(6)(C) medical, psychological, psychiatric evaluations;
208	(6)(D) pre-disposition and social summary reports;
209	(6)(E) probation agency and institutional reports or evaluations;
210	(6)(F) referral reports;
211	(6)(G) report of preliminary inquiries; and
212	(6)(H) treatment or service plans.
213	(7) The following are juvenile court legal records:
214	(7)(A) accounting records;
215	(7)(B) discovery filed with the court;

216	(7)(C) pleadings, summonses, subpoenas, motions, affidavits, calendars, minutes, findings,
217	orders, decrees;
218	(7)(D) name of a party or minor;
219	(7)(E) record of a court hearing;
220	(7)(F) referral and offense histories
221	(7)(G) and any other juvenile court record regarding a minor that is not designated as a social
222	record.
223	(8) The following are safeguarded records:
224	(8)(A) upon request, location information, contact information and identity information other than
225	name of a petitioner and other persons to be protected in an action filed under Title 77, Chapter 3a,
226	Stalking Injunctions or Title 78B, Chapter 7, Protective Orders;
227	(8)(B) upon request, location information, contact information and identity information other than
228	name of a party or the party's child after showing by affidavit that the health, safety, or liberty of the part
229	or child would be jeopardized by disclosure in a proceeding under Title 78B, Chapter 13, Utah Uniform
230	Child Custody Jurisdiction and Enforcement Act or Title 78B, Chapter 14, Uniform Interstate Family
231	Support Act or Title 78B, Chapter 15, Utah Uniform Parentage Act;
232	(8)(C) location information, contact information and identity information of prospective jurors on
233	the master jury list or the qualified jury list;
.34	(8)(D) location information, contact information and identity information other than name of a
235	prospective juror summoned to attend court;
236	(8)(E) the following information about a victim or witness of a crime:
237	(8)(E)(i) business and personal address, email address, telephone number and similar
238	information from which the person can be located or contacted;
239	(8)(E)(ii) date of birth, driver's license number, social security number, account description
240	and number, password, identification number, maiden name, mother's maiden name, and similar
241	personal identifying information.
242	
243	
244	

TAB 7



INTERIM HIGHLIGHTS

Office of Legislative Research and General Counsel
House Building, Suite W210 • Salt Lake City, Utah 84114 • (801) 538-1032

LEGISLATIVE INTERIM MEETINGS

Meetings were held October 19, 2016, or as noted.

IN THIS ISSUE:

(Click on the committee you would like to view)

Administrative Rules Review

Business and Labor

Child Welfare Legislative Oversight Panel Commission on Federalism

Economic Development and Workforce Services

Education

Government Operations

Health and Human Services

Health Reform Task Force

Judiciary

Law Enforcement and Criminal Justice

Legislative Management Committee

Native American Legislative Liaison Committee

Natural Resources, Agriculture, and Environment

Political Subdivisions

Public Utilities, Energy, and Technology

Revenue and Taxation

State Water Development Commission

Transportation

Utah International Relations and Trade Commission

Veterans' and Military Affairs Commission

Administrative Rules Review Committee

September 23, 2016

Local Ordinances and Potential Conflicts with State

Discussed whether the Legislature should provide oversight and assist citizens in addressing concerns about county or city ordinances that may be in conflict with state statute.

Office of Administrative Rules Transition

Received an update from the Office of Administrative Rules on its transition from a division to an office as a result of 2016 General Session <u>H.B. 103</u>, "Department of Administrative Services Amendments."

Rulemaking Training for State Agencies

Received an overview from the Office of Administrative Rules regarding training provided by the office to state agencies that write administrative rules.

October 14, 2016

Higher Education's Exemption from Administrative Rulemaking

Discussed with the Board of Regents whether to repeal a provision in the <u>Administrative Rulemaking Act</u> that exempts state education institutions from the requirement to make administrative rules when the institution's action applies only to students.

Impact of Administrative Rules on Businesses

Discussed with the Governor's General Counsel:

- The impact of administrative rules on businesses;
- The Governor's Executive Order <u>Establishing Effective</u> <u>Oversight over State Agency Rulemaking</u>; and
- Ways to improve the development and review of administrative rules.

Local Ordinances and Potential Conflicts with State Law

Discussed with the Utah League of Cities and Towns, the Utah Association of Counties, and the Utah Association of Special Districts whether a process is needed at the state level to review local government ordinances that may violate state law.

Chairs: Rep. Curtis Oda / Sen. Howard A. Stephenson Staff: Art L. Hunsaker (Policy Analyst) / Christine R. Gilbert (Attorney) / Tracey Fredman (Legislative Assistant)

Business and Labor

Alcoholic Beverage Control

Discussed draft legislation "Alcohol Beverage Control Budget Amendments" and draft legislation "Department of Alcoholic Beverage Control Amendments." Both bills would revise the budget of the Department of Alcoholic Beverage Control.

Consumer Protection Revisions

Discussed draft legislation "Consumer Protection Revisions," which would modify statutes administered by the Division of Consumer Protection.

Insurance Premium Tax

Action: Amended and approved as a committee bill, draft legislation "Insurance Premium Tax Amendments," which would modify provisions related to the insurance premium tax.

Payday Lending

Action: Approved as a committee bill, draft legislation "Check Cashing and Deferred Deposit Lending Amendments," which would modify provisions related to check cashing and deferred deposit lending.

State Construction Code

Action: Approved as a committee bill, draft legislation "State Construction Code Amendments," which would amend provisions related to the state construction code.

Statutorily Required Reports

Action: Approved as a committee bill, draft legislation "Statutory Required Reports Amendments," which would modify provisions regarding specific reports required by statute.

Utah Revised Business Corporation Act

Action: Approved as a committee bill, draft legislation "<u>Utah Revised Business Corporation Act Modifications</u>," which would modify provisions regulating business corporations.

Utah Science Technology and Research (USTAR)

Received a <u>presentation</u> from USTAR. Discussed issues regarding the operations, activities, programs, and services of the governing authority and the USTAR initiative. Also received the annual <u>report</u> from USTAR.

Workers' Compensation Fund

Discussed draft legislation "Workers' Compensation Fund Amendments," which would repeal the statute creating the Workers' Compensation Fund and make conforming amendments.

Chairs: Rep. Val L. Peterson / Sen. Curtis S. Bramble Staff: Joseph T. Wade (Policy Analyst) / Patricia Owen (Attorney) / Samuel C. Johnston (Attorney) / Lucy W. Daynes (Legislative Assistant)

Child Welfare Legislative Oversight Panel

October 13, 2016

Fatality Review Report

Received the <u>Fatality Review Executive Summary</u> from the Department of Human Services concerning deaths of all individuals during FY 2016:

- For whom there was an open department case at the time of death; or
- In cases where the individuals or their families had received services through the department within 12 months preceding the death.

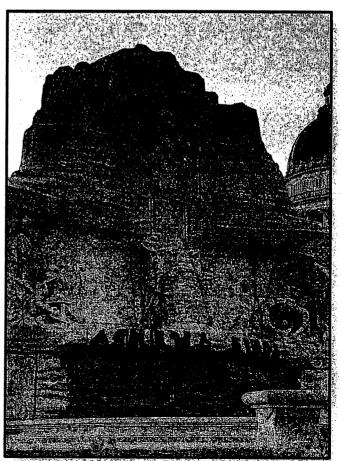
The panel discussed concerns about the increase in youth suicide. In a meeting closed to the public, the panel reviewed individual fatality cases.

Qualitative Case Review and Case Process Review

Received a <u>report</u> from the Office of Services Review on the findings of its qualitative case review and case process review of the Division of Child and Family Services.

Discussed trends and areas of concern identified by the Office of Services Review. The Division of Child and Family Services showed a <u>video</u> and advised what action has been taken, or should be taken, to address areas of concern.

Chairs: Rep. Earl D. Tanner / Sen. Allen M. Christensen Staff: Adam J. Sweet (Policy Analyst) / Lee A. Killian (Attorney) / Lori Rammell (Legislative Assistant)



Commission on Federalism

September 30, 2016

Continuing Education on Federalism Curriculum

Received a presentation from the Center for Constitutional Studies at Utah Valley University regarding the federalism curriculum and continuing legal education credit for participating attorneys. The curriculum has been approved for one credit hour of continuing legal education and the center has applied for two hours of continuing legal education credit for participants who complete the course and follow-up quiz.

Action: Voted to recommend that Utah Valley University be fully reimbursed for costs it incurred to develop the online federalism curriculum.

United States Constitution Article V Issues

Received a report from a legislator regarding Article V issues that were covered at a recent convention of the states. The purpose of the convention was to practice an Article V convention and the rules and processes that might be used.

Chairs: Rep. Ken Ivory / Sen. Allen M. Christensen
Staff: Jerry D. Howe (Managing Policy Analyst) / Nathan W. Brady (Policy Analyst) /
Robert H. Rees (Attorney) / Michael E. Curtis (Attorney) /
Bree Frehner (Legislative Assistant)



Economic Development and Workforce Services

Governor's Office of Economic Development

Received a <u>presentation</u> from the Governor's Office of Economic Development regarding its annual report. The presentation highlighted the office's:

- Student workforce training program;
- · Tourism marketing campaigns; and
- Corporate recruiting efforts.

INTERIM HIGHLIGHTS • October 2016

Science, Technology, Engineering, and Math (STEM) Action Center

Received a follow-up <u>presentation</u> from the STEM Action Center regarding questions raised during the September interim meeting. The presentation highlighted the center's efforts that support skilled trades in the state and noted a variety of metrics used to demonstrate the center's impact on educators and students in the state.

Utah Capital Investment Corporation

Received a <u>presentation</u> from the Utah Capital Investment Corporation regarding its annual report. The presentation highlighted efforts to refinance the corporation's original debt liabilities and contribute to entrepreneurial economic development efforts in the state. The presentation also reported that the corporation's portfolio has realized a 2.6% net internal rate of return as of June 30, 2016.

Utah Department of Heritage and Arts

Received a <u>presentation</u> from the Department of Heritage and Arts regarding its <u>annual report</u>. The presentation highlighted the department's efforts of the past year, including:

- Historic photograph digitization;
- Museum support;
- Multicultural events; and
- Bookmobile services to rural communities.

Utah Department of Workforce Services

Received a <u>presentation</u> from the Department of Workforce Services regarding its <u>annual report</u>. The presenters highlighted several awards the department has received and discussed the department's efforts to engage communities regarding intergenerational poverty and to reduce unemployment among veterans.

The presentation also included an update on the current status of the transition of the Utah State Office of Rehabilitation from the State Board of Education to the Department of Workforce Services.

Utah Science, Technology, and Research Initiative

Received a <u>presentation</u> from the <u>Utah Science</u>, Technology, and Research Initiative regarding the initiative's <u>annual report</u>. The presentation:

- Showed how the initiative has changed due to recent legislation;
- · Highlighted four new competitive grant programs; and
- · Provided performance metrics.

The presentation indicated that in the coming year the initiative will fully:

- Implement the new grant programs;
- Expand services for technology entrepreneurs; and
- Reopen an aerospace and advanced manufacturing incubator.

Chairs: Rep. Rebecca P. Edwards / Sen. Brian E. Shiozawa Staff: Ryan M. Hunter (Policy Analyst) / Peter Asplund (Attorney) / Debra Hale (Legislative Assistant)

INTERIM HIGHLIGHTS • October 2016

Education

Assessment and Accountability

Considered draft legislation "Education Assessment and Accountability Amendments," which would address changes regarding accountability and assessment in public schools, as proposed by the State Board of Education.

Equalization

Considered draft legislation "School Funding Amendments," which would:

- Direct the Legislature to annually appropriate certain funds to the voted and board local levy guarantee programs; and
- Amend the number of local levy increments guaranteed.

Higher Education Performance Funding

Received a presentation from the Utah System of Higher Education about the implementation of performance funding.

The Utah College of Applied Technology presented a proposed <u>model</u> for expanding performance funding to the Utah College of Applied Technology.

The committee also considered draft legislation "Higher Education Performance Funding," which would provide a dedicated portion of certain income tax growth to performance funding.

Outline for Recodification of Education Code

Discussed a proposed <u>outline</u> for recodifying <u>Title 53A</u>, <u>State</u> System of Public Education.

Chairs: Rep. Bradley G. Last / Sen. Ann Millner
Staff: Allyson R. Goldstein (Policy Analyst) / Nathan W. Brady (Policy Analyst) / Victoria
Ashby (Attorney) / Rebekah M. Bradway (Attorney) / Michael E. Curtis (Attorney) /
Debra Hale (Legislative Assistant)

Government Operations

Commission on Federalism

Received a <u>statutorily</u> required report from the Commission on Federalism, which included an update on the development of the curriculum on federalism through the <u>Center for Constitutional Studies</u> at Utah Valley University.

Disposition of Ballots

Action: Approved as a committee bill, draft legislation "<u>Disposition of Ballots Amendments</u>," which would require an elections officer to notify a voter when the voter's absentee ballot is rejected.

Federal Funds Commission

Received a <u>statutorily</u> required report from the Federal Funds Commission regarding the commission's findings and recommendations.

Free Market Protection and Privatization Board

Received a <u>statutorily</u> required <u>report</u> from the Free Market Protection and Privatization Board and discussed the future role of the board.

Governmental Nonprofit Entity Compliance

Discussed a proposal to require governmental nonprofit entities to be subject to certain transparency in provisions of the Utah Code, including the <u>Open and Public Meetings Act</u> and the <u>Government Records Access and Management Act</u>.

Plurality

Discussed a <u>proposal</u> to address the issue of a candidate being elected by a plurality rather than a majority of voters.

Voting Equipment

Received a <u>presentation</u> from the Office of the Lieutenant Governor regarding the need for, cost of, policies regarding, and progress in purchasing new voting equipment for the state.

Chairs: Rep. Jack R. Draxler / Sen. Margaret Dayton Staff: Brian J. Bean (Policy Analyst) / Thomas R. Vaughn (Attorney) / Katie LeFevre (Legislative Assistant)

Health and Human Services

Medical Marijuana

Received presentations from four legislators on draft legislation related to the regulation, research, and use of marijuana for medical purposes:

- "Cannabis-Based Medicine Regulatory Amendments";
- "Cannabinoid Medicine Act";
- "Cannabis-Based Medicine Research"; and
- "Cannabis-Based Medicine Amendments."

Opioid Misuse

Received a <u>report</u> on the outcomes of a Utah initiative to provide medication-assisted treatment to persons experiencing opioid addiction.

Also received reports from <u>Intermountain Healthcare</u> and <u>Utah Nurse Practitioners</u> on recent changes in opioid prescribing and a <u>request</u> for the state to provide financial support for expanded access to medication-assisted treatment.

Statutorily Required Reports

Considered draft legislation "Repeal of Health and Human Services Reports," which would repeal certain statutorily required reports on health and human services issues.

Chairs: Rep. Kay L. McIff / Sen. Evan J. Vickers

Staff: Mark D. Andrews (Policy Analyst) / Michael E. Curtis (Attorney) / Cathy J. Dupont
(Attorney) / Lee A. Killian (Attorney) / Lori Rammell (Legislative Assistant)

INTERIM HIGHLIGHTS • October 2016

Health Reform Task Force

September 29, 2016

Small Business Health Insurance Exchange

Received a <u>report</u> from Avenue H, the state's administrator of the federal Affordable Care Act's Small Business Health Options Program (the SHOP), a health insurance exchange for small employers. Avenue H reported on the challenges it faces and referred to a study by the Salt Lake Chamber of Commerce on whether Avenue H could be converted to a nonprofit organization and expanded to serve a larger market. Also received comments from interested parties on the value of having Avenue H, as opposed to another entity, administer the SHOP.

Health Insurance—2017 Premiums

Received a <u>report</u> from the Utah Insurance Department that premiums for health insurance plans offered in the individual market are expected to be 30% higher in 2017 than in 2016. Rates for small group plans are expected to increase by about 10%.

Medicaid Expansion

Received <u>updated estimates</u>, which include 2016 enrollment in the federal health insurance exchange, from the Office of the Legislative Fiscal Analyst of the impacts regarding expanding Medicaid eligibility.

Task Force Workgroups

Received updates on the work of the task force's:

- Telehealth Workgroup;
- Managed Care Workgroup; and
- Network Adequacy/Surprise Billing Workgroup.

The Telehealth Workgroup is considering <u>proposals</u> to establish pilot programs that would test the impacts of telemedicine.

October 20, 2016

All-Payers Claims Database—Federal Rule

Considered how to respond to a recent U.S. Supreme Court case that could affect the submission of health insurance claims data by self-insured employers to the state's all-payers health insurance claims database.

Action: Voted to draft a letter in support of <u>comments</u> by the National Association of State Health Policy regarding a U.S. Department of Labor proposed regulation that responds to the U.S. Supreme Court case.

Small Business Health Insurance Exchange

Considered options for the operation of the federal Affordable Care Act's Small Business Health Options Program (the SHOP), a health insurance exchange for small employers.

Action: Voted to draft a letter requesting that the executive branch notify the Centers for Medicare and Medicaid Services within the U.S. Department of Health and Human Services that Utah no longer wishes to provide the operational platform for the SHOP.

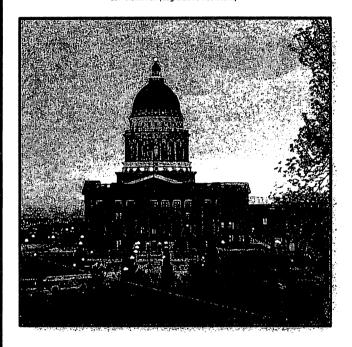
Medicaid Dental Services

Received a <u>report</u> from the Department of Health comparing the cost of providing Medicaid dental services under a managed care model with the cost of providing the same services under a fee for service model.

Medicaid Expansion

Received <u>updated estimates</u> from the Office of the Legislative Fiscal Analyst on the cost and coverage impacts of expanding Medicaid eligibility.

Chairs: Rep. James A. Dunnigan / Sen. Allen M. Christensen Staff: Mark D. Andrews (Policy Analyst) / Cathy J. Dupont (Attorney) / Lori Rammell (Legislative Assistant)



Judiciary

Court Surcharge

Received a follow-up <u>presentation</u> from committee staff on fines and surcharges levied on convicted individuals in Utah courts. The presentation focused on the "35/90 Surcharge," including:

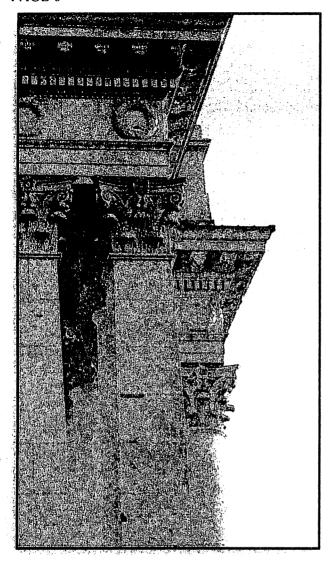
- How money from the surcharge is distributed to various state programs;
- How surcharge amounts collected have fallen in recent years, due in part to a decrease in the number of case filings; and
- An overview of policy options to increase surcharge amounts remitted to the state.

Department of Corrections Performance Report

Received a <u>statutorily</u> required <u>report</u> on performance results from criminal justice reforms implemented by the <u>Justice</u>
Reinvestment Initiative. The report noted:

- Changes in the classifications of criminal offenses;
- Reductions in the number of offenders in Utah prisons; and
- Treatment efforts for criminal offenders.

(Continued next page)



DUI Report

Received a <u>statutorily</u> required <u>report</u> on DUI offenses, which summarized data from FY2016 on DUI-related offenses, arrests, and fatalities.

Also discussed issues related to impairment from substances other than alcohol and the difficulty in determining whether the driver was impaired when operating a vehicle.

Indigent Defense

Received a presentation from the Indigent Defense Commission, established by 2016 General Session <u>S.B. 155</u>, "Indigent Defense." The commission reported on its activities and current efforts to reform:

- The state's indigent criminal defense system;
- The responsibilities of the commission authorized under statute;
- The structure of contracts for public defenders; and
- Grants available for local jurisdictions to improve indigent defense services.

Chairs: Rep. LaVar Christensen / Sen. Daniel Hemmert Staff: Gregg A. Girvan (Policy Analyst) / Esther Chelsea-McCarty (Attorney) / Lucy W. Daynes (Legislative Assistant)

Law Enforcement and Criminal Justice

Board of Pardons and Parole—Audit and Update

Received a <u>report</u> from the Board of Pardons and Parole regarding the findings and recommendations of the <u>February 2016 audit</u> conducted by the Office of the Legislative Auditor General. The board presented a plan to implement an electronic file management system during the next two and a half years. The system would assist with record management and streamline processes across law enforcement and criminal justice agencies.

Expungement Amendments

Discussed draft legislation "Expungement Amendments," which would:

- Prevent the dissemination of information regarding pardons and expungements; and
- Specify that infractions, traffic offenses, and certain minor offenses would not affect expungement eligibility.

Human Trafficking Amendments

Received an update from a legislator regarding the crime of human trafficking and the need to address gaps within current provisions to protect victims.

Sexualized Images

At its September 20, 2016, meeting, the Legislative Management Committee authorized this committee to study the effect of sexualized images on youth and to hold one additional meeting to address this topic. The meeting has been scheduled for November 10, 2016, at 4:00 p.m. in Room 450 of the State Capitol Building.

Chairs: Rep. Marc K. Roberts / Sen. Todd Weiler Staff: M'kynzi E. Newbold (Policy Analyst) / Nathan W. Brady (Policy Analyst) / Susan Creager Allred (Attorney) / Lori Rammell (Legislative Assistant)

Legislative Management Committee

October 18, 2016

Meeting Requests

Action: Approved the following committee requests:

- Education Interim Committee's request for an additional committee meeting in conjunction with the National Conference of State Legislatures on educational leadership; and
- Revenue and Taxation Interim Committee's request for an additional committee meeting to complete the assigned study items.

Chairs: Speaker Gregory H. Hughes / President Wayne L. Niederhauser Staff: Michael E. Christensen (Director) / John L. Fellows (General Counsel) / Denise L. Udy (Administrative Assistant)

INTERIM HIGHLIGHTS • October 2016

Native American Legislative Liaison Committee

September 29, 2016 Meeting held in Mexican Water, Utah

Broadband Infrastructure in San Juan County

Discussed with the Utah Education and Telehealth Network an opportunity to expand broadband access to Native American schools in San Juan County and the benefits that would result for the county.

Action: Voted to send a letter of support for this project to the president and speaker of the Navajo Nation, to Utah's governor, to Utah's congressional delegation, and to the Grand and San Juan county offices of the Bureau of Land Management.

State School Grants

State Board of Education staff discussed the state grant program for Native Americans, reporting that Eagle Mountain elementary school in Uintah School District received the only grant this year.

Action: Voted to increase the grant program to \$500,000 of ongoing funds annually for five years.

Native American Graves Repatriation Act

Discussed the issues concerning the remains of ancient Native Americans, particularly in regards to the relocation of remains.

Chairs: Rep. Jack R. Draxler / Sen. Kevin T. Van Tassell Staff: Art L. Hunsaker (Policy Analyst) / Michael E. Christensen (Director) / Patricia Owen (Attorney) / Joshua M. Weber (Legislative Assistant)

Natural Resources, Agriculture, and Environment

Statewide Wildland Fire Policy

Received a <u>report</u> from the Division of Forestry, Fire, and State Lands on its efforts to establish a comprehensive, statewide wildland fire prevention, preparedness, and suppression policy. The report emphasized efforts to reduce wildland fire risks and lower overall costs.

Direct Food Sales

Received a <u>report</u> from the Department of Agriculture and Food on the department's cottage food program.

The committee also considered draft legislation "<u>Direct Food Sales Amendments</u>," which would:

- Modify the rulemaking authority of the Department of Agriculture and Food regarding cottage food production operations; and
- Require the operator of a cottage food production operation to package a cottage food product with a label, as specified by the department.

Sage Grouse Program

Received a <u>report</u> from the Department of Natural Resources on the Greater Sage Grouse Compensatory Mitigation Program administered by the department.

Water Development Commission

Action: Approved as a committee bill, draft legislation "Water Development Commission Amendments," which would modify the membership of the State Water Development Commission.

Water System Infrastructure Funding

Received a report from the Division of Water Resources and the Board of Water Resources regarding efforts to establish rules relating to funding from the Water Infrastructure Restricted Account as required by 2016 General Session <u>S.B. 251</u> "Water Infrastructure Funding Amendments."

Chairs: Rep. Lee B. Perry / Sen. Scott K. Jenkins Staff: J Brian Allred (Policy Analyst) / RuthAnne Frost (Attorney) / Katie LeFevre (Legislative Assistant)

Political Subdivisions

Assessment Area Act

Action: Approved as a committee bill, draft legislation "<u>Assessment Area Act Amendments</u>," which would:

- Clarify the required contents of a notice of a proposed assessment area designation; and
- Require a local entity that levies an assessment for economic promotion activities to assess each benefited property.

Historic Preservation Amendments

Discussed draft legislation "<u>Historic Preservation</u> <u>Amendments</u>," which would:

- Authorize a local legislative body to designate a historic preservation commission to make administrative decisions on land use applications related to historically significant property; and
- Provide, under certain circumstances, an automatic appeal from a decision of a historic preservation commission.

Local Officer Appointments

Discussed draft legislation "Local Officer Amendments," which would modify provisions related to the timing of the appointment of the recorder and treasurer in certain municipalities.

Municipal Service Amendments

Discussed draft legislation "Municipal Service Amendments," which would address an issue identified in the 2015 Performance Audit of Culinary Water Improvement Districts. The legislation would restrict a municipality's ability to provide a service that a local district already provides.

INTERIM HIGHLIGHTS • October 2016

Quality Growth Commission

Received an annual report regarding progress statewide on accomplishing the purposes of the <u>Quality Growth Act</u>. The report advised the committee of:

- The <u>outcomes</u> of the <u>LeRay McAllister Critical Land</u> Conservation Program;
- Growth management issues; and
- Assistance needed by local governments to plan for quality growth.

Short-Term Rentals

Received an update from a legislator regarding the regulation of short-term property rental units. The League of Cities and Towns gathered data to determine how municipalities regulate these rental properties and reported that regulations vary by city, based on unique local factors.

Action: Found the item to be significant, and recommended more time be taken to develop solutions and consensus.

Chairs: Rep. R. Curt Webb / Sen. Daniel W. Thatcher

Staff: Ryan M. Hunter (Policy Analyst) / M'kynzi E. Newbold (Policy Analyst) / Christine R.

Gilbert (Attorney) / Joshua M. Weber (Legislative Assistant)

Public Utilities, Energy, and Technology

Alternative Energy Credits, Subsidies, and Exemptions

Discussed the total value or amount of state and federal incentives, subsidies, credits, and exemptions designed for alternative energy. Received <u>comments</u> from Utah State University about the impact on the potential for oversupply and market distortion due to excessive credits.

Received a <u>presentation</u> and <u>handout</u> from the Governor's Office of Energy Development about incentive programs that it administers.

Action: Voted to request that the Legislative Audit Subcommittee to order an audit of state energy incentive programs.

Self-Driving Motor Vehicle Study

Received a <u>report</u> from the Department of Public Safety and the Department of Transportation regarding best practices for regulation of autonomous vehicle technology on Utah highways, as required by 2016 General Session <u>H.B. 280</u>, "Autonomous Vehicle Study."

Molten Salt Reactor

Received a <u>presentation</u> from an energy company about developing a liquid fluoride thorium reactor with an advanced power conversion system known as a supercritical CO₂ Brayton cycle. Discussed the economic, industrial, and technological benefits of developing this type of reactor in Utah.

Received an outline from the Governor's Office of Energy Development regarding its mission to strengthen Utah's energy policies.

Revenue and Taxation

Assessment of Golf Courses

Received a <u>presentation</u> from the Golf Alliance of Utah on its concerns regarding the method used by some county assessors to value golf courses for property tax purposes.

Assessment of Static Property

Received a presentation from a legislator on draft legislation "Property Tax Changes," which would modify the method of valuing property, for property tax purposes, when the property has not been improved, rezoned, or leased since the prior assessment.

New Growth and Property Taxes

Action: Approved as a committee bill, draft legislation "Revenue and Taxation Modifications," which would amend one of the new growth definitions to exclude a change in assessed value that occurs due to property being assessed under the Farmland Assessment Act or the Urban Farming Assessment Act.

Sales and Use Tax Exemption Changes

Action: Approved as a committee bill, draft legislation

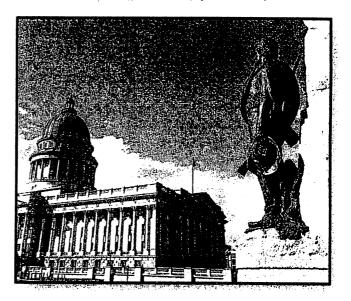
<u>Sales and Use Tax Exemption Changes</u> which would clarify a sales and use tax exemption for the cleaning and washing of a vehicle.

Utah Educational Savings Plan Tax Amendments

Received a presentation from a legislator on draft legislation "Student Prosperity Savings Plan - Tax Amendments," which would create the Student Prosperity Savings Plan and related corporate and individual tax benefits. Money donated or appropriated to the Student Prosperity Savings Plan would be used to fund tax-advantaged college savings accounts for high school students who are economically disadvantaged.

Chairs: Rep. Daniel McCay / Sen. Deidre M. Henderson

Staff: Bryant R. Howe (Deputy Director) / Leif G. Elder (Policy Analyst) / Andrea Valenti
Arthur (Attorney) / Bree Frehner (Legislative Assistant)



State Water Development Commission

October 18, 2016

Water Infrastructure Funding

Received a report from the Division of Water Resources and the Board of Water Resources regarding efforts to draft water infrastructure funding rules as required by 2016 General Session S.B. 251, "Water Infrastructure Funding Amendments."

Water Law—Nonuse Applications

Considered draft legislation "<u>Water Law - Nonuse</u> <u>Applications</u>," which would provide that:

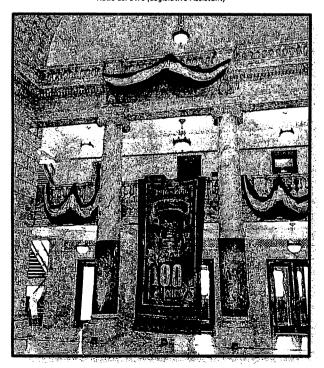
- An approved nonuse application is not subject to the requirement of beneficial use of water from the date of filing; and
- The time during which an approved nonuse application is in effect is not subject to and does not count toward the seven-year time limit, for purposes of forfeiture.

The draft legislation would also provide that the filing or approval of a nonuse application, or a series of nonuse applications, would not:

- Constitute a beneficial use of a water right;
- Protect a water right that is already subject to forfeiture; or
- Bar a water right owner from using the water under the water right, as permitted under the water right, or claiming a forfeiture defense.

The draft legislation would also modify the procedure for instituting a forfeiture action.

Chairs: Rep. Keith Grover / Sen. Margaret Dayton Staff: J Brian Alired (Policy Analyst) / RuthAnne Frost (Attorney) / Katie LeFevre (Legislative Assistant)



Transportation

Self-Driving Vehicle Study

Received a <u>presentation</u> from the Utah Department of Transportation and the Driver License Division summarizing the <u>study</u> of autonomous vehicles as required by 2016 General Session H.B. 280, "Autonomous Vehicle Study."

Department of Transportation Divisions and Structure

Action: Approved as a committee bill, draft legislation "Transportation Divisions and Structure Amendments," which would modify the structure and responsibilities of the divisions of the Utah Department of Transportation.

DUI Impound Fees

Received a briefing from the Utah State Tax Commission regarding the Motor Vehicle Division's processing of refund requests made for DUI impound fees after a "no action" determination is made by the Driver License Division regarding the driver. The briefing referred to an opinion written in response to an appeal made to the Utah State Tax Commission.

Action: Directed staff to open a committee bill file that would amend the statutory timeframe regarding the request for refund of DUI impound fees following a "no action" determination by the Driver License Division.

Motor Carrier Size and Weight Restrictions

Action: Approved as a committee bill, draft legislation "Motor Carrier Amendments," which would modify the following motor carrier provisions:

- · Length restrictions;
- Rulemaking authority; and
- Meetings of the Motor Carrier Advisory Board.

Motor Vehicle Accident Cost Recovery

Action: Approved as a committee bill, draft legislation "Motor Vehicle Accident Cost Recovery," which would modify provisions related to the recovery of costs to repair damages caused by motor vehicle accidents, including allowing government entities to contract with third parties to recover these costs.

State Highway System Amendments

Action: Directed staff to open a committee bill file that would codify any additions to, or deletions from, the state highway system during the past year.

Utah Transit Authority Governance Structure

Received a <u>presentation</u> from the Utah Transit Authority and its Board of Trustees regarding the agency's governance structure and board composition.

Chairs: Rep. Johnny Anderson / Sen. Wayne A. Harper Staff: Alex R. Janak (Policy Analyst) / Kurt P. Gasser (Attorney) / Shannon C. Halverson (Attorney) / Joshua M. Weber (Legislative Assistant)

<u>Utah International Relations and</u> Trade Commission

October 17, 2016

Global Cities Initiative

Received a <u>presentation</u> from Salt Lake County regarding participation in the global cities initiative. The county discussed its <u>export plan</u> that was developed during the first phase of the initiative. The plan highlights the county's current reliance on mining for a large share of exports and the potential for increased exports in other industries due to multiple hard and soft assets available to exporters. The county also noted that the second phase of the initiative will result in a foreign direct investment plan for the county.

World Trade Center

Received a <u>presentation</u> from World Trade Center Utah outlining the services the center provides to Utah companies interested in exporting goods and services. The center highlighted three 2016 trade missions that brought Utah business and government leaders together with their counterparts from Mexico, France, and Canada.

Chairs: Rep. Eric K. Hutchings / Sen. Peter C. Knudson
Staff: Ryan M. Hunter (Policy Analyst) / Robert H. Rees (Attorney) / Thomas E. Young
(Senior Economist/Forecaster) / Andrea Wilko (Chief Economist) / Debra Hale (Legislative
Assistant)

Veterans' and Military Affairs Commission

September 27, 2016

College Veterans Centers

Received a briefing from the Utah Department of Veterans and Military Affairs on veterans and families who are receiving GI Bill education benefits or other education benefits.

Received a presentation from the Utah System of Higher Education on improvements at Utah Valley University and Southern Utah University to better integrate veterans and provide employment opportunities after graduation.

(Continued next column)

INTERIM HIGHLIGHTS • October 2016

Department of Veterans and Military Affairs Update

Received a <u>presentation</u> from the Utah Department of Veterans and Military Affairs on the current activities of the department, including:

- Mental health and employment services offered to veterans; and
- Collaboration efforts with veterans and military groups.

Received an update from the Utah Defense Alliance regarding activities at Hill Air Force Base to facilitate combat readiness of F-35 jets.

National Guard Assistance for Service Members and Families

Received a briefing from the Utah National Guard on services offered through the National Guard's Family Assistance Center, including monthly contact with service members' families when a service member is deployed. Services include regular contact and counseling, with services extending 180 days or longer after the service member has returned home.

State Support of Post Traumatic Stress Disorder (PTSD) Treatment

Received a <u>presentation</u> from the National Center for Veterans Studies on:

- The costs to society of ineffective treatments for PTSD among military service members; and
- The cost savings achieved through proper training of clinicians in best practices for PTSD treatment.

Veteran Benefit Disclosure

Received a staff <u>presentation</u> on the Veteran Benefit Disclosure as outlined in the <u>Veterans Benefit Assistance Act</u>. The presentation described the disclosure and outlined policy options to help veterans avoid being subjected to fraudulent activities.

Chairs: Rep. Paul Ray / Sen. Peter C. Knudson Staff: Art L. Hunsaker (Policy Analyst) / Gregg A. Girvan (Policy Analyst) / Esther Chelsea-McCarty (Attorney) / Tracey Fredman (Legislative Assistant)

Next Interim Day — November 16, 2016



OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL HOUSE BUILDING, SUITE 210 PO BOX 145210 SALT LAKE CITY UT 84114-5210

For more information about legislative activities, visit the Utah State Legislature's website at: le.utah.gov

> Staff: Susan Creager Allred, Nathan W. Brady, Leif G. Elder, Bree A. Frehner, and Tracey Fredman

Photo Credits: Susan Creager Allred and Bree A. Frehner

TAB 8



Administrative Office of the Courts

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

November 16, 2016

Daniel J. Becker State Court Administrator Ray Wahl Deputy Court Administrator

MEMORANDUM

TO: Judicial Council

FROM: Debra Moore, District Court Administrator

RE: Final Approval of CJA 10-1-407

In June 2016, the Judicial Council approved Fourth District local rule 10-1-407 effective August 1, 2016, subject to change after the comment period. No comments were received during the comment period, which expired on August 28, 2016. However, to avoid confusion about where the rule applies, the Board of District Court Judges requests that the clarifying language be added to the applicability section of rule as shown on in redline on the draft accompanying this memo. With that change, the Council's final approval of CJA 10-1-407 is requested.

Field

under rule 2-205 of the Utah Code of Judicial Administration.

	Subject to change after the comment period
36	10-1-407. Time to charge
37	Intent:
38	A rule relating to the time and conditions between arrest and first appearance for non-petty offenses.
39	Applicability:
40	This rule shall apply to the Fourth District Court. All Felony and Class A Misdemeanor charges as
41 '	identified in the statement of probable cause supplied upon booking at the jail when the Defendant has
42	been arrested without a warrant and remains in custody, having not posted bail.
43	Statement of the Rule:
44	(a) A person arrested for a non-petty offense who is unable to post bail and remains in custody shall be
45	taken before a District Judge before the close of business on the 4 th (fourth) business day after arrest.
46	The first day commences at the first 8 a.m. time to occur on a working day after arrest. At the initial
47	appearance the Court will comply with the Utah Rules of Criminal Procedure Rules 7(e) and (f) and, in
48	particular:
49	Provide the arrestee a copy of the information;
50	2. Confirm the accuracy of the name, address and date of birth as included in the information;
51	3. Confirm that the arrestee understands the nature of the charges and any potential penalty;
52	4. Rule upon any request for appointed counsel or otherwise confirm if the Defendant will be
53	retaining counsel;
54	5: Consider any request to modify bail; and,
55	6. Set the matter for the next available hearing before the Division of the District Court randomly
56	assigned to the case.
57	(b) If a criminal information has not been filed by the time of the hearing, the arrestee shall be discharged
58	and the matter closed without prejudice unless the State is allowed additional time to screen and charge.
59	The Court shall consider a request for additional time to screen and prepare charges if presented, in
60	writing, by counsel for the State. The request shall be granted for a reasonable period of time upon a
61	showing of good cause. In such an event the hearing described in the preceding subsection (a) shall be
62	continued to a certain date and time. In such an event the arrestee will continue to be held, subject to the
63	established order of bail.
64	(c) If a criminal information has not been prepared and no order for additional time to screen and file
65	charges has been made, the arrestee will be released without requirement for bail or surety but upon a
66	promise to appear on the first appearance calendar one week or less at a future date. The promise to
67	appear shall include a residential address which the arrestee affirms to be accurate.
68	(d) At the subsequent hearing date and time, set as provided in subsection (b) or (c), preceding:

(1) if an information has been filed and the arrestee is present the Court shall proceed as

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provided in subsection (a), preceding.

(2) If an information has been filed but the arrestee fails to appear as promised, the Court may consider and grant a warrant for the arrest of the arrestee with such bail as is appropriate in the discretion of the Judge.

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(3) If an information has not been filed, whether the arrestee is present or not, the case shall be closed without prejudice.

TAB 9

JUVENILE INDIGENT REPRESENTATION COMMITTEE INITIAL REPORT TO JUDICIAL COUNCIL

The Committee, Its Charge, and Process

At its June 2016 meeting, the Judicial Council created the Juvenile Indigent Representation Study Committee to conduct a thorough assessment of the provision of indigent representation services for juveniles in delinquency cases and adults in child welfare cases before Utah Juvenile Courts. Specifically, the Judicial Council asked the committee to determine whether "juvenile court indigent representation issues are best incorporated into the work of the newly formed Indigent Defense Commission (IDC) or dealt with separately, and, if combined with the work of the commission, what, if any, changes would need to be made in the commission's responsibilities and membership." The Judicial Council asked the committee to present its initial report on November 21st so that the Council could determine whether legislation should be prepared for the 2017 legislative session.

The committee divided into two subcommittees. The Contracts Subcommittee obtained and reviewed all existing county juvenile indigent defense contracts. That committee also drafted model contracts. The Representation Subcommittee reviewed best practices in juvenile delinquency defense cases, as well as in parental defense in child welfare cases. That committee crafted a set of best practices recommendations. The subcommittees met frequently and reported to the entire committee, which met monthly. At its last meeting, the committee approved recommendations to report to the Judicial Council.

Recommendations

- 1. <u>Indigent Defense Commission Tab 1.</u> The committee recommends that juvenile indigent representation be added to the charge of the Indigent Defense Commission (IDC). The committee has attached proposed statutory amendments to achieve this goal. Specifically, the committee recommends:
 - a. Creation of a juvenile subcommittee within the IDC, including members of the commission and experts in juvenile defense
 - b. Two new members of the commission; one practicing child welfare parental defense attorney and one practicing juvenile delinquency defense attorney
 - c. An assistant director of the commission who is an active member of the Utah State Bar, with experience combined with the director covering all aspects of the IDC's charge
 - d. Amendments to the IDC's duties to ensure juvenile issues are adequately addressed
- 2. <u>Best Practices Tab 2.</u> The committee recommends that the best practices identified by the committee for both parental defense and juvenile delinquency defense be submitted to the IDC for consideration.
- 3. <u>Data Collection Tab 3.</u> The committee has identified several data elements that must be captured in CARE in order to adequately assess the provision of juvenile indigent defense services in Utah courts. The committee recommends that the Council adopt the data collection recommendations for incorporation into CARE programming rewrites.

Conclusion

If the Council accepts the committee's recommendations, the committee will draft a final report, which would include model contracts, for presentation to the Council at its January meeting.

Tab 1

Effective 5/10/2016

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Part 8 Utah Indigent Defense Commission

77-32-801 Indigent Defense Commission creation -- Purpose.

- (1) There is created within the Commission on Criminal and Juvenile Justice the Utah Indigent Defense Commission.
- (2) The purpose of the commission is to assist the state in meeting the state's obligations for the provision of indigent <u>criminal</u> defense services, consistent with the United States Constitution, the Utah Constitution, and <u>this chapter the Utah</u> Code.
- (3) "Indigent defense services" means the representation of indigent persons in criminal, juvenile delinquency and child welfare cases.

Enacted by Chapter 177, 2016 General Session

77-32-802 Commission members -- Membership qualifications -- Terms -- Vacancy -- Administrative support.

- (1) The commission is composed of 143 voting and two ex officio, nonvoting members.
 - (a) The governor, with the consent of the Senate, shall appoint the following <u>nine eleven</u> members:
 - (i) two practicing criminal defense attorneys recommended by the Utah Association of Criminal Defense Lawyers;
 - (ii) an attorney representing minority interests recommended by the Utah Minority Bar Association;
 - (iii) one member recommended by the Utah Association of Counties from a county of the first or second class;
 - (iv)one member recommended by the Utah Association of Counties from a county of the third through sixth class;
 - (v) a director of a county public defender organization recommended by the Utah Association of Criminal Defense Lawyers;
 - (vi) two members recommended by the Utah League of Cities and Towns from its membership;
 - (vii) a retired judge recommended by the Judicial Council; and
 - (viii) one member of the Utah Legislature selected jointly by the Speaker of the House and President of the Senate.:
 - (ix) one practicing child welfare parental defense attorney; and
 - (x) one practicing juvenile delinquency defense attorney.
 - (b) The executive director of the Commission on Criminal and Juvenile Justice or the executive director's designee shall be a voting member of the commission.
 - (c) The ex officio, nonvoting members of the commission are:
 - (i) the director of the Utah Indigent Defense Commission appointed in Section 77-32-803; and
 - (ii) a representative from the Administrative Office of the Courts appointed by

the Judicial Council.

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- (2) Members appointed by the governor shall serve four-year terms, except as provided in Subsection (3).
- (3) The governor shall stagger the initial terms of appointees so that approximately half of the commission is appointed every two years.
- (4) Members appointed to the commission shall have significant experience in criminal defense, <u>child welfare</u>, <u>or juvenile delinquency</u> proceedings or have demonstrated a strong commitment to providing effective <u>representation in</u> indigent <u>criminal</u> defense services.
- (5) Commission members shall hold office until their successors are appointed.
- (6) The commission may remove a member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or for any other good cause.
- (7) When a vacancy occurs in the membership for any reason, a replacement shall be appointed for the remaining unexpired term in the same manner as the original appointment.
- (8) The governor shall appoint one of the initial commission members to serve as chair of the commission for a term of one year. At the expiration of that year, or upon the vacancy in the membership of the appointed chair, the commission shall annually elect a chair from the commission's membership to serve a one-year term. A commission member may not serve as chair of the commission for more than three consecutive terms.
- (9) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (10) <u>Six Seven</u> members constitute a quorum, however, the affirmative vote of at least <u>six seven</u> members of the commission is required for official action of the commission.

Enacted by Chapter 177, 2016 General Session

77-32-803 Director -- Qualifications -- Staff.

- (1) The commission shall appoint a director to carry out the following duties:
 - (a) establish an annual budget;
 - (b) assist the commission in developing and regularly reviewing advisory caseload guidelines and procedures, including recommending to the commission suggested changes to the criteria for an indigent <u>defendant person</u>'s eligibility to receive <u>criminal indigent</u> defense services under this chapter; and
 - (c) perform all other duties as assigned.
- (2) The director shall be <u>a full-time licensed attorney</u> <u>an active member of the Utah State Bar</u> with appropriate background and experience to serve as the full-time director.

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- (3) The director shall hire staff as necessary to carry out the duties of the commission, including at least one individual:
 - (a) one individual who is an active member of the Utah State Bar to serve as a full-time assistant director; and
 - (b) one individual with data collection and analysis skills to carry out duties as outlined in Subsection 77-32-804(1)(a).
- (4) The director and the assistant director shall have combined experience in adult criminal defense, child welfare parental defense, and juvenile delinquency defense.

Enacted by Chapter 177, 2016 General Session

77-32-804 Duties of the commission -- Annual report.

- (1) The commission shall:
 - a) develop and adopt guiding principles for the assessment and oversight of criminal, indigent defense systems with the state that, at a minimum, address the following:
 - (i). Indigent defense service providers shall have independent judgment without fear of retaliation.
 - (ii). Service providers shall provide conflict-free representation, including the need for a separate contract for conflict counsel.
 - (iii). Service providers shall provide separate contracts for criminal defense, parental defense and juvenile delinquency defense.
 - (iv). The state may not interfere with the service provider's access to clients and the service provider is free to defend the client based on the service provider's own independent judgment.
 - (v). Accused persons <u>in criminal cases</u> shall be provided counsel at all critical stages <u>of the criminal process</u>. <u>Indigent persons in juvenile delinquency and child welfare proceedings shall be provided counsel at all stages.</u>
 - (vi). Counsel shall be free to provide meaningful, adversarial testing of the evidence, including:
 - (A) adequate access to defense resources; and
 - (B) workloads that allow for time to meet with clients, investigate cases, and file appropriate motions.
 - (vii). Service providers shall be fairly compensated and incentivized to represent clients fully through:
 - (A) compensation, that shall be independent from prosecutors' compensation;
 - (B) incentives that are structured to <u>effectively</u> represent <u>criminal</u> <u>defendants well indigent persons</u>; <u>and</u>
 - (C) <u>Contract provisions that address mandatory training and education, and separate arrangements for resources and expenses;</u>
 - (D) separate contracts for appellate attorneys that are offered or separate contract provisions to ensure the right to appeal: and

1 ***		(E) compensation sufficient to attract well-qualified applicants.
1		(viii). The commission may maintain oversight to collect data, audit
136		attorney performance, establish standards, and enforce the
137		principles listed above;
138		(ix). Contracts that address counsel's obligations under the Utah
139		Rules of Professional Conduct, including expectations on client
140		communications and managing conflicts of interest.
141	(b)	
142		(i). review compliance by <u>criminal</u> indigent defense systems of
143		minimum principles for effective representation;
144		(ii). establish procedures for the collection and analysis of the data; and
145		(iii). provide reports regarding the operation of the commission and the
146		provision of indigent <u>criminal</u> defense services by each indigent <u>criminal</u>
147		defense system <u>;.</u>
148	(c)	develop and oversee the establishment of advisory caseload principles and
149		guidelines to aid indigent <u>criminal</u> defense systems in delivering effective
150		representation in the state consistent with the safeguards of the United States
151		Constitution, the Utah Constitution, and this chapter the Utah Code;
152	(d)	9
153		provision of indigent <u>eriminal</u> defense services and provide
154		assistance and recommendations regarding compliance with
155		minimum principles for effective representation;
. .	(e)	
157		services for compliance with minimum principles;
158	(f)	establish procedures for the receipt, acceptance, and resolution of
159		complaints regarding the provision of indigent eriminal defense services;
160	(g)	establish procedures that enable indigent eriminal defense systems to
161		apply for state funding as provided under Section 77-32-805;
162	(h)	establish procedures for annually reporting to the governor, Legislature,
163		Judicial Council, and indigent <u>criminal</u> defense systems throughout the
164		state that include reporting the following:
165		(i). the operations of the commission;
166		(ii). the operations of each indigent <u>criminal</u> defense system;
167		and
168		(iii). each indigent <u>eriminal</u> defense system's compliance with
169		minimum standards for the provision of indigent eriminal
L70		defense services for effective representation; including
L71		current caseloads, both contract work and private work, for
172		attorneys presently providing indigent defense services;
173	(i)	award grants to indigent eriminal defense systems consistent with metrics
174		established by the commission under this part and appropriations by the
175		state;
176	(j)	encourage and aid in the regionalization of indigent eriminal defense
		services within the state for effective representation and for efficiency and

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cost savings to local systems;

- (k) submit to legislative, executive, and judicial leadership, from time to time, proposed recommendations for improvement in the provision of indigent <u>criminal</u> defense services to ensure effective representation in the state, consistent with the safeguards of the United States Constitution and the Utah Constitution <u>and the Utah Code</u>; and
- (I) identify and encourage best practices for effective representation <u>to indigent</u> <u>defendants charged with crimes</u>.
- (2) The commission shall emphasize the importance of indigent <u>criminal</u> defense services <u>provided to defendants</u>, <u>whether charged with a misdemeanor or</u> <u>felony</u>.
- (3) The commission shall establish procedures for the conduct of the commission's affairs and internal policies necessary to carry out the commission's duties and responsibilities under this part.
- (4) Commission policies shall be placed in an appropriate manual, made publicly available on a website, and made available to all attorneys and professionals providing indigent <u>criminal</u> defense services, the Judicial Council, the governor, and the Legislature.
- (5) The delivery of indigent <u>criminal</u> defense services shall be independent of the judiciary, but the commission shall ensure that judges are permitted and encouraged to contribute information and advice concerning the delivery of indigent <u>criminal</u> defense services.
- (6) An indigent <u>criminal</u> defense system that is in compliance with minimum principles and procedures may not be required to provide indigent <u>criminal</u> defense services in excess of those principles and procedures.
- (7) The commission shall submit a report annually to the Judiciary Interim Committee on the commission's efforts to improve the provision of indigent criminal defense services statewide.

Enacted by Chapter 177, 2016 General Session

77-32-805 Indigent Defense Resources Account -- Administration.

- (1) For purposes of this part, "account" means the Indigent Defense Resources Account.
- (2)
 - (a) There is created within the General Fund a restricted account known as the "Indigent Defense Resources Restricted Account."
 - (b) Funds in the account shall be nonlapsing.
 - (c) Subject to appropriation, funds from the account shall be disbursed by the

,	Utah Indigent Defense Commission in accordance with the provisions of this
(chapter.
225	(3) The account consists of:
226	(a) funds appropriated by the Legislature based upon recommendations from the
227	commission consistent with principles of shared state and local funding;
228	(b) other moneys received by the commission pursuant to Subsection 77-32-809(3);
229	and
230	(c) interest and earnings from the investment of account funds.
231	(4) Funds from the account shall be invested by the state treasurer with the earnings
232	and interest accruing to the account.
233	(5) The account shall be administered by the commission for:
234	(a) the establishment and maintenance of a statewide indigent <u>criminal</u> defense
235	data collection system;
236	(b) grants to indigent <u>criminal</u> defense systems for defense resources; and
237	(c) grants to indigent <u>criminal</u> defense systems for defense services providers.
238	(6) Money allocated to or deposited into the account shall be used:
239	(a) to reimburse participating systems for commission-approved expenditures for
240 241	the purposes listed in Subsection (5); and
	(b) for administrative costs.
242 243	Enacted by Chapter 177, 2016 General Session
243	Chacled by Chapter 177, 2010 General Session
	77-32-806 Indigent <u>criminal</u> defense system participation.
246	(1) To qualify for grant funds described in Subsection 77-32-805(5), the
247	legislative body responsible for an indigent <u>criminal</u> defense system shall:
248	(a) adopt a resolution stating the intent to apply for grant funds from the account and
249	committing that the indigent criminal defense system shall meet minimum
250	principles for effective representation; and
251	(b) submit a certified copy of that resolution together with an application to the
252	commission.
253	(2) The commission may revoke an indigent <u>criminal</u> defense system's grant award if
.55 254	the system fails to meet minimum principles for effective representation.
255	the system rails to meet minimum principles for effective representation.
256	Enacted by Chapter 177, 2016 General Session
257	Endoted by Chapter 177, 2010 Centeral Cossion
258	77-32-807 Application for grant funds.
259	(1) Applications for grant moneys may seek resources for the following expenses:
260	(a) establishment and maintenance of an indigent eriminal defense data collection
261	system;
262	(b) defense resources;
263	(c) matching fund grants for defense services providers; and
264	(d) critical need grants for defense services
265	providers.
	· (2)

- (a) Matching fund grants, as described in Subsection (1)(c), may be awarded if the indigent <u>criminal</u> defense system spends an amount greater than the system's baseline budget, as described in Subsection 77-32-809(2)(a), for defense services providers.
- (b) For the purposes of Subsection (2)(a), matching funds is an amount equal to the product of:
 - (i) the indigent <u>criminal</u> defense system's spending above the system's baseline budget; and
 - (ii)
 - (A) 50% for counties of the first class;
 - (B) 100% for counties of the second or third class; or
 - (C) 200% for counties of the fourth through sixth class.
- (3) Critical need grant moneys, as described in Subsection (1)(d), may be awarded if the indigent <u>eriminal</u> defense system can demonstrate to the commission's satisfaction that:
 - (a) the system has incurred or reasonably anticipates incurring expenses in excess of the system's annual local funding, as adjusted for population growth and inflation;
 - (b) the funding for the expenses described in Subsection (3)(a) is necessary for the indigent <u>eriminal</u> defense system to meet minimum standards for effective representation; and
 - (c) increasing the system's local share for indigent <u>criminal</u> defense providers would constitute an undue burden on the indigent <u>criminal</u> defense system.
- (4) If the application of a participating indigent <u>criminal</u> defense system is approved by the commission, the director of the commission shall negotiate, enter into, and administer a contract with the participating indigent <u>criminal</u> defense system for the purposes listed in Subsection (1).
- (5) Nonparticipating systems remain responsible for meeting minimum principles for effective representation but may not be eligible for any legislative relief.
- (6) A county or municipality may not be required to increase the county or municipality's certified tax rate pursuant to Section 59-2-924 to participate in the fund.

Enacted by Chapter 177, 2016 General Session

77-32-808 Annual report, budget, and listing of expenditures -- Availability on website.

- (1) As used in this section, "expenditures" means all payments or disbursements of commission funds, received from any source, made by the commission.
- (2) The commission shall publish and make available to the public on a website the commission's annual report, budget, salary information, a listing of all expenditures, and a list of all indigent <u>criminal</u> defense systems.
- (3) Publication and availability of the listing of expenditures shall be on a quarterly basis. The commission's budget and salary information may be published and made available on an annual basis.

Enacted by Chapter 177, 2016 General Session
77-32-809 Investigation, audit, and review of indigent <u>eriminal</u> defense services Cooperation and participation with commission Maintenance of local share Necessity for excess funding Funds received by commission as state funds. (1) All indigent <u>eriminal</u> defense systems and attorneys engaged in providing indigent <u>eriminal</u> defense services shall cooperate and participate with the commission in the investigation, audit, and review of all indigent <u>eriminal</u> defense services. (2)
 (a) For purposes of this part, "baseline budget" means an indigent eriminal defense system's share of local funding, adjusted annually for growth in population and inflation.
 (b) An indigent <u>criminal</u> defense system shall maintain the system's baseline budget each year.
(c) If the commission determines that funding in excess of the indigent <u>criminal</u> defense system's baseline budget is necessary to achieve minimum principles for effective representation, the excess funding shall be paid from state or local funding, or a combination of both, as determined by the grant application process described in Section 77-32-807.
(d) An indigent <u>criminal</u> defense system is not required to expend all of the system's local funding if minimum principles for effective representation may be met for less than local funding.
(3) The commission may apply for and obtain state funding from any source to carry out the purposes of this part. All funds received by the commission, from any source, are state funds and shall be appropriated as provided by law.
Enacted by Chapter 177, 2016 General Session
 77-32-810 Applicability of GRAMA and Open and Public Meetings Act. (1) Official business conducted by the commission is subject to Title 63G, Chapter 2, Government Records Access and Management Act. (2) Meetings convened by the commission in the commission's official capacity are
subject to Title 52, Chapter 4, Open and Public Meetings Act.

Enacted by Chapter 177, 2016 General Session

Tab 2

JIRC BEST PRACTICES RECOMMENDATIONS

Recommendations for both Delinquency and Parental Defense

- 1. Appellate Representation
 - a. Review standards, requirements, compensation in rules and/or contracts regarding the first right of appeal
 - b. Create a contract provision specific to appeals
 - c. Option 1: Counties should provide the following:
 - i. Appellate training for trial attorneys
 - ii. Access to appellate counsel/advice for trial attorneys, and
 - iii. Appellate work must be acknowledged, funded, etc.
 - d. Option 2: Create a state-wide full time appellate division that handles all appeals throughout the state. To fund this office, counties could pool money or provide a percentage with matching funds from the state.

2. Caseloads/Episode Loads

- a. Collect data in CARE to measure caseload standards
 - i. Determine exactly what we are counting; families, children, cases, etc.
 - ii. System should be similar to judicial weighted caseloads
- b. Contracts should reflect the defenders workload, national standards on caseloads, provide appropriate payment in order to manage more episodes and the increasing complexity of work, and a provision giving attorneys the ability to refuse additional cases if they are overloaded
- c. Require attorneys to count and report workloads/episode loads in a consistent manner (contract provision)
- d. Need to know the time investment on the contract versus private work
- e. Institute a peer performance review process

3. Compensation

- a. Option 1: Federal Model
 - i. If attorneys hit a certain caseload, cases are assigned to a panel
 - ii. Attorneys can bill to a cap and apply for more per case
- b. Option 2: Flat Fee Modified
 - i. Presumptive fee
 - ii. Option to apply for more
- c. Option 3: Hybrid Compensation
 - i. Must provide sufficient predictability to ensure quality applicants and enough flexibility to allow for variations in caseload, complexity of cases, trials, expert witnesses and appeals

4. Training

- a. Mandatory training required in contracts
- b. Determine particular number of training hours and the type of training preferred
- c. Counties should provide funding for training or pool money with other counties combined with state participation

5. Communication with Clients

- a. Attorneys should comply with Model Rule of Professional Conduct 1.4, regarding communication with clients
- b. Create a contract provision outlining this duty.

6. Recognizing the Difference Between Child Welfare Work and Criminal Defense

a. There should be separate contracts for delinquency and parental defense, with specific training requirements for parental defense

Delinquency Representation

- 1. Duty of Representation is to the Juvenile Client
 - a. Clarify conflict of issue rules in dual representation cases
 - i. Example: where an attorney is representing the juvenile in a delinquency case and the parents in a child welfare case
 - ii. Review and provide clarification on relevant Model Rules of Professional Conduct and Judicial Rules
 - b. Create a contract provision detailing conflict determinations
 - c. Create a contract provision with specifications regarding CLE/Training requirements either prior to hiring or within a specific time frame of hire
- 2. Maintain Youth's Confidence and Secrets
 - a. MRPC Rule 1.6: Confidentiality of Information
 - b. NJDC Standard 2.3: Counsel must clarify that the client's private conversations with counsel are protected from disclosure to anyone, including the client's parent, the prosecutor, and the court. Counsel must also explain that the attorney-client privilege is deemed waived if anyone else, including a parent, is present during a conversation between the client and counsel.
 - c. These standards should be included in any training/education/CLE modules

3. Expressed Interest of Juvenile

- a. Attorney should understand the ethical obligation to represent the juvenile client's expressed/stated interests and ensure the juvenile's rights are sufficiently protected and advanced throughout the life of the case
- b. This standard should be included in any training/education/CLE modules

4. Require Early Appointment of Counsel

- a. Rules and Statutes must clarify when, where and how counsel will be appointed
- b. Ensure contracts currently comply with the statutory right to counsel
- c. Provide training for counsel and the judiciary on the right to counsel
- d. Option 1: Presumption of Indigence
 - i. Counsel appointed immediately and remains throughout, with no indigency determination
- e. Option 2: Indigence Determination After Detention Hearing
 - i. Counsel appointed immediately, regardless of indigence, with an indigence determination happening at a later date
- f. Option 3: Parents' Indigence as ONE Factor
 - i. Tighten up statutory language regarding parents' indigence as ONE factor in determining a minor's indigence

5. Require Counsel at Every Stage of the Proceeding Through Termination of Court Jurisdiction

- a. Counsel should be required at ALL stages, including the initial court appearance
- b. Create a contract provision enforcing this standard
- c. Conduct a rule/statute review and recommend any necessary amendments
- d. Training for counsel and judiciary

Parental Defense Representation

1. Representation Out of Court

- a. Attorney should assist the parent in exercising his/her rights to continue to make decisions regarding the child's medical, mental health & educational services, including seeking court orders when the parent has been left out of important decisions
- b. Attorney should intervene with the child welfare agency, provider agencies, medical providers and school to ensure parents' rights are protected, including attending mediation, family team meetings, etc.
- c. Create contract provision outlining these duties

2. Representation In Court

- a. Judges should work with attorneys to ensure a parental defender is present for each shelter hearing to serve as appointed counsel for limited purposes (with an indigency determination made as soon as possible thereafter)
- b. Courts should schedule consistent shelter hearing dates to help accomplish this goal
- c. Recommend possible rule amendment to Advisory Committee on Rules of Juvenile Procedure to ensure discovery is continuing and ongoing until jurisdiction is terminated

3. Advocacy and Client Empowerment

- a. Attorneys should advocate for the client's goals and empower the client to direct the representation and make informed decisions based on thorough counsel.
- b. Create a contract provision outlining this duty.

Tab 3

JIRC DATA COLLECTION RECOMMENDATIONS

1. <u>Caseloads/Episode Loads</u>

- a. Number of cases in which a contracted attorney has been appointed?
 - i. By attorney, county and case type (welfare/delinquency/adult)
- b. Number of clients each attorney has been appointed to represent?
 - i. By attorney, county and case type (welfare/delinquency/adult)
- c. Number of additional cases assigned to a contracted attorney in which they have NOT been appointed under a contract (private cases)?
 - i. By attorney, county and case type (welfare/delinquency/civil/criminal/probate, etc.)

2. Appearances

- a. What is the appearance rate of each attorney in contracted cases?
 - i. What is the appearance rate by type of hearing?
- b. At what stage of the proceedings were attorneys appointed?
 - i. Date in relation to case filing date?
 - ii. Type of hearing where they were appointed?
- c. Per contracted attorney, number of missed appearances on appointed cases?
 - i. Number of times the attorney missed an appearance in a felony delinquency case?

3. Filings

- a. How many dependency filings each year?
 - i. By court, county, district
- b. How many welfare filings each year?
 - i. By court, county, district
- c. Of the delinquency filings, how many were misdemeanors and how many were felonies?
- d. Number of attorneys appointed in both delinquency and welfare cases filed?
 - i. Types of cases attorneys were appointed to?
 - ii. Who were they appointed to represent (parent/juvenile)?
- e. Number of times an appointed attorney made no appearance in a felony delinquency case?
 - i. By county and type of hearing

TAB 10

Utah Juvenile Justice Working Group

Final Report



November 2016

Members of the Utah Juvenile Justice Working Group

Ron Gordon, Executive Director, Utah Commission on Criminal and Juvenile Justice (chair)

Sen. J. Stuart Adams, Senate 22nd District

Sen. Todd Weiler, Senate 23rd District

Rep. Eric Hutchings, House 38th District

Rep. Lowry Snow, House 74th District

Judge Michelle Heward, 2nd Judicial District

Judge James Michie, 3rd Judicial District

Judge Ryan Evershed, 8th Judicial District

Steve Anjewierden, Chief of Police Services, Unified Police Department

Susan Burke, Director of Juvenile Justice Services, Utah Department of Human Services (DHS)

Charri Brummer, Deputy Director, Division of Child and Family Services, DHS

Darin Carver, Clinical Practice Administrator

Maria Garciaz, Executive Director, NeighborWorks Salt Lake

Carolyn Hansen, Associate Director, Salt Lake County Division of Youth Services

Steve Kaelin, Alternative and Adult Education Specialist, Utah State Board of Education

Troy Rawlings, County Attorney, Davis County

Dawn Marie Rubio, Utah Juvenile Court Administrator

Doug Thomas, Director, Division of Substance Abuse and Mental, DHS

Pam Vickrey, Executive Director, Utah Juvenile Defender Attorneys

SUMMARY

In 2014, Utah undertook a research-based initiative to improve public safety and control costs in the adult corrections system, resulting in the passage of House Bill 348. During that process, stakeholders concluded that a similar data-driven effort could help Utah develop policies that improve outcomes in the juvenile justice system. A similar cross-agency effort, headed by the leaders of the Executive, Legislative and Judicial branches will be critical in a state where juvenile reoffending remained high despite the investment of more than \$50 million to incarcerate youth in Fiscal Year 2014.

Building on the success of the adult corrections initiative, Governor Gary Herbert, Chief Justice Matthew Durrant, Senate President Wayne Niederhauser, and House Speaker Gregory Hughes established the inter-branch Utah Juvenile Justice Working Group and asked members to develop policy recommendations that meet three goals:

- Promote public safety and hold juvenile offenders accountable;
- Control costs; and
- Improve recidivism and other outcomes for youth, families, and communities.

From June through November 2016, the Working Group, with technical assistance from The Pew Charitable Trusts and The Crime and Justice Institute at CRJ, completed a data-driven assessment of the Utah juvenile justice system. The assessment began with an exhaustive review of quantitative information from Utah's courts and juvenile corrections system. It also included stakeholder feedback from three surveys and more than 30 roundtable discussions with prosecutors, families, judges, victims, youth, probation officers, defense attorneys, and others connected to the juvenile justice system. After combing through the Utah data, the Working Group then examined research on what works to reduce reoffending along with effective policies and practices used in other states.

The major findings from this review of Utah's juvenile justice system include:

- A lack of statewide standards leads to inconsistent responses and disparate outcomes
 throughout the juvenile justice system. Disparities based upon race and geography persist for
 youth with similar offenses at every stage of the system and are most pronounced for youth
 removed from the home.
- Most youth who enter the system are low-level offenders. The majority of referrals into the
 juvenile justice system are for misdemeanor offenses, and more than 80 percent of youth
 entering the court system for the first time are at a low risk to reoffend. Youth who receive precourt diversion reoffend at lower rates, but most youth who end up on probation or in custody
 are denied a diversion opportunity when they first entered the system, despite being statutorily
 eligible.
- Youth who have never committed a felony make up a large portion of out-of-home placements, potentially increasing their risk to reoffend. A high proportion of youth removed from the home for the first time have limited prior histories of only misdemeanor or status offenses, charges such as habitual truancy, which would not be a crime if committed by an adult. Research shows that out-of-home placement does not reduce recidivism for most youth and may increase it for youth who enter at a low risk to reoffend.
- Youth remain stalled in the system for long periods due to court-ordered conditions such as financial obligations. Youth placed on probation or in custody spend approximately three years on average monitored by the court before aging out. The average length of an out-of-home

- disposition to state custody ranges from 10 months for the Department of Human Services' Division of Juvenile Justice Services (JJS) to 19 months for a Division of Child and Family Services (DCFS) disposition for youth placed for a delinquency or status offense without any finding of abuse, neglect, or dependency.
- Affordable, accessible services that effectively hold youth accountable and keep families
 intact are largely unavailable to the courts across the state. Judges, probation officers, and
 other stakeholders reported that high-quality services for youth living at home that reduce
 reoffending and strengthen families are not available across much of the state. Where they do
 exist, long waitlists and high costs hinder families' access.
- Out-of-home placement costs up to 17 times more than community supervision, but results in similar rates of re-offending. Community supervision costs up to \$7,500 per youth per year compared to as much as \$127,750 per year for some JJS non-secure out-of-home placements. But roughly half of youth released from both state custody and probation are convicted of another crime within two years.
- Most youth do not receive legal representation throughout the duration of the court process, even when their liberty is at stake. While statute requires appointment of counsel for felony offenses, it does not require counsel for misdemeanor or status offenses (which account for the vast majority of cases coming into the juvenile court system). Judges reported that few youth have legal representation through every stage of the court process. Statute allows the courts to impose any disposition, including out-of-home state custody, on youth charged with any delinquency offense at any stage of the court process without the benefit of counsel.

THE UTAH JUVENILE JUSTICE WORKING GROUP

Beginning in June 2016, the Working Group met monthly to conduct a comprehensive, data-driven assessment of the Utah juvenile justice system. Over the course of six meetings, Working Group members reviewed Utah data drawn from the Court and Agencies Record Exchange (CARE) system, which houses data collected by the Administrative Office of the Courts (AOC) and the Department of Human Services' (DHS) Division of Juvenile Justice Services (JJS). The Working Group also reviewed state statutes, administrative policies, and court rules while collecting additional system assessment information from stakeholder interviews and statewide surveys of juvenile court judges, probation officers, and JJS case managers. In addition, the Working Group members received stakeholder input by hosting 32 stakeholder roundtables across the state with groups on the front lines of the Utah juvenile justice system. Participants included:

- Law enforcement,
- Judges,
- Victims,
- Families,
- Probation officers, supervisors, and chiefs,
- JJS Youth Services, secure detention, work camp, and secure care staff,
- DHS' Division for Child and Families Services (DCFS) staff,
- Youth on probation and in secure care, secure detention, work camps, JJS proctor care, and DCFS custody,
- Juvenile prosecutors,

¹ Unless otherwise cited, all analyses in this report were conducted by The Pew Charitable Trusts and the Crime and Justice Institute at CRJ using data provided by the Administrative Office of the Courts, the Division of Juvenile Justice Services, the Division of Children and Family Services, and the Youth Parole Authority.

- Juvenile defense attorneys,
- Service providers,
- Educators,
- Tribal representatives, and
- Community partners.

In September, the Working Group heard from Dr. Edward Mulvey, a nationally recognized juvenile justice researcher at the University of Pittsburgh School of Medicine. Dr. Mulvey presented research on effective policies and practices for reducing recidivism for youth living at home as well as those in secure- and non-secure out-of-home placements.

After reviewing Utah's system and data, as well as research on best practices in reducing juvenile recidivism, the Working Group split into three subgroups to consider additional information and develop consensus-based policy recommendations:

- The *Pre-Adjudication Subgroup* focused on aligning pre-adjudication decision-making and court processes with research about improving outcomes,
- The *Dispositions Subgroup* focused on disposition options and supervision length to focus state resources on offenders at highest risk to public safety and more effectively hold youth accountable, and
- The Investment and Oversight Subgroup focused on investment in evidence-based practices and programming, as well as data collection, training, and system accountability.

Using the data and research discussed throughout the Working Group process as well as the more indepth analysis of their specific policy areas, members of each subgroup prepared a set of policy proposals and presented them to the full panel for consideration. The Working Group discussed the proposals and submitted this report of process, findings and consensus recommendations to the Commission on Criminal and Juvenile Justice (CCJJ) for consideration during the 2017 legislative session.

Collectively, the Working Group's policy recommendations will yield an estimated \$25 million in averted costs from JJS over five years for reinvestment in a continuum of evidence-based options for the courts to hold youth accountable in the community, with additional averted costs stemming from changes to how existing JJS facilities are utilized. Further, the policy changes will create an additional \$33 million in averted costs for DCFS over five years for reinvestment in evidence-based in-home services to improve outcomes and strengthen families. The Working Group recommends that the legislature provide an upfront investment to fund services before these policies changes go into effect to support the achievement of this reinvestment.

KEY FINDINGS

A lack of statewide standards leads to inconsistent responses and disparate outcomes.

The Working Group found that Utah state law includes few criteria or requirements for decision-making at each stage of the juvenile justice process. In addition, Utah data reveal disparate practices and outcomes for similarly situated youth by judicial district and by race.

The Working Group found inconsistent practices at key decision points throughout the system, including:

Non-Judicial Adjustment Prior to Formal Court Processing

- The practice of offering youth non-judicial adjustment—a pre-court diversion in which a youth may avoid a charge in court by signing an agreement and completing its requirements—varies by judicial district. No statutory requirements or prohibitions exist, leading to disparate outcomes across the state. For example,
 - o In the 7th judicial district, of the youth charged with class B misdemeanors or below coming into the system for the first time, just over one-third received a non-judicial adjustment instead of a petition in 2015. But in the 1st judicial district, more than two-thirds of those youth received a non-judicial adjustment that year.

Technical Violations of Court Orders

• There are no statutory criteria for how and when to respond to technical violations (violations of court orders that are not new offenses). In the Working Group's roundtables and surveys, probation officers, supervisors, and chiefs reported inconsistency in how different courts allow them to respond to technical violations, including which types of offenses, if any, they are permitted to act on in the community. Probation staff report that differences in these practices lead to disparities in which behaviors trigger contempt charges.

Out-of-Home Placement

- There is wide district-level variation in the use of out-of-home placements, relative to the districts' proportion of youth coming into the system (new court intakes). The districts that have the largest share of cases coming into the system do not have as large a share of out-of-home placements. For example:
 - While the 2nd Judicial District accounted for 18 percent of new court intakes across the state in 2015, the district accounts for 32 percent of JJS detention dispositions and bookings.
 - o In contrast, the 4th Judicial District accounted for 20 percent of new intakes in 2015 but just 11 percent of JJS detention dispositions and bookings.
- Sentencing guidelines are not statutorily binding for judges. In surveys, 77 percent of Utah's
 juvenile court judges reported sometimes or always departing from sentencing guidelines,
 either departing "up" (giving a more serious disposition than the guidelines recommend) or
 departing "down" (giving a less serious disposition than the guidelines recommend).
- The likelihood that a youth will be placed in child welfare custody for delinquent behavior without a finding of abuse, neglect, or dependency varies by district. Most DCFS delinquent youth are placed in non-secure out-of-home placements that also house youth found to have been abused, neglected, or dependent on the state. DCFS staff report that they do not receive training on effective responses to the criminogenic needs of youth. Additionally, some judicial districts use DCFS custody frequently for delinquent youth, while others use it rarely, if ever. For example:
 - The 2nd district accounted for just nine percent of DCFS custody dispositions in 2015 despite representing 18 percent of new intakes statewide.
 - o In the same year, however, the 3rd district represented 36 percent of new intakes but more than half of DCFS custody dispositions (see Table One)

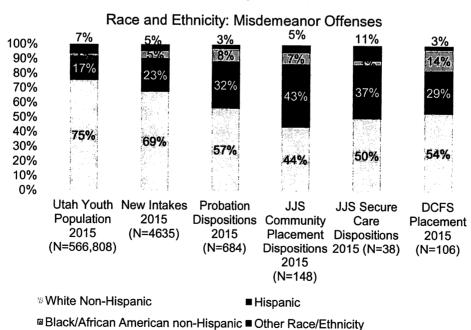
Table One

	New Intakes 2015	DCFS Custody Dispositions 2015
First District	7%	1%
Second District	18%	9%
Third District	36%	56%
Fourth District	20%	16%
Fifth District	8%	0%
Sixth District	3%	3%
Seventh District	3%	11%
Eighth District	4%	2%

Racial disparities persist for all types of probation and custody dispositions, and the disparities grow larger as youth progress deeper into the system, especially once they are removed from the home. These racial disparities remain when taking into account the different demographics in each judicial district, and differences in offense type. For example:

- Hispanic youth charged with misdemeanors make up 43 percent of JJS non-secure out-of-home placement, but only 23 percent of new cases coming into the system (see Chart One)
- African-American youth make up 5 percent of new misdemeanor cases coming into the system, but nearly three times that proportion (14 percent) of misdemeanor youth placed in DCFS custody solely for delinquency.

Chart One: Race and Ethnicity for Misdemeanor Offenses

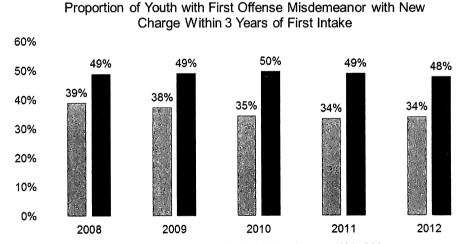


Most youth who enter the system are low-level offenders.

The Working Group reviewed Utah data showing that most youth entering the juvenile justice system are charged with low-level offenses. While juvenile arrests in Utah fell approximately 33 percent between 2002-2012, Utah's juvenile arrest rate remains higher than the national average, a gap driven primarily by lower-level crime. The majority of the youth entering the juvenile justice system were referred on a misdemeanor offense, and 80 percent of youth entering the system for the first time were assessed as low risk to reoffend.

Probation officers and other stakeholders reported the effectiveness of non-judicial adjustment at keeping low-level youth out of the system, and their perspective was supported by data: a higher proportion of misdemeanants and status offenders who receive a petition on their first case have subsequent charges, compared to those who receive a non-judicial adjustment (see Chart Two for an example for misdemeanor offenders). The difference in rates of reoffending is primarily driven by contempt charges, or technical violations of court orders that are not new delinquency charges. However, due to court rules and local standards that vary by district, many youth who are statutorily eligible for non-judicial adjustment do not receive it, a reality that is reflected in district-level variation—and an overall statewide decline—in the proportion of youth who receive a non-judicial adjustment on their first case. The most common charges for youth who have a petition filed on their first case rather than receiving a non-judicial adjustment are marijuana possession, drug paraphernalia, and truancy. Of the youth who progress through to the deep end of the system on probation or in state custody, most did not have a non-judicial adjustment on their first case.

Chart Two: Non-Judicial Adjustment and Petition Outcomes for Misdemeanor Offenders



- % First Intake Non-Judicial Misd New Charge within 3 Years
- ■% First Intake Petition Misd New Charge Within 3 Years

Adding context to such data, the Working Group reviewed research showing that most youth involved with the juvenile justice system are not on a path to adult criminal behavior. A researcher who addressed the Working Group, Dr. Mulvey, presented research showing that lower risk youth should be held accountable through diversion outside of court because too much involvement with the juvenile justice system can increase recidivism for those youth.²

² Dr. Edward Mulvey, Presentation to the Utah Juvenile Justice Working Group, September 1st, 2016.

Youth who have never committed a felony make up a large portion of out-of-home placements, potentially increasing their risk to reoffend.

In its review of research, the Working Group found broad consensus that out-of-home placements do not improve outcomes for most youth and, in fact, can increase the likelihood of reoffending for certain youth. Research indicates that the most intensive dispositions should target youth who pose the greatest risk to public safety. In Utah, however, data show large proportions of the youth housed in out-of-home placements are not serious, chronic offenders. Instead, a significant percentage of Utah youth placed in the custody of the state for the first time have only misdemeanors or status offenses in their history and few prior delinquency offenses. The Working Group found that Utah judges making out-of-home placement dispositions lack statutory standards to guide them, whether their decisions concern pre-adjudication secure detention or long-term state custody.

Although the state's validated Pre-Screen Risk Assessment (PSRA) tool shows that placement in secure detention is a risk factor for reoffending, secure detention is the most frequently used out-of-home disposition. For example, the first out-of-home placement for many youth entering Utah's system, including many lower-level youth, is secure detention. In Utah, secure detention can be used in any case both as a disposition and to hold youth at any point prior to disposition. Utah does not utilize a risk assessment instrument to inform secure detention decision-making and, in 2015, more than 400 youth spent time in secure detention before adjudication on their first charge, staying an average of nine days. The most common charges for those detained youth included retail theft, misdemeanor assault, and marijuana offenses, and 44 percent of the youth were assessed at a low risk to reoffend by the PSRA (just 11 percent are high risk). For those youth who have prior contact with the system, contempt is the most serious charge in their court history for nearly half of detention bookings (43 percent). Adjudicated youth who are ordered to secure detention reoffend at higher rates than those who are not, a gap that holds among youth who are assessed as low risk.

Chart Three: Outcomes for Low-Risk Youth Detained on their First Case

Proportion of New Charges for PSRA Low-Risk Youth Ordered to Detention at First Intake, 2012 70% 64% 60% 60% 49% 50% 45% 45% 40% 34% 30% 20% 10% 0% % New Charge within 1 Year % New Charge within 3 % New Charge within 2 Years Years

■ Adjudicated Youth Ordered to Detention at First Intake, PSRA Low Risk, 2012

[■] First Intake Adjudicated Petition, PSRA Low Risk, 2012

³ Presentation of Dr. Edward Mulvey to the Utah Juvenile Justice Working Group, September 1st, 2016.

⁴ Secure detention is used both as a disposition and to hold youth prior to adjudication.

Looking at youth in the deep end of Utah's juvenile justice system, the Working Group found that the vast majority are not serious, chronic offenders. Data show that large proportions of youth in out-of-home placement do not have serious delinquency offenses in their history and have limited or no history of court involvement. For example:

- The majority of out-of-home dispositions (81 percent) are for non-felony cases, including:
 - o 81 percent of Observation and Assessment (O&A) dispositions,
 - o 91 percent of DCFS delinquency dispositions,
 - 83 percent of secure detention dispositions,
 - o 86 percent of JJS non-secure out-of-home placement dispositions, and
 - 50 percent of JJS secure care dispositions.
- 40% of youth sent to JJS non-secure, out-of-home placements and 17% of youth sent to JJS secure care did not have a prior felony in their history before their first placement.
- Contempt charges are a major driver within each type of state custody disposition, and the majority of youth placed in DCFS or JJS non-secure out-of-home placement on contempt had not committed a felony prior to their first placement.
 - For those who did have a prior felony, an average of more than six months had passed since the felony charge.
 - Contempt is the most serious offense for 19% of secure care dispositions.
- The majority of youth on probation and in DCFS custody —and nearly half of JJS non-secure outof-home placement youth—have two or fewer prior delinquency incidents before their first placement.

Youth remain stalled in the system for a long period due to court-ordered conditions such as financial obligations.

The Working Group found that with the exception of Observation and Assessment and secure detention, all disposition lengths in Utah are indefinite, and youth remain in the system for long periods of time, often spending several years under court jurisdiction. No statutory language restricts overall supervision length, probation length, or custody disposition length, except for the jurisdictional age of 21.

Stakeholders, including families, probation officers, youth, and JJS and DCFS staff, reported that it is difficult for youth to work their way out of the system once they enter it, that major financial and community service obligations overwhelm youth, and that expectations and incentives for release are unclear at all stages of case processing. As one youth in secure detention stated, "The system feels like once you're in it, it's almost impossible to get out."

Length of Stay for Youth Who Are Formally Petitioned is Much Longer, Despite Similar Offenses to Diverted Youth

For youth entering the system for the first time, the length of time they are monitored varies dramatically depending on whether the youth is diverted or sent to court (petitioned). Even though the offenses for youth who are petitioned and youth who are diverted through non-judicial adjustment are largely similar, the average length of a non-judicial adjustment for a youth's first case is less than two months, while youth who are petitioned on their first case average one year under court jurisdiction.

Length of Stay Under Court Jurisdiction Averages Three Years for Youth Put on Probation or in Custody The Working Group found that youth who are adjudicated and disposed to probation or state custody spend on average three years monitored by the juvenile justice system. All youth placed on probation

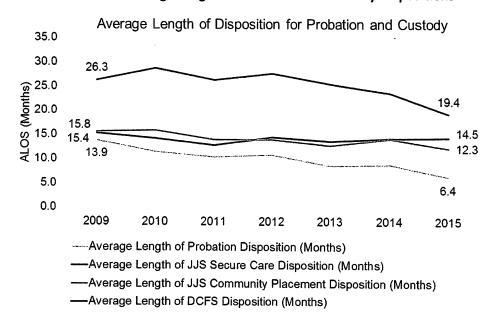
⁵The jurisdictional limit of 21 years of age can be surpassed if financial obligations remain.

must comply with 18 standard conditions, and many have additional special conditions, regardless of their risk level or offense type. Research reviewed by the dispositions subgroup shows that heavy financial obligations can extend length of stay, increase the likelihood of recidivism, and contribute to racial disparities. Yet Utah data show that fines, fees, and community service hours are the most common dispositions. One probation chief summarized the challenges this way: "The standard probation orders are too much for a [probation officer] to hold any kid to, so they end up picking and choosing what to enforce. It's too much for the [probation officer] to hold the youth accountable."

Lengths of Stay in Out-of-Home Placement Exceed Evidence-Based Timelines for Reducing Reoffending Research finds no consistent relationship between longer lengths of stay in out-of-home placements and recidivism; one recent study of serious offenders, for example, found no change in re-arrest rates for youth staying more than three months out of home compared to youth who stayed three months. However, for Utah youth who are placed out of home, the average length of a JJS non-secure placement disposition is nearly 10 months, while the average length of a JJS secure care disposition is more than 14 months (see Chart Four).

Youth who receive a DCFS disposition for a delinquency or status offense stay out of home more than 19 months on average, significantly longer than the average JJS secure care disposition. The Working Group found that although youth in DCFS custody solely for a delinquency or status offense are placed in the same facilities as youth with abuse, neglect, or dependency petitions, they do not receive the same statutory rights and protections, such as permanency planning.

Chart Four: Average Length of Probation and Custody Dispositions



⁶ Alex Piquero and Wesley Jennings, "Justice System Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders" DRAFT, *Juvenile Law Center*, http://debtorsprison.jlc.org/documents/JLC-Debtors-Prison-criminology-study.pdf

⁷ Loughran, T. A., Mulvey, E. P., Schubert, C. A., Fagan, J., Piquero, A. R., & Losoya, S. H. (2009). Estimating a dose-response relationship between length of stay and future recidivism in serious juvenile offenders. Criminology, 47, 669-740

Most youth who remain in the system for long lengths of time do not leave the system at a lower risk to reoffend than when they entered. Rather, Utah data show that while very few of the youth who are put on probation or in JJS custody enter the court system as high risk, most of them leave the system high risk. Much of this risk elevation occurs during the period of court monitoring that occurs before the youth is placed on probation or in custody.

Affordable, accessible services shown to hold offenders accountable and keep families intact are largely unavailable to the courts across the state.

The Working Group reviewed research showing that high quality, evidence-based programming for youth in the home and community improves outcomes while also reducing costs. Utah prosecutors, law enforcement, and other stakeholders reported to the Working Group that evidence-based services for youth in the home keep families united and provide them with tools to improve accountability. As one law enforcement officer noted, "We need to invest in the families and see what is needed for the family to improve."

Despite knowledge of the scientific evidence and the desire for quality programs, stakeholders at every stage of Utah's juvenile justice system reported that such evidence-based services for youth living at home are largely unavailable. Data show that early intervention, substance abuse treatment, and family services are in place and working effectively only in a few districts in the state, and are particularly lacking in rural areas. In surveys, probation officers and JJS case managers reported that the options and availability of effective services for youth living at home vary regionally, and that youth often encounter barriers to service, such as limited transportation, long waitlists, and high costs to families.

In roundtables, a wide range of stakeholders, including probation staff, defense attorneys, and prosecutors, said the scarcity of services in the community often leads to decisions that send lower-level youth deeper into the justice system. In surveys, judges cited a lack of access to services in the community as a factor in their decisions to place youth in state custody. In addition, staff at JJS non-secure, out-of-home placement and secure care facilities reported that high proportions of lower-level youth are placed out of home solely as a means to ensure the youth can access services. One probation officer said that, "One of the things that really frustrates us is the lack of services and the lack of quality services for our kids because we do end up moving them along farther into the system to meet their needs [when they] could have their needs addressed in the community."

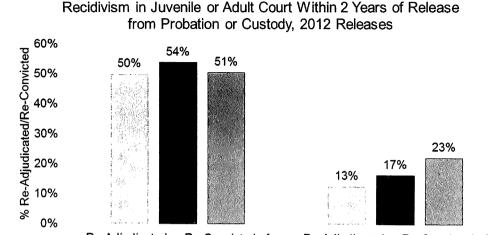
Out-of-home placement can cost up to 17 times more than community supervision, but results in similar rates of re-offending.

The Working Group found that JJS non-secure out-of-home placement beds—where the largest share of youth are placed— cost as much as \$127,750 per year and average nearly \$44,000 per year. JJS work camps cost the state \$208 per youth per day even though a youth working an eight-hour day could only earn approximately \$50 in restitution. In contrast to out-of-home placement, community supervision costs the state up to \$7,500 per youth per year. Longer lengths of stay increase costs in all parts of the system. However, despite dramatic differences in cost, overall recidivism rates are similar for youth released from probation and state custody: approximately 50 percent are re-adjudicated in the juvenile justice system or re-convicted in the adult system within two years of release (see Chart Five). Most of

⁸ Christopher T. Lowenkamp and Edward J. Latessa, "Evaluation of Ohio's RECLAIM funded programs, community corrections facilities, and DYS facilities," (Cincinnati, OH: University of Cincinnati, 2005).

these youth recidivated on a misdemeanor offense rather than a felony, and the data indicate that, overall, the severity of offenses did not increase as they progressed deeper through the system.

Chart Five: Recidivism Outcomes for Youth Released from Probation and JJS Custody



Re-Adjudicated or Re-Convicted of Felony or Misdemeanor Felony

9 Probation JJS Community Placement JJS Secure Care

Most youth do not receive legal representation throughout the duration of the court process, even when their liberty is at stake.

Utah statute allows the court to impose any disposition, including out-of-home placement, on youth charged with any offense type at any stage of the court process. The only exception comes in cases involving status offenders, who cannot be placed in JJS detention without a new contempt charge. In their comments to the Working Group at the judicial roundtable, judges expressed concern that few youth have legal representation at every stage of the court process, and in surveys, just 38 percent of judges reported that defense counsel is appointed for all types of offenses. Stakeholders also expressed concern that probation officers were responsible for filing charges in many districts, and prosecutors were never involved in reviewing the cases for probable cause. In cases where attorneys are appointed at the beginning of a case, only 35 percent of judges reported that defense lawyers are present at subsequent detention hearings; additionally, judges reported that prosecutors often weren't present at these hearings, and some judges reported that prosecutors weren't even present at adjudication or disposition hearings.

State law does not require that an attorney be present for misdemeanor and contempt charges, even if the initial charge is a felony. As a result, even youth who face the most serious consequence—removal from their home and placement in state custody—may not have legal representation and are not required by statute to receive it. In roundtable discussions, large proportions of youth—including those in secure care and secure detention facilities—reported having no lawyer during the court process. Of those youth who reported having legal representation, many said the quality of representation was poor due to inadequate communication by lawyers with their clients and families.

The Working Group reviewed research demonstrating that youth who perceive the juvenile justice system as fair (whether it is actually fair to them or not) are less likely to reoffend; conversely, punishing youth in an unfair process (again, whether perceived or real) reinforces social disaffection and antisocial

behavior. However, the Working Group's analysis demonstrates that a lack of statewide standards governing dispositions and legal representation, as well as inconsistent responses by the juvenile justice system to youth by geography and race, create disparate outcomes through the system.

POLICY RECOMMENDATIONS

Reinvest in effective early interventions to improve outcomes, strengthen families, and keep lower-level youth out of the juvenile justice system

Reinvestment in Graduated Responses for Pre-Court Early Intervention

- Reinvestment of averted costs and savings from reductions in out-of-home placement should prioritize evidence-based early interventions as part of a statewide tiered system of graduated responses prior to a court referral.
 - Funding must be made available for early intervention investments including, but not limited to, statewide expansion of receiving centers, Mobile Crisis Outreach Teams (MCOT), and youth courts, as well as for additional allocations for family strengthening programs and proven community-based truancy interventions.
 - MCOTs shall be expanded statewide and shall be authorized to accept referrals from family members, schools, or law enforcement officers for youth who are experiencing mental, emotional, or behavioral crises.

Statewide Tiered System of Graduated Responses Prior to Court Referral

- School-based offenses¹⁰
 - o Class C misdemeanors and below
 - An enrolled student shall never be arrested, issued a citation, or have a complaint filed on them for behavior alleged to have taken place in a school environment if that behavior constitutes a class C misdemeanor, infraction, or status offense.
 - Instead, responses to these behaviors shall occur through multidisciplinary early interventions such as MCOTs, receiving centers, and other community-based alternatives to court.
 - Youth may also utilize the tiered responses developed to intervene with schoolbased class B misdemeanors and above (see below).
 - All non-person Class A misdemeanors and all class B misdemeanors with limited exceptions for certain class B persons offenses
 - For all non-person Class A misdemeanors and all class B misdemeanors (with limited exceptions for certain class B persons offenses) that would otherwise be referred to court, youth must fail to fully progress through a tiered set of graduated responses before being referred to court or to law enforcement for behavior alleged to have taken place in a school environment:
 - Tier 1:
 - The youth must be referred to a youth court program or comparable restorative justice program within the school setting rather than receive a referral to court.
 - Tier 2:

⁹ Dr. Edward Mulvey, Presentation to the Utah Juvenile Justice Working Group, September 1, 2016

¹⁰ Law enforcement may be consulted to make charge determinations.

- Youth who fail to comply with the school-based restorative justice program shall be referred to a multidisciplinary team of community stakeholders, including, but not limited to family members, a school administrator or his or her designee, and a mental health worker or clinician. The team must review the case and develop a plan for the youth with the goal of providing additional supports to address the youth's needs and prevent a court referral.
- The youth must comply with the plan set out by the multidisciplinary team.

• Tier 3:

 If the youth is unsuccessful in complying with his or her plan, the youth may be referred to the prosecuting attorney, who may review the case and refer to intake probation for determination of eligibility for non-judicial adjustment.

Expand and create statewide standards for non-judicial adjustments to hold lower-level youth accountable, increase fairness, and reduce reoffending

- When a youth is apprehended or cited by law enforcement, the initial report shall be referred to the prosecuting attorney for review.
- At that point, the prosecuting attorney shall review the case without unnecessary delay and make one of the following charging decisions according to the standard laid out below:
 - o Dismiss
 - o Charge and refer to intake for determination of eligibility for non-judicial adjustment
- In making the charging decision, the prosecutor shall use the following standard:
 - A prosecutor shall only charge a youth if the prosecutor reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to support conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice.
- Following the screening by the prosecuting attorney, the youth will meet with an intake
 probation officer. Any youth with two or fewer prior adjudications who is alleged to have
 committed a misdemeanor and who has not already failed to complete three prior non-judicial
 adjustments, including youth who have been placed in secure detention prior to the intake
 appointment, shall be offered a non-judicial adjustment.
 - Any other youth may be offered a non-judicial adjustment at the discretion of the intake officer.
- Acceptance of an offer of non-judicial adjustment shall not require an admission of guilt from a youth.
- A youth shall be offered the opportunity to seek the advice of counsel after receiving and prior to accepting the non-judicial offer.
- When a youth declines to accept a non-judicial adjustment, or when a probation officer
 determines that a youth who is ineligible for an automatic non-judicial adjustment offer has
 demonstrated conduct deemed inappropriate for such an adjustment, a petition must be filed
 with the court.
- At that point, the prosecuting attorney shall review the case again and make one of the following charging decisions according to the same standard laid out above:

- o Dismiss
- o Refer back for non-judicial adjustment
- o Petition
- If a petition is filed, the judge shall be authorized at any subsequent stage of the court process to refer any case back for non-judicial adjustment.

Non-Judicial Financial Obligations

- Fines, fees, and restitution for non-judicial adjustment or any other court diversion program shall be assessed based upon the youth's family's ability to pay as determined by a statewide sliding scale established in accordance with federal poverty levels.
- A youth shall not be refused an offer for non-judicial adjustment due to an inability to pay a fine
 or fee associated with non-judicial adjustment, court diversion program, or any other related
 programming or sanction.
- A youth shall not have a petition filed due to an inability to pay a fine or fee associated with non-judicial adjustment or any other court diversion program, or due to an outstanding balance on a fine or fee upon completion of the non-judicial adjustment or other court diversion program.

Reinvest in a continuum of community-based alternatives to detention in every judicial district and focus pre-adjudication detention on youth who pose a public safety risk

Investment in Community-Based Alternatives to Detention

- A continuum of community-based alternatives to detention for youth who are living at home shall be available in every judicial district. The options shall include home detention for serious, higher risk youth who might otherwise be held in custody as well as a range of less restrictive, community-based programs for lower-level youth.
- All savings and costs averted from reductions in the number of youth placed in pre-adjudication secure detention shall be reinvested in community-based alternatives to detention programs for youth living at home.
- If a youth is eligible for alternatives to detention according to the results of a detention risk assessment, an alternative may but need not include supervision by a probation or intake probation officer.

Pre-Adjudication Detention Criteria

- The state, through collaboration between JJS and AOC, shall develop or adopt and also validate a statewide detention risk assessment instrument and establish cutoff scores for determining eligibility for detention and alternatives to detention prior to adjudication.
- Every youth apprehended by law enforcement and under consideration for placement in secure detention at any point prior to adjudication shall undergo a detention risk assessment conducted by an individual trained to administer it.
 - The results of the detention risk assessment shall determine if the youth is eligible to be detained, referred to a community-based alternative, or released to a parent or guardian on the promise to reappear at future court hearings.

- The law enforcement officer, court, or probation officer administering the assessment shall have the discretion to release youth to a less restrictive program even if the youth is assessed as eligible for secure detention.
- Once a youth is assessed as eligible for secure detention, the youth shall only be detained if:
 - 1) Leaving the youth with a parent, a guardian, or custodian presents an unreasonable risk to public safety and the reason for this determination is entered into the written record by the law enforcement officer, probation officer, or court;
 - 2) The law enforcement officer, probation officer, or the court have considered and, where appropriate, employed the least restrictive community-based alternative to detention prior to the use of secure detention; and
 - 3) The youth is eligible for secure detention according to JJS rule R547-13-4
 - Youth shall not be placed in secure detention based upon the number of presenting offenses, only the severity of offense.
 - JJS shall remove from rule <u>R547-13-4</u> the criterion that a youth may be detained when "three or more non-status criminal offenses are currently alleged in a single criminal episode."
- Youth charged only with a status offense shall not be placed in secure detention. This does not apply to out-of-state runaways.
- Youth shall not be detained due to a lack of more appropriate facilities or due to a parent or guardian avoiding his or her legal responsibilities.
- For youth who are detained, the law enforcement officer, probation officer, or judge must state for the record the reason that the youth was detained. If an override of the risk assessment occurred, the reason must be recorded in writing or on the record.

Ensure that all youth receive legal counsel at every stage of the court process and that the state collaborates with counties to certify that legal representation meets high standards across Utah

- Legal counsel shall be appointed in all juvenile court cases.
 - A determination of indigence shall not be required to qualify for appointed counsel but may be considered for purposes of reimbursement.
- The appointment of legal counsel shall extend until the closure of the case and shall include all appellate proceedings.
- The Utah Indigent Defense Commission shall oversee or create a statewide entity to oversee
 matters relating to juvenile legal representation, including but not limited to contract
 standardization, training and certification, technical assistance, and the development of a costsharing partnership between the state and counties.

Establish timelines to improve fairness and increase the swiftness of responses from the system

- Youth shall be adjudicated within 60 days of the filing of a petition with the court unless extended by the court for good cause, through stipulation of the parties, or through a motion by the defense.
- Dispositions shall not be held under advisement. Disposition hearings shall be delayed only as long as needed to complete the requisite assessments.

Expand investment into evidence-based programs in the community so that every judicial district in the state has access to high-quality options proven to strengthen families and reduce reoffending for youth living at home

- All programs delivered to youth in the juvenile justice system should be evidence-based or
 within a specified time period rated by a standardized tool as effective for reducing recidivism.
 Tools used to evaluate programs should be agreed upon and selected by the Administrative
 Office of the Courts and Utah Department of Human Services. Once programs are evaluated, a
 timeline should be developed to support improvements of the program to achieve reduced
 recidivism.
- Reinvestment of averted costs and savings from reductions in out-of-home placements should prioritize evidence-based cognitive behavioral and family therapy programs designed to reduce recidivism. Other evidence-based programs shall then be considered as well. Implementation and infrastructure (including staffing, transportation, family wraparound services, and flexible funds) to support the sustainability and fidelity of evidence-based programs shall also be funded.
- Funding must be made available to establish a continuum of evidence-based cognitive behavioral and family therapy programs that target a youth's criminogenic needs in every judicial district statewide for youth living at home who are assessed as moderate or high risk.

Adopt performance-based contracting to ensure the results and accountability we expect from our system

- A performance-based contracting system shall be developed for contracted services in the
 community as well as for contracted out-of-home placement providers. All contracts should
 incentivize the use of evidence-based programs or those programs identified as effective by
 standardized tools, and the use of three-month, evidence-based timelines for program
 completion.
 - Contracts for out-of-home placements shall offer premium rates for youth who receive appropriate dosage of treatment and are successfully discharged within the first three months.
 - When services are provided by a state agency, the agency should be guided by the same evidence-based timelines.
- In rural areas, incentives shall be developed to ensure that evidence-based services for youth living at home are available and accessible.

Increase the use of structured decision making to respond uniformly and ensure that the right youth receive the right level of supervision and services for the right amount of time

Structured Decision Making

- All adjudicated youth shall undergo a Pre-Screen Risk Assessment (PSRA) prior to disposition, excluding those with minor traffic, fish and game, tobacco, and curfew violations. Assessment information shall not be provided to the judge prior to the adjudicatory decision but shall be used to inform disposition decisions and case planning.
 - All adjudicated youth shall also undergo an appropriate risk assessment within seven days of case closure.

- Case plans for youth on community supervision and in out-of-home placement shall be created in collaboration with families and shall be individualized, informed by the results of a validated risk and needs assessment, and tailored to the youth's offense and history.
- A statewide system of appropriate responses, including sanctions and incentives, shall be
 established and approved by the Sentencing Commission to help Probation and JJS respond to
 positive and negative behavior of youth on diversion, community supervision, and in out-ofhome placements.
 - The responses shall be swift and certain; include a continuum of community-based options for youth living at home; target the youth's criminogenic risk and needs and the severity of the violation; and provide earned discharge credits as incentive for compliance.
 - All responses to compliant and noncompliant behavior shall be documented in a youth's case plan, including positive behaviors and incentives, violation(s) and corresponding sanction(s), and whether the youth had a subsequent violation after a sanction. Before referring the matter to court for judicial review, either through a contempt or failure to comply citation, supervising officers must document a pattern of technical violations and sanction attempts in the youth's case plan. Notwithstanding the above, violations for no-contact orders with victims and new delinquency offenses may be filed directly with the court.

Expand training in order to increase consistency in the use of evidence-based practices and to reduce racial disparities

Training

- Training shall be expanded for stakeholders throughout the juvenile justice system, including
 educators, law enforcement officers, probation officials, judges, JJS staff, DCFS staff, and
 program providers. Training should be focused on evidence-based principles of juvenile justice,
 such as risk, needs, responsivity, and fidelity, and shall be supplemented by the following topics:
 - Adolescent development
 - o Identifying and using local behavioral health resources
 - o Implicit bias
 - o Cultural competency
 - Graduated responses
 - o Utah juvenile justice system data and outcomes
 - o Gangs

Establish enhanced inter-branch oversight to inform decision-making and ensure the success and sustainability of reforms

Oversight and Data Collection

• The state shall create an oversight entity tasked with ensuring the effective implementation of the juvenile justice reforms recommended by the Working Group. An existing structure can be used for this purpose (the Commission on Criminal and Juvenile Justice or the Utah Board of Juvenile Justice, for example). Potential gaps in stakeholder representation on such boards should be addressed through additions to their membership or the creation of a subgroup with expanded membership to ensure representation of all three government branches and all parts of the juvenile justice system. Responsibilities of the oversight entity shall include:

- Ensuring implementation support for the expansion of evidence-based practices, including fidelity assistance, quality assurance, and ongoing evaluation;
- Examining the potential use of third party entities or an intermediary organization for assistance with implementation and supporting performance-based contracting;
- Overseeing the development of performance measures to track specific elements of the reforms recommended by the Working Group, while ensuring early and ongoing stakeholder engagement in identifying the relevant performance measures;
- Evaluating currently collected data elements and contract requirements to streamline reporting, reduce redundancies, and eliminate inefficiencies with the goal of ensuring a focus on recidivism reduction;
- Reviewing averted costs, ensuring reinvestment into prioritized community-based programs for youth living at home, and aligning resources into appropriate entities;
- Analyzing the alignment of resources and the roles and responsibilities of agencies, such as the operation of Early Intervention services, Receiving Centers, and diversion;
- Meeting on a regular basis; and
- Reporting back to the legislative, executive, and judicial branches on the progress of the reforms and any additional areas in need of review.
- The oversight entity shall ensure that data reporting is enhanced and expanded to include additional areas that are either difficult to analyze or are not reviewed on a regular basis to inform decision making. These areas shall include but are not limited to:
 - Key referral and disposition data from each judicial district;
 - Enhanced data on the length of time youth spend in the system, including the total time spent under court jurisdiction, on community supervision, and in individual out-of-home placements;
 - Relevant data pertaining to youth in DCFS custody, including the number of youth and time spent in out-of-home placement;
 - Recidivism data for all diversion and disposition types, including tracking youth from the juvenile system to the adult system;
 - Aggregate risk levels throughout the time youth are receiving services, under supervision, and in out-of-home placement as well as changes in risk level over time; and
 - Dosage of programming

Promote individualized dispositions, reduce unnecessary, control-oriented probation conditions, and tailor therapeutic conditions to address a youth's assessed risks and needs

- Remove standard conditions that require youth to follow parental rules, house arrest, treatment, gang conditions and curfew and convert them to special conditions that may be ordered to address a specifically assessed risk or need; clarify the standard conditions of probation regarding weapon possession (to be specific to oneself, not one's family) and victim contact (to be specific to no-contact order).
- Eliminate state supervision as a separate disposition option and merge it into probation so that probation officers can supervise all youths according to their risk and needs.
- Fines, fees, restitution, and hours shall be considered collectively to ensure that the order is reasonable, and, where appropriate, prioritizes victim compensation.

- Mandatory court-ordered conditions, such as treatment, and other minimum requirements shall be removed from statute. Treatment shall only be ordered consistent with a demonstrated need as assessed by a validated assessment.
- Mandatory minimums shall be eliminated, and maximums on fines, fees, and hours shall be
 established. Where fines, fees, community service hours, or compensatory service hours¹¹ are
 ordered, limit amounts per criminal episode to a maximum of \$180 or 24 hours of
 compensatory service for youth under the age of 16, and a maximum of \$270 or 36 hours of
 compensatory service for youth 16 and older (at a conversion rate of \$7.50 per hour). Where
 community service is ordered, create a presumptive community service order of five to ten
 hours.
- The legislature shall develop a statutory restitution scheme that is juvenile-specific to govern
 guidelines for setting restitution amounts that is inclusive of these policy considerations,
 including whether restitution shall be ordered if there is any evidence of the youth's inability to
 pay or acquire the means to pay.
- Restitution shall be ordered only for "material loss," to be defined as uninsured property loss, uninsured out-of-pocket monetary loss, uninsured lost wages, and uninsured medical expenses.
 Any amount paid in restitution should be credited against liability in a civil suit. Any civil penalty paid to a victim should be credited against the total amount of restitution owed.
- If the youth and the victim agree to participate, the court may refer the case to a restorative justice program such as Victim Offender Mediation that will address how loss resulting from the delinquency will be addressed.
- Victim Offender Mediation shall be expanded and offered statewide.
- If a youth has not paid their fine at the end of their presumptive time under court jurisdiction and the outstanding financial obligation is the sole basis for continued jurisdiction, the juvenile court may extend jurisdiction and authorize court monitoring for up to 3 months to allow the youth more time to pay. At the end of that extension, if the youth has not paid, the court may convert the unpaid fine into service hours at a conversion rate of \$7.50 per hour and allow court jurisdiction to be extended. Unfinished financial obligations shall not be referred to collections.
- The notification to the Utah Department of Motor Vehicles for license suspension shall be based on the age of actual eligibility for a driver's license. There shall be no mandatory suspension of a license and no presumption of suspension unless the youth is in actual control of the motor vehicle.

Tailor eligibility for removal from the home to focus state resources on youth who pose the highest risk to public safety

- Commission of a status offense shall not serve as grounds for out-of-home placement or secure
 detention, either at initial disposition or on a subsequent filing of contempt or order to show
 cause. Neither a custody order nor a detention order may be stayed on a status offense.
- Secure care placement shall not be used for those who do not pose a public safety threat, and
 JJS community placement shall not be used for youth unless there is a need for residential
 treatment as assessed by a validated risk and needs assessment and non-residential options
 have been exhausted.

¹¹ In these recommendations, both compensatory and community service hours are covered by the term "service hours."

- Neither JJS long-term custody option (community placement and secure care) may be ordered by the court unless a youth has a present felony; a present misdemeanor with more than five prior delinquency adjudications arising from separate incidents, or has a present misdemeanor offense that involves use of a firearm. Contempt charges shall not be used to override these limitations on JJS custody orders. For youth who qualify for commitment to JJS custody, the court may suspend a JJS custody order for three months following the initial disposition, but the court may only lift that order upon adjudication of a new delinquency offense that occurred within those first three months. Extensions of the suspended order will not be permitted.
- Detention and JJS custody shall not be used in response to contempt of court or technical violations of supervision. Youth shall not be removed from the home to repay financial obligations or work off service hours, and JJS work camps shall be eliminated.
- Youth shall not be removed from the home for observation and diagnostic assessment. Diagnostic assessment, including substance abuse, mental health, psychological or sexual behavior risk assessment, may be ordered by the court to be completed in the youth's home environment and shall be funded in every judicial district in the state with reinvestment from averted costs due to reductions in out-of-home placement. If a diagnostic assessment cannot be completed safely in home, Youth Services/Receiving Centers will used as an alternative to detention to allow the assessment to be completed out of home. Where public safety is at risk, diagnostic assessments can be done in detention between adjudication and disposition.
- DCFS placement shall not be a custody option for youth with only delinquency or status
 offenses. If a delinquent or status youth has an abuse, dependency, or neglect case, DCFS
 custody may be ordered as part of the court's jurisdiction over that matter, in accordance with
 the abuse, neglect, and dependency statutes. Cases where there is dual involvement in the
 juvenile justice and child welfare systems shall continue to be referred to a Multi-Agency
 Staffing committee.
 - o If the juvenile court has reasonable suspicion that abuse, neglect, or dependency is present, the court may order DCFS to conduct an assessment. Based on the results of the assessment, the court can order in-home DCFS family services for delinquent or status youth with abuse, neglect, or dependency concerns.
 - The juvenile court will still have the option under 78a-6-302 to place a youth in emergency protective custody with DCFS for up to 72 hours per the criteria for a shelter hearing under 78a-6-307.

Maximize the impact of supervision and deliver evidence-based interventions in the most effective period of time

- There shall be a presumptive limit on the term of court supervision and out-of-home placement:
 - The presumptive maximum length of intake probation shall be three months and the presumptive maximum length of formal probation shall be four to six months.
 - The presumptive maximum length of JJS out-of-home placement shall be three to six months. If the court adjudicates a youth delinquent for one of the crimes enumerated in 78a-6-701 and 78a-6-702, then the presumptive length of stay does not apply, regardless of the youth's age.
 - The presumptive maximum length of aftercare supervision or parole, which could apply to any youth placed out of home with JJS, shall be three to four months. Youth shall be entitled to receive voluntary aftercare support services after their JJS custody is terminated.

- For the purposes of this policy, "out-of-home" placement shall not include "kinship" placements or placements with a permanent guardian. In other words, if a youth maximizes time in out-of-home placement but cannot immediately return to his/her family, the youth may spend the period of aftercare supervision or parole living with a relative or permanent guardian without exceeding the out-of-home placement cap.
- The judge, or Youth Parole Authority in the case of youth sent to secure care, shall terminate court jurisdiction at the end of these presumptive timeframes unless at least one the following circumstances is met:
 - Termination would interrupt the completion of a necessary treatment program.
 Completion shall be determined based on whether the youth has regularly and consistently attended the program.
 - o The youth commits a new delinquency offense.
 - o Service hours have not been completed (only for the extension of intake probation).
- If one of these circumstances exists, the judge shall have the discretion to extend jurisdiction for
 the time needed to address the specific circumstances. If a youth is Absent Without Leave
 (AWOL) for more than one day, that will "stop the clock" on the presumptive length of
 supervision and placement so that supervision can continue when the youth returns. Grounds
 for departure from the presumptive length of supervision or placement shall be recorded in the
 court record and tracked in the CARE data system.
- There shall be a cumulative cap on the amount of detention post-adjudication of 30-days. Any time spent in detention pre-adjudication must be credited toward that 30-day cap post-adjudication. In other words, if a youth spends more than 30 days in detention pre-adjudication, the court cannot use detention as a disposition post-adjudication. A youth can still spend up to 7 additional days awaiting placement in JJS custody. Those 7 days are authorized even if the detention cap has been met. Thirty-day detention dispositions shall not be used in conjunction with JJS custody or DCFS custody to lengthen the amount of time youth can be placed in detention awaiting placement.
- Youth on parole shall have an expedient rescission hearing if they are brought back in on a parole violation within 90 days of release; the same process is used for youth returned on parole violations more than 90 days after release.
- JJS shall use a structured decision-making tool to respond to technical violations of aftercare or parole in the community before bringing the youth in for a revocation or rescission hearing.
- Those youth who are currently subject to the jurisdiction of the district court under 78a-6-701(b) and (c) shall now be subject instead to the serious youth offender procedure under 78a-6-702.

CONCLUSION

The Utah Juvenile Justice Working Group's assessment of the juvenile justice system was comprehensive, data-driven, and based upon the input of Utahns across the state. The Working Group recommends that state leadership introduce legislation based upon the inter-branch, consensus-based recommendations contained in this report in order to place Utah on the path toward fulfilling the charge of improving public safety and holding youth accountable, controlling costs, and improving recidivism and other outcomes for youth, families, and communities across the state.

TAB 11

(will be sent separately)

TAB 12

Standing Committee on Technology



Supreme Court State of Utah

450 South State Street, \$520 PD Box 140210 Salt Lake City, Utah 64114-0210 Telephone: (801) 238-7935 Fax: (801) 238-7980

Email: supremecourt@utcourts.gov

September 12, 2016

Chief Justice Matthew B. Durrant Utah State Courts 450 South State Street Salt Lake City, UT 84114

Re: Appointment to the Standing Committee on Technology

To Chief Justice Durrant:

The Technology Committee develops and makes recommendations to the Judicial Council relating to the plans, priorities, and strategies that guide and govern technology as applied to Utah's courts and management structure.

There exists a vacancy on the Committee because Blake Miller resigned. The Committee has nominated Adam Richards to fill the vacant position.

I would ask that you act favorably on the nomination of Adam Richards to the Technology Committee.

Sincerely,

John A. Pearce

I den I lhu

Chair, Standing Committee on Technology

cc: Ron Bowmaster



Supreme Court State of Utah

450 South State Street, \$520 PG Box 140210 Salt Lake City, Utah 84114-0210 Telephone: (801) 238-7935 Fax: (801) 238-7980 Email: supremecourt autourts. gob

November 1, 2016

Chief Justice Matthew B. Durrant Utah State Courts 450 South State Street Salt Lake City, UT 84114

In re: Appointment to the Standing Committee on Technology

To Chief Justice Durrant:

The Technology Committee develops and makes recommendations to the Judicial Council relating to the plans, priorities, and strategies that guide and govern technology used by the Utah Courts.

There exists a vacancy on the Committee consisting of one of the two staff members of the Administrative Office of the Courts. The Administrative Office has nominated John Bell to fill the position left vacant by Brian Ross.

I would ask that you act favorably on the nomination of John Bell to the Technology Committee.

Sincerely,

John A. Pearce

) den d'Am

Chair, Standing Committee on Technology

cc: Ron Bowmaster



Supreme Court State of Utah

450 South State Street, \$520 PO Box 140210 Salt Lake City, Utah 84114-0210 Telephone: (\$01) 238-7935 Fax: (801) 238-7980 Email: supremecourt@utcourts.gov

September 20, 2016

Chief Justice Matthew B. Durrant Utah State Courts 450 South State Street Salt Lake City, UT 84114

Re: Appointment to the Standing Committee on Technology

To Chief Justice Durrant:

The Technology Committee develops and makes recommendations to the Judicial Council relating to the plans, priorities, and strategies that guide and govern technology used by the Utah Courts.

Dawn Marie Rubio is one of two representatives appointed by the Administrative Office of the Courts to serve as a member of the Technology Committee. Her appointment to the Committee expires on October 27, 2016. Dawn Marie is serving her first term on the Committee. The Administrative Office of the Courts has recommended that Dawn Marie Rubio be appointed to a second term and we agree that Dawn Marie has been and will continue to be a excellent member of your committee.

I would ask that you act favorably on the nomination of Dawn Marie Rubio to the Technology Committee.

Sincerely,

John A. Pearce

) den d'Are

Chair, Standing Committee on Technology

cc: Ron Bowmaster

GAL Oversight Committee

Utah Office of Guardian ad Litem

Oversight Committee

TO:

The Utah Judicial Council

FROM:

Stacey M. Snyder, Director, on behalf of the GAL Oversight Committee

DATE:

November 15, 2016

SUBJECT:

Nominee for Oversight Committee

There is currently one vacancy on the Guardian ad Litem Oversight Committee due to the departure of Karen Flynn. For the Council's consideration, the Judicial Management Committee recommends Mollie McDonald. Mollie McDonald is currently an ALJ with DHS. She has previously worked as an Assistant Attorney General and a Guardian ad Litem. Her resume is included for your consideration.

We are fortunate to have a highly experienced and qualified nominee and appreciate your consideration.

MOLLIE MCDONALD

3656 MacIntosh Lane, Salt Lake City, UT 84121 Email: molliemcd@utah.gov Phone: (801) 755-5196

EXPERIENCE

• Utah Department of Human Services, Salt Lake City, UT Administrative Law Judge May 2013 - Present

Preside over administrative hearings throughout Utah considering challenges to agency decisions within the Department of Human Services. Author decisions evaluating the evidence presented at hearing, weighing the credibility of witnesses, and applying the applicable statutes and case law.

• Utah Office of the Attorney General, Salt Lake City, UT Assistant Attorney General Jan. 2004 - May 2013

Practiced in the Child Protection Division representing the Division of Child and Family Services ("DCFS") in child abuse and neglect cases. Managed a large caseload representing DCFS in all court proceedings, negotiated settlement, engaged in mediation in an effort to resolve disputes and responded to emergency situations by applying for warrants to place children in shelter care.

• Utah Office of Guardian ad Litem, Salt Lake City, UT Attorney Guardian ad Litem Dec. 2001 - Jan. 2004

Represented children involved in child welfare proceedings. Developed rapport with child clients, assessed the child's needs, advocated for the child's best interest in court, and explained the legal proceedings and possible outcomes to child clients.

• Utah State Courts, Third District Court, Salt Lake City, UT Judicial Clerk

Nov. 2000 - Dec. 2001

Assisted fifteen trial court judges with both civil and criminal caseloads, conducted research, drafted opinions and prepared bench memoranda on a wide variety of topics including, civil and criminal procedure, evidentiary issues, domestic law, business law, and governmental immunity.

• Plant, Wallace, Christensen & Kanell, Salt Lake City, UT Associate Attorney Oct. 1999 - Nov. 2000

Represented insurers in a practice which included personal injury, product liability, construction law, and commercial tort litigation.

EDUCATION

University of Utah College of Law

Juris Doctorate - 1999

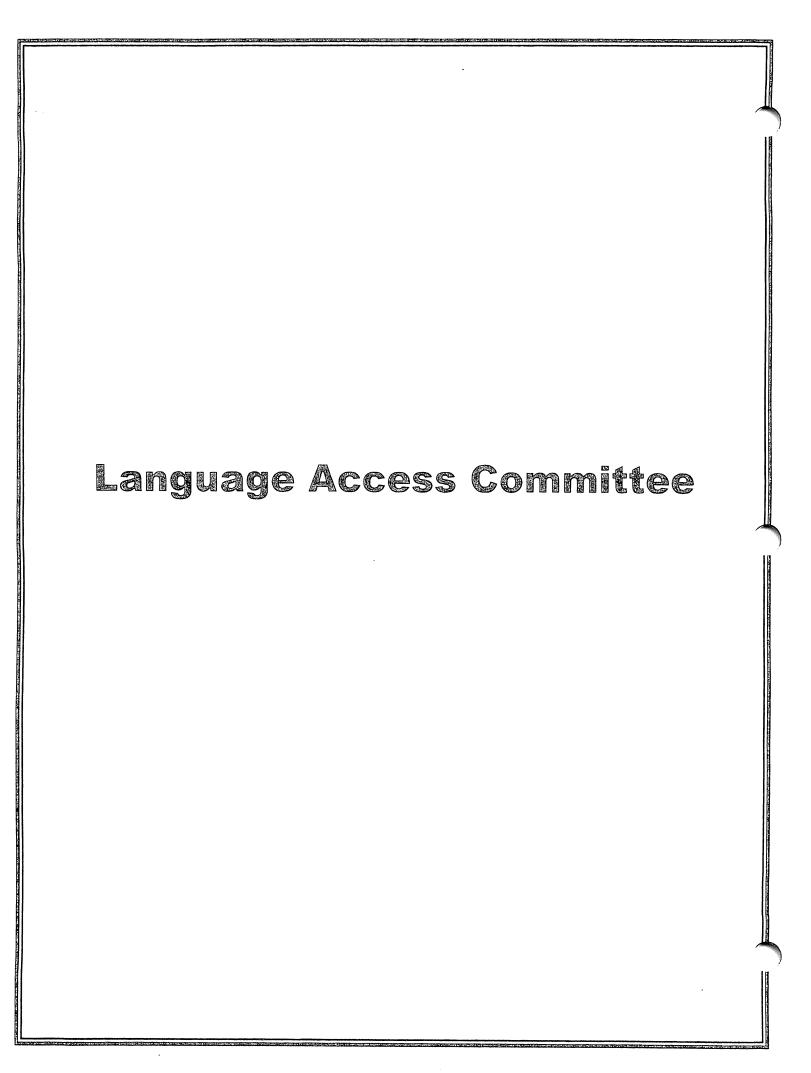
Awards: Full Tuition Scholarship from Questar Corporation. - 1998-99
Outstanding Achievement – Contracts and Legal Writing - 1997

Activities: Legal Writing Teaching Assistant - 1998-99

University of Utah

Bachelor of Arts in English, minor in Linguistics - 1995

Activities: Full Tuition Athletic Scholarship - Women's Swimming - 1990-94





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: Management Committee

From: Keisa L. Williams

Date: November 8, 2016

Re: Language Access Committee Appointment

Currently, there is a defense attorney vacancy on the Language Access Committee. Pursuant to CJA Rule 1-205(1)(B)(ix):

The Language Access Committee shall consist of one district court judge, one juvenile court judge, one justice court judge, one trial court executive, one court clerk, one interpreter coordinator, one probation officer, one prosecuting attorney, one defense attorney, two certified interpreters, one approved interpreter, one expert in the field of linguistics, and one American Sign Language representative.

After two separate publication periods, the committee received only one application. However, the applicant comes highly recommended by Pamela Vickrey, the Executive Director of Utah Juvenile Defender Attorneys, LLC. On September 23, 2016, the Language Access Committee voted unanimously to recommend that Bebe Vanek be appointed to fill the defense attorney vacancy. Ms. Vanek's resume is enclosed for your consideration.

Encl. B. Vanek Resume

Bebe G. Vanek

Active Bar License: Utah #14663

1839 South 400 East, Salt Lake City, Utah 84115 Cellular: (909) 557-6417 Office: (801) 521-5225 bvanek@ ujda.org

OBJECTIVE: To facilitate equal implementation of Federal and State laws to all people of the United States and encourage civility and ethics in the practice of law.

EDUCATION

University of Utah S.J. Quinney College of Law, Salt Lake City, Utah, J.D. May 2013, G.P.A.: 3.181

- American Bar Association Negotiation Competition Team, August 2012 December 2012
- Women's Law Caucus, President, May 2011 May 2012
- Minority Law Caucus, Coordinator: Kids' Court (after school program for at-risk youth), May 2011 May 2012

University of California, Santa Barbara, Santa Barbara, California

B.A., Black Studies, Highest Honors, June 2009; 4.0 GPA in Major

• Grill, Bebe. "The Problem of Race and Pollution in the 21st Century: Environmental Racism in the Post-Fordist Regime." *Black Studies Review*, Fall 2009: 161-174. Print.

PROFESSIONAL EXPERIENCE

Utah Juvenile Defender Attorneys, Salt Lake City, Utah; Executive Director: Pam Vickrey, P: (801) 521-5225 Criminal Defense, Juvenile Justice, January 2016 – present

- Provide legal services to indigent juveniles in delinquency proceedings
- Currently assigned in the West Jordan Courthouse

'torney Guardian ad Litem, Matheson Courthouse, Salt Lake City, Utah; Salary: \$27.27/hour, 40 hours/week Leferences: Tracy Mills, (801) 578-3963; Supervisor: Kristin Fadel, (801) 238-7865 Juvenile Justice, Child Welfare, October 2013 – January 2016

- Analyzed evidence and provided legal advice to hundreds of abused and neglected children in Juvenile Court
- Litigate family law and child welfare matters in court and mediation, and present persuasive legal arguments

Utah Legal Clinic, Salt Lake City, Utah, Supervisor: Stewart Gollan, P: (801) 413-3106 Law Clerk, Civil Rights, Family Law and Estate Planning, August 2013 – November 2013

• Prepared documents for Federal and State Civil Rights litigation: deposition review, legal research and writing

Utah Attorney General's Office, State Agency Counsel, Salt Lake City, Utah

Law Clerk, May 2012 – September 2012

• Researched and drafted legal memoranda and legal documents for State Eminent Domain litigation

KUTV, Get Gephardt, Salt Lake City, Utah

Intern, Consumer Protection Division, May 2012 – August 2012

- Investigated consumer claims and produced television segments aimed to promote consumer awareness
- Gained knowledge of Federal Consumer law and Insurance law and persuasively argued legal issues

Utah Legal Services, Community Legal Center, Salt Lake City, Utah

Civil Externship, Public Benefits, June 2011 - August 2011

• Drafted motions for appeal and supporting memoranda for Workforce Services disability and employment claims

COMMUNITY

oung Lawyers Division, Secretary, Present; Chair: Community Service Committee, May 2013 - June 2016

INTERESTS

Distance running, snowboarding, fly-fishing, and sculpture

Self-Represented Parties

Committee



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: Judicial CouncilFrom: Nancy SylvesterDate: November 8, 2016

Re: Chair and justice court judge positions on the Committee on Resources for Self-

represented Parties

The Committee on Resources for Self-represented Parties has two vacancies to fill: the chair position and the justice court judge position. Judge Marsha Thomas occupies both positions.

Judge Marsha Thomas's term will expire in February 2017. Due to a reduction in force at her court, Judge Thomas has applied for senior judge status as of January 1 and so has elected not to stay on for another term with the committee.

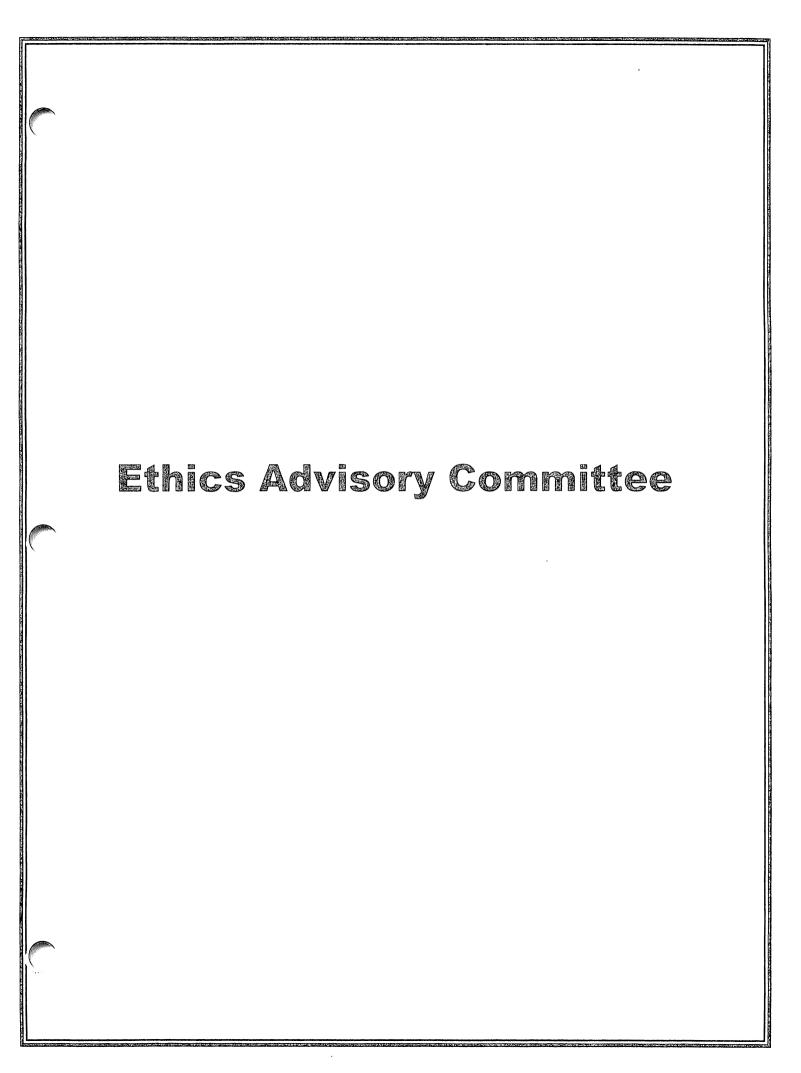
Chair Position

Judge Barry Lawrence has been a member of the committee since November 2015 and has offered to assume the committee chairmanship. Judge Lawrence has made significant contributions to the committee over the past year and would provide the kind of leadership the committee needs to continue moving its efforts forward. The committee would be pleased to have Judge Lawrence at the helm.

Justice Court Judge Position

The Board of Justice Court Judges has recommended that Judge Catherine E. Roberts serve in the justice court judge committee position. Although Judge Roberts expects to retire in 2017, the Board plans to seek interested judges to replace her at the spring education conference. The committee would be pleased to welcome Judge Roberts.

The Management Committee recommends Judge Lawrence and Judge Roberts for the chair and justice court judge positions, respectively.



Chief Justice Matthew B. Durrant Utah Supreme Court Chair, Utah Judicial Council Daniel J. Becker
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

MEMORANDUM

To:

Management Committee

From:

Brent Johnson, General Counsel

Re:

Vacancy on the Ethics Advisory Committee

Date:

October 31, 2016

Judge Renee Jimenez's first term on the Ethics Advisory Committee expires on December 31, 2016. I have talked to Judge Jimenez and she would like to serve another term. The Ethics Advisory Committee does not meet often, because it only meets when there is a request for an opinion, but Judge Jimenez has been a valuable member when the committee has met. The committee would therefore like to have Judge Jimenez serve another term. The committee requests that the Judicial Council reappoint Judge Jimenez.

TAB 13



Chief Justice Christine M. Durham Utah Supreme Court Chair. Utah Judicial Council

October 31, 2016

Daniel J. Becker State Court Administrator Myron K. March Deputy Court Administrator

MEMORANDUM

TO:

Judicial Council Management Committee

FROM:

Debra Moore

RE:

Appointment of Tax Judges

Three District Court Judges have volunteered to serve as tax judges under CJA 6-103. Rule 6-103 provides that the Judicial Council "shall formally designate at least three district court judges who volunteer as tax judges." In making the designation, the Council "shall consider the knowledge and experience of the judge in relation to the theory and practice of ad valorem, excise, income, sales and use, and corporate taxation." The volunteer judges are:

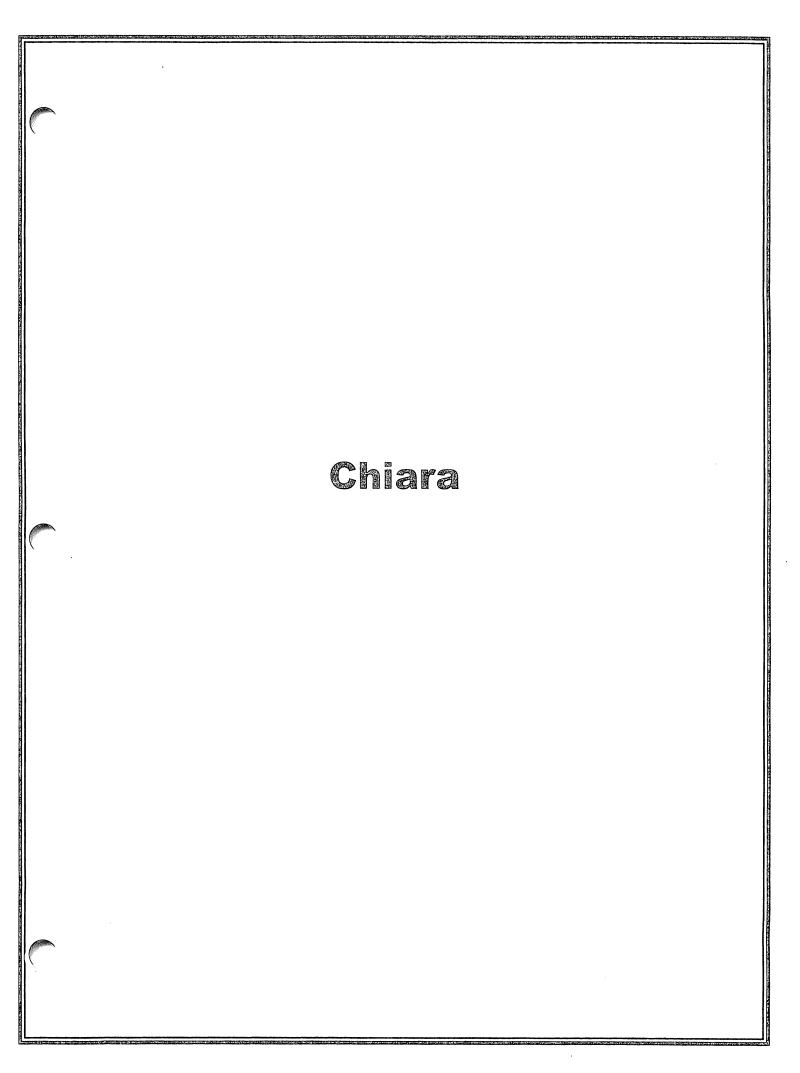
Eighth District Court Judge Samuel Chiara Second District Court Judge Noel Hyde Third District Court Judge Keith Kelly

Information about their qualifications is attached.

Currently, there are four designated tax court judges. They are Judge David Connors, Judge Samuel McVey (Supervising Judge), Judge Todd Shaughnessy, and Judge Andrew Stone. At the recent Annual Judicial Conference, an informational meeting was held to recruit interested judges. Designating additional tax judges will help ensure that the district court bench maintains expertise in tax law, furthering the purpose of Rule 6-103. Regular training is provided for tax judges, with the next training scheduled for April 2017.

If approved by the Management Committee, this item may be placed on the Council's consent agenda.

cc: Hon. Samuel McVey





Appointment as Tax Judge

Judge Samuel Chiara <schiara@utcourts.gov>
To: Debra Moore <debram@utcourts.gov>

Fri, Oct 28, 2016 at 8:06 AM

Dear Debra,

I decided to simply send you an email regarding my educational background in taxation. My law practice did not involve taxation. I have presided over one tax-related case as a district court judge. That case involved a question of taxation of real property and is currently awaiting decision at the Utah Supreme Court.

I have a Bachelor's Degree from Brigham Young University in Accounting. That program included study of financial accounting, managerial accounting, audit, and taxation. In addition, while in law school I completed law classes in Business Associations, Federal Income Tax I, Federal Income Tax II, Federal Estate and Gift Tax, Advanced Estate Planning, and Real Estate Finance.

Additionally, as a judge I have attended a three-day continuing education course on inancial documents.

My background in taxation is therefore scholastic and not practical and admittedly dated. However, I do have a working knowledge of the vocabulary and fundamentals of accounting and taxation.

Sincerely, Judge Samuel Chiara

On Fri, Oct 14, 2016 at 5:50 PM, Debra Moore <debram@utcourts.gov> wrote: [Quoted text hidden]

Tyde

Noel S. Hyde

Statement of Qualifications for Consideration as Tax Judge

I am interested in serving as a volunteer tax judge based upon my prior law-practice experience as follows:

- 1. Representation of both business entities and individuals (in excess of 100 cases over 28 years) in both informal negotiations and formal litigation with the IRS and the Utah State Tax Commission regarding business and personal income tax, payroll and other business taxes, sales tax, and personal penalties relating to such taxes.
- 2. Appointment by the U.S. Bankruptcy Court for the District of Utah as a trustee to administer both individual and business cases under chapter 7 and chapter 11 of the Bankruptcy Code, including the administration and ultimate liquidation of the Utah Title and Abstract Company estate from 1988 2000.
- 3. Admission to and the litigation of disputes before the U.S. Court of Claims.
- 4. Litigation from initial administrative hearings through trial court proceedings and appeals of questions of first impression relating to the validity, priority, and extent of personal liability of corporate principals for business-related tax debts. (See representative cases: <u>United States v. Victor</u>, 121 F.3d 1383 (10th Cir. 1997) and <u>Utah State Tax Commission v. Stevenson</u>, 150 P.3d 521, 2006 UT 84 (Utah 2006)).

Kelly



CJA Rule 6-103 application to serve as a tax court judge

Debra Moore <debram@utcourts.gov>
To: Debra Moore <debram@utcourts.gov>

Tue, Oct 18, 2016 at 2:19 PM

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

From: Judge Keith Kelly <kakelly@utcourts.gov>

Date: Tue, Oct 18, 2016 at 1:35 PM

Subject: CJA Rule 6-103 application to serve as a tax court judge

To: Debra Moore <debram@utcourts.gov>

Debra:

Pursuant to CJA Rule 6-103, I am volunteering and applying to serve as a tax court iudge. As part of my application, I attach a pdf copy of my Attorney and Judge Profile rom Westlaw (which I have updated), along with appending my brief CV below.

In applying, I highlight the following background and experience relevant under Rule 6-103:

<u>Tax Commission Experience</u>: When obtaining my master's degree in economics in 1982, I served as a research fellow at the Utah State Tax Commission. In that role, I testified before a legislative interim taxation committee, and my research was published as: *The Impact of a Proposed Severance Tax on the Utah Underground Coal Industry*, Utah State Tax Commission, Research Publication 82-5, August 27, 1982.

Statutory & Regulatory Experience: In my 23 years of private practice, I focused on complex litigation that often involved complex statutory issues. In addition, my practice included counseling attorneys and health care providers on statutory and regulatory compliance issues, including compliance with the Fair Debt Collection Practices Act, HIPAA, the Anti-Kickback Statute, Physician Self-Referral (Stark) laws, among others. I gave a significant number of presentations on these issues at statewide and national conferences.

Educational Background on Tax Issues. In law school and while obtaining my bachelor's nd master's degrees in economics, I completed courses dealing with taxation issues anyolving ad valorem, excise, income, sales and use, and corporate taxation.

Please let me know if you need anything else for me to apply under Rule 6-103.

Thanks, Keith

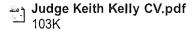
Judge Keith A. Kelly

Utah 3rd District Court

801-238-7024

rief CV:

Judge Keith A. Kelly was appointed to the Third District Court in November 2009 by Gov. Gary R. Herbert. He serves Salt Lake, Summit, and Tooele counties. Judge Kelly graduated summa cum laude with a bachelor's degree in 1981 and with a master's degree in 1982, both in economics from Brigham Young University. He then received a juris doctorate degree from Stanford Law School in 1985, where he was an editor of the Stanford Law Review. After law school, he clerked for the Honorable Monroe G. McKay, U.S. Tenth Circuit Court of Appeals. Prior to his appointment to the bench, Judge Kelly practiced law at the firm of Ray Quinney & Nebeker for 23 years. He has served since 1998 as a member of the Utah Supreme Court's Advisory Committee on the Rules of Evidence, and as chairman of the Utah Judicial Council's Oversight Committee for the Office of the Guardian Ad Litem. He formerly served as president of the Utah State Bar's Young Lawyers Division and Delivery of Legal Services Committee. Judge Kelly has served as chair of the boards of trustees of the Disability Law Center, the Utah Parent Center, and for "And Justice for All." He has served as president of the Aldon J. Anderson American Inn of Court. Judge Kelly has also served as a member of the Utah State Advisory Board on Children's Justice.



Contact Information

Hon. Keith A. Kelly

Organization: State of Utah District Court, 3rd District

Matheson Courthouse 450 South State St. P.O. Box 1860 Salt Lake City, Utah 84114-1860 Salt Lake County U.S.A. Phone: (801) 238-7024

Email: kakelly@utcourts.gov

Website: http://www.utcourts.gov

Position: Judge

Education:

Stanford Law School, Stanford, California, United States of America, 1985 Juris Doctorate Law Review: Stanford Law Review, 1984 - 1985

Brigham Young University, Provo, Utah, United States of America, 1982

M.A.

Major: Economics

Brigham Young University, Provo, Utah, United States of America, 1981

B.A.

Honors: summa cum laude

Major: Economics

Admitted:

Utah, 1986

U.S. Supreme Court

U.S. Federal Courts, 1986

U.S. District Court District of Utah

U.S. Court of Appeals 10th Circuit

Narrative:

Judge Keith A. Kelly was appointed to the Third District Court in November 2009 by Gov. Gary R. Herbert. He serves Salt Lake, Summit, and Toocle counties. Judge Kelly graduated summa cum laude with a bachelor's degree in 1981 and with a master's degree in 1982, both in economics from Brigham Young University. He then received a juris doctorate degree from Stanford Law School in 1985, where he was an editor of the Stanford Law Review. After law school, he clerked for the Honorable Monroe G. McKay, U.S. Tenth Circuit Court of Appeals. Prior to his appointment to the bench, Judge Kelly practiced law at the firm of Ray Quinney & Nebeker for 23 years. He has served since 1998 as a member of the Utah Supreme Court's Advisory Committee on the Rules of Evidence, and as chairman of the Utah Judicial Council's Oversight Committee for the Office of the Guardian Ad Litem. He formerly served as president of the Utah State Bar's Young Lawyers Division and Delivery of Legal Services Committee. Judge Kelly has served as chair of the boards of trustees of the Disability Law Center, the Utah Parent Center, and for "And Justice for All." He has served as president of the Aldon J. Anderson American Inn of Court. Judge Kelly has served as a member of the Utah State Advisory Board on Children's Justice.

Published Works:

Tips for Admitting Persuasive Expert Testimony, 4 Utah Journal of Family Law, v. 1 p. 37, 2014

Lead Editor, Utah chapter, Business Torts Desk Reference, Aspen Publishers, 2006

Recent Changes and Developments in the Utah Rules of Evidence: Definitive Evidence Rulings, Character Evidence, Expert Testimony, and Business Records, Utah Bar Journal, June/July, 2002

Making Pro Bono Easy, 7 Utah Bar Journal at 37, June/July, 1994

Legal Needs Assessment, Delivery of Legal Services Committee (Editor of study of unmet legal needs in Utah), Utah State Bar, 1994

Young Lawyers Division President and Officer Messages, Utah Bar Journal, 1990-1994

Note, Using Market Bidding to Regulate the Transfer Price of Utility Affiliate Coal, 36 Stanford L. Rev. 1215, 1984

The Basis of Property Rights in 19th Century Utah Mining, 51 Utah Historical Quarterly 346, 1983

The Impact of a Proposed Severance Tax on the Utah Underground Coal Industry, Utah State Tax Commission, Research Publication 82-5, August 27, 1982

Classes/Seminars Taught:

Tips for Admitting Persuasive Expert Testimony in the Utah State Courts (presented at Utah State Bar, Mid-Year Meeting) 2014

Medical Records Law in Utah (presented to health care providers), Lorman Education Services, 2005 - 2006

Developments on the Utah Rules of Evidence (presented at the annual conference of Utah District Court Judges)

HIPAA Standards in Utah (presented to health care providers), Lorman Education Services

Confidentiality of Medical Records in Utah, Including the Requirements of HIPAA Privacy Regulations ((presented to health care providers and managers), Lorman Education Services, 2002 - 2003

HIPAA Medical Privacy, Attorneys as HIPAA Business Associates and Subpoenas of Medical Records (presented at Utah State Bar Mid-Year Meeting)

Steps for Small Group Compliance with HIPAA Privacy Regulations, speaker at American Health Lawyers Annual Meeting

Steps to Developing a HIPAA Compliance Program in a Small Group Practice, speaker at the HCCA/AHA HIPAA Forum

Utah Rules of Evidence: Definitive Evidence Rulings, Character Evidence, Expert Testimony, and Business Records ((presented to 2001 Annual Judicial Conference of Utah Judges)

Standards for Privacy of Individually Identifiable Health Information under HIPAA, June 2001 (presented to health care professionals and managers), Lorman Education Services

Standards for Privacy of Individually Identifiable Health Information under HIPAA ((presented to nurse practitioners), Utah Ass'n of Nurse Attorneys

A Practical Approach for Helping Individual and Small Group Physician Practices Develop Compliance Programs (presented

at the annual meeting of the American Health Lawyers Ass'n.)

Health Care Fraud and Abuse in the Context of Medical Compliance Planning (with Mark Cotter, presented to health care managers and providers)

How Changes to Evidence Rules on Expert Witnesses Will Affect Your Practice (presented at Utah State Bar Mid-Year Meeting)

Confidentiality of Medical Records in Utah (presented to health care professionals and managers), Lorman Education Services

Hidden Traps in Debt Collection under the Fair Debt Collection Practices Act (presented at Utah State Bar Mid-Year Meeting)

Honors:

1995 Distinguished Committee Award, Delivery of Legal Services Committee, Utah State Bar

"AV" rating with Martindale-Hubbell

One of Utah's "Legal Elite" in the category of Business Litigation (as published in Utah Business Magazine)

Past Positions:

Ray Quinney & Nebeker, 1986-2010.

United States Court of Appeals, Tenth Circuit, Hon, Monroe G. McKay, Law Clerk, 1985 – 1986.

Utah State Tax Commission, Research Fellow, 1982.

Affiliations:

American Bar Association, Member, 1986 - Present

Utah State Bar Committee on Delivery of Legal Services, Chairperson, 1993 - 1997

Governor's Committee, Commemoration of the Bicentennial of the Constitution, Member, 1989 - 1991

Young Lawyers Division, Commemoration of the Bicentennial of the Constitution, President, 1992 - 1993

Committee on Bill of Rights, Bicentennial, Commemoration of the Bicentennial of the Constitution, Chairperson

Section of Young Lawyers, Utah State Bar, Member

Committee on Needs of the Elderly, Utah State Bar, Chairperson, 1987 - 1989

American Health Lawyers Association

Health Care Compliance Association

Aldon J. Anderson American Inn of Court, President, 2007 - 2008

Aldon J. Anderson American Inn of Court, Master of the Bench, 2003 - Present

Kelly, Hon. Keith A., Attorney and Judge Profiles

Aldon J. Anderson American Inn of Court, Treasurer, 2004 - 2006

Aldon J. Anderson American Inn of Court, Barrister, 2002 - 2003

Utah Supreme Court Advisory Committee on the Rules of Evidence, Member (appointed by Utah Supreme Court), 1998 - Present

Oversight Committee, Utah Office of Guardian Ad Litem (appointed by Utah Judicial Council), Chairperson, 2007 - 2010

Oversight Committee, Utah Office of Guardian Ad Litem (appointed by Utah Judicial Council), Member, 2005 - 2010

Board of Trustees, Disability Law Center, President, 1999 - 2001

Board of Trustees, Disability Law Center, Member of Board, 1997 - 2005

Board of Trustees, And Justice for All, President, 1998 - 2000

Board of Trustees, And Justice for All, Member of Board, 1998 - 2005

Board of Trustees, Utah Parent Center, President, 2003 - 2004

Board of Trustees, Utah Parent Center, Member of Board, 2000 - 2006

Delivery of Legal Services Committee, Utah State Bar, Chairman, 1993 - 1996

Board of Bar Commissioners, Utah State Bar, Ex-Officio Member, 1992 - 1993

Young Lawyers Division, Utah State Bar, President, 1992 - 1993

Young Lawyers Division, Utah State Bar, Past-President, 1993 - 1994

Young Lawyers Division, Utah State Bar, President-Elect, 1991 - 1992

Young Lawyers Division, Utah State Bar, Treasurer, 1989 - 1990

Futures Task Force, Utah State Bar, Member, 1992 - 1993

Utah Council on the U.S. Constitution and Bill of Rights (appointed by Utah Governor), Co-Chairperson, 1990 - 1991

Utah Council on the U.S. Constitution and Bill of Rights (appointed by Utah Governor), Member, 1989 - 1990

YLD Needs of the Elderly Committee, Chairperson, 1987 - 1989

Fraternities/Sororities:

Phi Kappa Phi

End of Document

Our Thomas Relators November of comment S. Covernment Works

TAB 14

To:

Member of the Judicial Council

From:

Dan Becker

Subject:

Appointment to the Utah Retirement Advisory Council

Judge Kimberly Hornak has recently stepped down as the Judicial Council's representative to the above Council. The Management Committee has recommended that Judge David Mortensen be appointed to fill this vacancy and he has agreed to serve, if appointed.

It is recommended that the Council appoint Judge David Mortensen to this position.

TAB 15



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:

Judicial Council

From: Keisa L. Williams

Date:

November 8, 2016

Re:

Rules for Public Comment

Lung Sty ...

The Policy and Planning Committee recommends the following proposed amendment to the Utah Code of Judicial Administration. The circumstances are outlined below. If the Council votes to approve this rule, it will be opened for public comment.

Rule CJA 2-212. Communication with the Office of Legislative Research and General Counsel. Amend. Limits and changes the timing of the notice requirement to the Office of Legislative Research and General Counsel of the Court's draft rules.

The proposed amendments, at lines 8, 18-22 and 28-31, eliminate the requirement for staff, Boards of Judges and standing committees each to provide notice to the legislature of draft rules and final action on rules and instead, requires only that the Administrative Office of the Courts (AOC) provide such notice. Additionally, the amendments change the timing of the notice to either the date a draft rule is published for public comment or adopted by the Council. This amendment saves judicial resources and comports with actual practice.

Encl. CJA 2-212

Rule 2-212. Communication with the Office of Legislative Research and General Counsel. 1 2 3 Intent: 4 5 To provide the Legislature, through the Office of Legislative Research and General Counsel, with notice of Council rules and opportunity to comment upon them. 6 7 To provide the Legislature, and through the Office of Legislative Research and General Counsel 8 9 with notice of Council action upon Council rules. 10 11 Applicability: 12 13 This rule shall apply to the Council, the Boards of Judges, the standing and ad hoc committees of 14 the Council, and the Administrative Office. 15 16 Statement of the Rule: 17 18 (1) The principal staff person assigned to the Council, the Boards of Judges, and the standing and ad hoc committees of the Council Administrative Office of the Courts shall 19 0ר send to the Director of the Office of Legislative Research and General Counsel and the chair of the Judicial Rules Review Committee the a draft rule of the Council, Board, or committee at 21 the same time the draft rule is submitted to the Council published for public comment. 22 23 (2) A legislator or representative of the Office of Legislative Research and General Counsel may 24 25 attend any meeting of the Council at which a rule of the Council is under consideration, and may 26 comment upon the rule. 27 28 (3) The State Court Administrator Administrative Office of the Courts shall notify the chair of the Judicial Rules Review Committee and the Director of the Office of Legislative 29 Research and General Counsel and the Judicial Rules Review Committee of the Council's final 30 action on any rule published for comment or adopted the Council adopts. 31



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:

Judicial Council

From: Keisa L. Williams

Date:

November 8, 2016

Re:

Rules for Public Comment

The Policy and Planning Committee recommends the following proposed amendment to the Utah Code of Judicial Administration. The circumstances are outlined below. If the Council votes to approve this rule, it will be opened for public comment.

Rule CJA 3-111. Performance evaluation of senior judges and court **commissioners.** Amend. Requires the presiding judge in each district to prepare separate performance evaluations when a commissioner serves multiple districts.

The proposed amendment, at lines 24-26, requires performance evaluations from the presiding judge in each district, when a commissioner serves multiple districts. The Policy & Planning Committee wanted to ensure commissioner performance was fully evaluated in each district, including case reviews and surveys, as performance may vary.

Encl. CJA 3-111

Rule 3-111. Performance evaluation of senior judges and court commissioners.

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Intent:

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To establish a performance evaluation, including the criteria upon which senior judges and court commissioners will be evaluated, the standards against which performance will be measured and the methods for fairly, accurately and reliably measuring performance.

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To generate and to provide to senior judges and court commissioners information about their performance.

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To establish the procedures by which the Judicial Council will evaluate and certify senior judges and court commissioners for reappointment.

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Applicability:

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This rule shall apply to presiding judges, the Board of Justice Court Judges and the Judicial Council, and to the active senior judges and court commissioners of the Court of Appeals, courts of record and courts not of record.

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- 21 Statement of the Rule:
- 22 (1) Performance evaluations.
- (1)(A) On forms provided by the administrative office, the presiding judge of <u>a</u> district a court commissioner <u>primarily</u> serves shall complete an annual evaluation of the court commissioner's performance. <u>If a commissioner serves multiple districts</u>, the <u>presiding judge of each district</u>
- 26 **shall complete an evaluation.**
- 27 (1)(B) On forms provided by the administrative office, the presiding judge of the Court of
- Appeals shall complete an evaluation of the appellate senior judge's performance every eighteen months starting after the senior judge's initial term.
- 30 (1)(C) On forms provided by the administrative office, the presiding judge of the district an
- active senior judge primarily serves shall complete an evaluation of the senior judge's
- performance every eighteen months starting after the senior judge's initial term.
- 33 (1)(D) On forms provided by the administrative office, the chair of the Board of Justice Court
- Judges shall complete an evaluation of the active senior justice court judge's performance every eighteen months starting after the senior judge's initial term.
- 36 (1)(E) The presiding judge shall provide a copy of each commissioner evaluation to the Judicial Council.
- 38 (1)(F) If a senior judge receives an overall "Needs Improvement" rating on the performance
- evaluation, the evaluator shall provide a copy of the evaluation to the Judicial Council.
- 40 (2) Active senior judges and court commissioners shall be evaluated and certified upon the
- 41 following criteria:
- 42 (2)(A) demonstration of understanding of the substantive law and any relevant rules of procedure
- 43 and evidence;
- 44 (2)(B) attentiveness to factual and legal issues before the court;
- 45 (2)(C) adherence to precedent and ability to clearly explain departures from precedent;

- 6 (2)(D) grasp of the practical impact on the parties of the commissioner's or senior judge's
- rulings, including the effect of delay and increased litigation expense;
- 48 (2)(E) ability to write clear judicial opinions;
- 49 (2)(F) ability to clearly explain the legal basis for judicial opinions;
- 50 (2)(G) demonstration of courtesy toward attorneys, court staff, and others in the commissioner's
- or senior judge's court;
- 52 (2)(H) maintenance of decorum in the courtroom;
- 53 (2)(i) demonstration of judicial demeanor and personal attributes that promote public trust and
- 54 confidence in the judicial system;
- 55 (2)(J) preparation for hearings or oral argument;
- 56 (2)(K) avoidance of impropriety or the appearance of impropriety;
- 57 (2)(L) display of fairness and impartiality toward all parties;
- 58 (2)(M) ability to clearly communicate, including the ability to explain the basis for written
- rulings, court procedures, and decisions;
- 60 (2)(N) management of workload;
- 61 (2)(O) willingness to share proportionally the workload within the court or district, or regularly
- 62 accepting assignments; and
- 63 (2)(P) issuance of opinions and orders without unnecessary delay.
- 64 (3) Senior judges shall also be evaluated on their ability and willingness to use the court's case
- 65 management systems in all cases.
- 66 (4) Standards of performance.
- 67 (4)(A) Survey of attorneys.
- (4)(A)(i) The Council shall measure satisfactory performance by a sample survey of the
- 9 attorneys appearing before the senior judge or court commissioner during the period for which
- 70 the senior judge or court commissioner is being evaluated. The Council shall measure
- satisfactory performance based on the results of the final survey conducted during a court
- 72 commissioner's term of office, subject to the discretion of a court commissioner serving an
- abbreviated initial term not to participate in a second survey under Section (2)(A)(vi) of this rule.
- 74 (4)(A)(ii) Survey scoring. The survey shall be scored as follows.
- 75 (4)(A)(ii)(a) Each question of the attorney survey will have six possible responses: Excellent,
- More Than Adequate, Adequate, Less Than Adequate, Inadequate, or No Personal Knowledge.
- 77 A favorable response is Excellent, More Than Adequate or Adequate.
- 78 (4)(A)(ii)(b) Each question shall be scored by dividing the total number of favorable responses
- by the total number of all responses, excluding the "No Personal Knowledge" responses. A
- satisfactory score for a question is achieved when the ratio of favorable responses is 70% or
- 81 greater.
- 82 (4)(A)(ii)(c) A court commissioner's performance is satisfactory if:
- 83 (4)(A)(ii)(c)(1) at least 75% of the questions have a satisfactory score; and
- 84 (4)(A)(ii)(c)(2) the favorable responses when divided by the total number of all responses,
- excluding "No Personal Knowledge" responses, is 70% or greater.
- 86 (4)(A)(ii)(d) The Judicial Council shall determine whether the senior judge's survey scores are
- 87 satisfactory.
- 88 (4)(A)(iii) Survey respondents. The Administrative Office of the Courts shall identify as
- 89 potential respondents all lawyers who have appeared before the court commissioner during the
- period for which the commissioner is being evaluated.
- (4)(A)(iv) Exclusion from survey respondents.

- (4)(A)(iv)(a) A lawyer who has been appointed as a judge or court commissioner shall not be a
- respondent in the survey. A lawyer who is suspended or disbarred or who has resigned under
- 94 discipline shall not be a respondent in the survey.
- 95 (4)(A)(iv)(b) With the approval of the Management Committee, a court commissioner may
- exclude an attorney from the list of respondents if the court commissioner believes the attorney
- 97 will not respond objectively to the survey.
- 98 (4)(A)(v) Number of survey respondents. The Surveyor shall identify 180 respondents or all
- 99 attorneys appearing before the court commissioner, whichever is less. All attorneys who have
- appeared before the senior judge shall be sent a survey questionnaire as soon as possible after the
- 101 hearing.
- 102 (4)(A)(vi) Administration of the survey. Court commissioners shall be the subject of a survey
- approximately six months prior to the expiration of their term of office. Court commissioners
- shall be the subject of a survey during the second year of each term of office. Newly appointed
- court commissioners shall be the subject of a survey during the second year of their term of
- office and, at their option, approximately six months prior to the expiration of their term of
- 107 office
- 108 (4)(A)(vii) Survey report. The Surveyor shall provide to the subject of the survey, the subject's
- presiding judge, and the Judicial Council the number and percentage of respondents for each of
- the possible responses on each survey question and all comments, retyped and edited as
- 111 necessary to redact the respondent's identity.
- 112 (4)(B) Survey of presiding judges and court staff. The Council shall measure performance of
- senior judges by a survey of all presiding judges and trial court executives of districts in which
- the senior judge has been assigned. The Administrative Office of the Courts shall distribute
 - survey forms with instructions to return completed surveys to the Surveyor. The Surveyor shall
- provide to the subject of the survey, the subject's presiding judge, and the Judicial Council the
- number and percentage of respondents for each of the possible responses on each survey
- question and all comments, retyped and edited as necessary to redact the respondent's identity.
- The Judicial Council shall determine whether the senior judge's survey scores are satisfactory.
- 120 (4)(C) Case under advisement standard. A case is considered to be under advisement when the
- entire case or any issue in the case has been submitted to the senior judge or court commissioner
- for final determination. The Council shall measure satisfactory performance by the self-
- declaration of the senior judge or court commissioner or by reviewing the records of the court.
- 124 (4(C)(i) A senior judge or court commissioner in a trial court demonstrates satisfactory
- performance by holding:
- (4)(C)(i)(a) no more than three cases per calendar year under advisement more than 60 days after
- 127 submission: and
- 128 (4)(C)(i)(b) no case under advisement more than 180 days after submission.
- (4)(C)(ii) A senior judge in the court of appeals demonstrates satisfactory performance by:
- 130 (4)(C)(ii)(a) circulating no more than an average of three principal opinions per calendar year
- more than six months after submission with no more than half of the maximum exceptional cases
- in any one calendar year; and
- 133 (4)(C)(ii)(b) achieving a final average time to circulation of a principal opinion of no more than
- 134 120 days after submission.
- 135 (4)(D) Compliance with education standards. Satisfactory performance is established if the
- senior judge or court commissioner annually complies with the judicial education standards of
 - this Code, subject to the availability of in-state education programs. The Council shall measure

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- satisfactory performance by the self-declaration of the senior judge or court commissioner or by reviewing the records of the state court administrator.
- 140 (4)(E) Substantial compliance with Code of Judicial Conduct. Satisfactory performance is
- established if the response of the senior judge or court commissioner demonstrates substantial
- compliance with the Code of Judicial Conduct, if the Council finds the responsive information to
- be complete and correct and if the Council's review of formal and informal sanctions lead the
- 144 Council to conclude the court commissioner is in substantial compliance with the Code of
- Judicial Conduct. Under Rule 11-201 and Rule 11-203, any sanction of a senior judge
- disqualifies the senior judge from reappointment.
- 147 (4)(F) Physical and mental competence. Satisfactory performance is established if the response
- of the senior judge or court commissioner demonstrates physical and mental competence to serve
- in office and if the Council finds the responsive information to be complete and correct. The
- 150 Council may request a statement by an examining physician.
- 151 (5)(A) At its meeting in August, the Council shall begin the process of determining whether the
- senior judges and court commissioners whose terms of office expire that year meet the standards
- of performance provided for in this rule. The Administrative Office of the Courts shall assemble
- all evaluation information, including:
- 155 (5)(A)(i) survey scores;
- 156 (5)(A)(ii) judicial education records;
- 157 (5)(A)(iii) self-declaration forms;
- 158 (5)(A)(iv) records of formal and informal sanctions;
- (5)(A)(v) performance evaluations, if the commissioner or senior judge received an overall rating of Needs Improvement; and
 - (5)(A)(vi) any information requested by the Council.
- 162 (5)(B) Prior to the meeting the Administrative Office of the Courts shall deliver the records to
- the Council and to the senior judges and court commissioners being evaluated.
- 164 (5)(C) In a session closed in compliance with Rule 2-103, the Council shall consider the
- evaluation information and make a preliminary finding of whether a senior judge or court
- 166 commissioner has met the performance standards.
- 167 (5)(D) If the Council finds the senior judge or court commissioner has met the performance
- standards, it is presumed the Council will certify the senior judge or court commissioner for
- reappointment. If the Council finds the senior judge or court commissioner did not meet the
- performance standards, it is presumed the Council will not certify the senior judge or court
- commissioner for reappointment. The Council may certify the senior judge or court
- commissioner or withhold decision until after meeting with the senior judge or court
- 173 commissioner.
- 174 (5)(E) A presumption against certification may be overcome by a showing of good cause to the
- contrary. A presumption in favor of certification may be overcome by:
- (5)(E)(i) reliable information showing non-compliance with a performance standard; or
- 177 (5)(E)(ii) formal or informal sanctions of sufficient gravity or number or both to demonstrate
- lack of substantial compliance with the Code of Judicial Conduct.
- 179 (5)(F) At the request of the Council the senior judge or court commissioner shall meet with the
- 180 Council in September. At the request of the Council the presiding judge shall report to the
- 181 Council any meetings held with the senior judge or court commissioner, the steps toward self-
- improvement identified as a result of those meetings, and the efforts to complete those steps.

- Not later than 5 days after the August meeting, the Administrative Office of the Courts shall
- deliver to the senior judge or court commissioner being evaluated notice of the Council's action
- and any records not already delivered to the senior judge or court commissioner. The notice shall
- contain an adequate description of the reasons the Council has withheld its decision and the date
- by which the senior judge or court commissioner is to deliver written materials. The
- Administrative Office of the Courts shall deliver copies of all materials to the Council and to the
- senior judge or court commissioner prior to the September meeting.
- 190 (5)(G) At its September meeting in a session closed in accordance with Rule 2-103, the Council
- shall provide to the senior judge or court commissioner adequate time to present evidence and
- arguments in favor of certification. Any member of the Council may present evidence and
- arguments of which the senior judge or court commissioner has had notice opposed to
- 194 certification. The burden is on the person arguing against the presumed certification. The
- 195 Council may determine the order of presentation.
- 196 (5)(H) At its September meeting in open session, the Council shall approve its final findings and
- 197 certification regarding all senior judges and court commissioners whose terms of office expire
- 198 that year.
- 199 (5)(I) The Judicial Council shall communicate its certification decision to the senior judge or
- 200 court commissioner. The Judicial Council shall communicate its certification decision for senior
- judges to the Supreme Court and for court commissioners to the presiding judge of the district
- the commissioner serves.



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:

Judicial Council

From: Nancy Sylvester Jones Sylvester

Date:

November 10, 2016

Re:

CJA 4-103(2). Civil calendar management. (Dismissals "without prejudice")

The Policy and Planning Committee recommends the following proposed amendment to the Utah Code of Judicial Administration.

CJA 4-103. Civil calendar management. Amend. Pursuant to Cannon v. Holmes, 2016 UT 42 and Civil Rule 41, requires that all orders of dismissal entered under the rule must contain the language "without prejudice."

In Canon v. Holmes, the Supreme Court suggested an amendment to this rule (described above) to resolve the tension between Civil Rule 41 and CJA Rule 4-103. The amendment is found at lines 16-17.

Rule 4-103. Draft: October 25, 2016

- 1 Rule 4-103. Civil calendar management.
- 2 Intent
- 3 To establish a procedure which that allows the trial courts to manage civil case processing.
- 4 To reduce the time between case filing and disposition.
- 5 Applicability:
- 6 This rule shall apply to the District Court.
- 7 Statement of the Rule:
- 8 (1) If a default judgment has not been entered by the plaintiff within 60 days of the availability of default,
- 9 the clerk shall-will mail written notification to the plaintiff stating that absent a showing of good cause by a
- date specified in the notification, the court will shall-dismiss the case without prejudice for lack of
- 11 prosecution.
- 12 (2) If a certificate of readiness for trial has not been served and filed within 330 days of the first answer,
- 13 | the clerk will shall-mail written notification to the parties stating that absent a showing of good cause by a
- 14 date specified in the notification, the court will shall-dismiss the case without prejudice for lack of
- 15 prosecution.
- 16 (3) Pursuant to Rule 41 of the Utah Rules of Civil Procedure, all orders of dismissal entered under this
- 17 rule must contain the language "without prejudice."
- 18 (34) Any party may, pursuant to the Utah Rules of Civil Procedure, move to vacate a dismissal entered
- 19 under this rule.

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

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

Sworn Statement under Rule 2-103(4)(B) of the Utah Code of Judicial Administration Regarding Judicial Council Meeting Closure

I, Justice Matthew B. Durrant, state as follows:
1. On 1/-2/-/ (date), the Judicial Council closed its meeting. The meeting was closed only to discuss:
the character, competence, or physical or mental health of an individual; litigation; the deployment of security personnel, devices, or systems; allegations of criminal misconduct; consideration of a private, protected, sealed, juvenile court social, juvenile court legal, or safeguarded record; the purchase, or exchange or lease of real property because public discussion would prevent the Council from completing the transaction on the best possible terms; or
the sale of real property because public discussion would prevent the Council from completing the transaction on the best possible terms.
2. For the reason(s) noted above, a recording and minutes were not kept during the closed portion of the meeting.
I declare under penalty of perjury that the statements made in this document are true and correct
Date Justice Matthew B. Durrant Chair, Utah Judicial Council

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.

Chief Justice Matthew B. Durrant Utah Supreme Court Chair, Utah Judicial Council Daniel J. Becker
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

Sworn Statement under Rule 2-103(4)(B) of the Utah Code of Judicial Administration Regarding Judicial Council Meeting Closure

Juage Kate A. Toomey, I. Justice Matthew B. Durrant. state as follows:
1. On 11-21-16 (date), the Judicial Council closed its meeting. The meeting we closed only to discuss:
the character, competence, or physical or mental health of an individual;
✓ litigation; ☐ the deployment of security personnel, devices, or systems:
 the deployment of security personnel, devices, or systems; allegations of criminal misconduct;
consideration of a private, protected, sealed, juvenile court social, juvenile court legal, or safeguarded record;
the purchase, or exchange or lease of real property because public discussion would prevent the Council from completing the transaction on the best possible terms; or
the sale of real property because public discussion would prevent the Council from completing the transaction on the best possible terms.
2. For the reason(s) noted above, a recording and minutes were not kept during the closed portion of the meeting.
I declare under penalty of perjury that the statements made in this document are true and correct
Date Justice Matthew B. Durrant Kate A Toomey

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.

Uice - Chair, Utah Judicial Council

PRETRIAL SERVICES

Public Safety Assessment - Court Report

Name: John Defendant

PID: 123456

DOB: 08/11/1977

Race: White

Gender: Male

Arrest Date: 06/15/2014

PSA - Court Completion Date: 11/08/2014

New Violent Criminal Activity Flag

No

New Criminal Activity Scale

1	2	3	4	5	6
Failure to Appe	ear Scale				
1	2	3	4	5	6

Charge(s):

14-113.9 FINANCIAL CARD THEFT F 1

Risk	Factors:	Responses:	
1.	Age at Current Arrest	23 or Older	
2.	Current Violent Offense	No	
	a. Current Violent Offense & 20 Years Old or Younger	No	
3.	Pending Charge at the Time of the Offense	No	
4.	Prior Misdemeanor Conviction	Yes	
5.	Prior Felony Conviction	Yes	
	a. Prior Conviction	Yes	
6.	Prior Violent Conviction	0	
7.	Prior Failure to Appear in Past 2 Years	1	
8.	Prior Failure to Appear Older than 2 Years	Yes	
9.	Prior Sentence to Incarceration	Yes	

Recommendations:

Release Recommendation- Unsecured Appearance Bond

Conditions - Pretrial supervision

Notes -

Decision Making Framework

- » DMF Instructions
 - Step 1: Complete PSA
 - Step 2: Determine if any of the charges or circumstances (predetermined) are present in which the majority of the time a recommendation of detention would be appropriate regardless of the risk assessment results
 - Step 3: Apply the FTA and NCA weights to the DMF Matrix to determine the preliminary recommendation release type and corresponding conditions level
 - Step 4: Determine if any of the charges (predetermined) are present in which the majority of the time an increase in release conditions would be appropriate



Preparation for the journey

PSA implementation journey

6 months

Journey to excellence

Implementation

- » JSP Team supports your local project team
 - Ensure accurate definitions of violent crimes
 - Customize the Decision Making Framework
 - Train stakeholders and staff
 - Craft policies and procedures



Pretrial Release PSA RISK ASSESSMENT TOOL WORKING GROUP

Keisa Williams, STAFF	Judge W. Brent West - CHAIR	Kim Allard
Associate General Counsel	Second District Court	Director
Administrative Office of the Courts	2525 Grant Ave.	Court Services, Administrative
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Fourth District Court	450 South State Street	Administrative Office of the
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ppetersen@utcourts.gov	tutzinger@daviscountyutah.gov	
L	L	

We appreciate the Council's consideration of our proposal and hope you will find the potential study a valuable opportunity. Should it prove feasible, an evaluation of the PSA's effectiveness—using Utah judges and defendants—will reveal much about the value of pretrial risk assessment in your state.

Sincerely,

Christopher L. Griffin, Jr.