AGENDA

SUPREME COURT'S ADVISORY COMMITTEE
ON THE
RULES OF JUVENILE PROCEDURE

Matheson Courthouse
Education Room (3rd Floor AOC)
June 7, 2019
Noon – 2:00 p.m.

12:00-12:10	**Welcome and Approval of Minutes** *(Draft Minutes of May 3, 2019—Tab 1)*	Carol Verdoia
12:10-12:20	**Recognition of Members Completing Terms of Service**	Katie Gregory
12:20-1:00	**Rule 9-Detention Hearings; scheduling; hearing procedure** *(Current Draft of Rule 9,* *Comment Received Pertaining to Rule 9 and* *Memorandum Summarizing History of Warrantless* *Arrests of Minors -Tab 2)*	Carol Verdoia
1:00-1:30	**Discussion of Tribal Participation in Juvenile Court** *(Examples of Notices or Motions to Intervene From Other States-Tab3)*	Carol Verdoia
1:30-1:50	**Rule 27A-Admissibility of Statements Given by Minors** *(Current Draft of Rule 27A and R.G. v. State, 416 P.3d 478 (Utah 2017)-Tab 4)*	Carol Verdoia
1:50-2:00	**Old or New Business** • Rules 32 and 58 (Awaiting Final Review by Supreme Court)	All
2:00	**Adjourn**	

Next Meeting: August 2, 2019

TAB 1

Utah Rules of Juvenile Procedure Committee- Meeting Minutes

May 3, 2019	Noon to 2:00 p.m.	Conference Rooms B & C
MEETING DATE	TIME	LOCATION

MEMBERS:	Present	Absent	Excused	MEMBERS:	Present	Absent	Excused
Carol Verdoia	☒	☐	☐	Daniel Gubler	☒	☐	☐
Judge Elizabeth Lindsley	☐	☐	☒	Sophia Moore	☐	☐	☒
Judge Mary Manley (by telephone)	☒	☐	☐	Mikelle Ostler	☒	☐	☐
Arek Butler	☒	☐	☐	Jordan Putnam	☒	☐	☐
Trish Cassell	☒	☐	☐	Chris Yannelli	☒	☐	☐
Monica Diaz	☐	☐	☒		☐	☐	☐
Kristin Fadel	☒	☐	☐		☐	☐	☐
David Fureigh	☒	☐	☐		☐	☐	☐

AOC STAFF:	Present	Excused	GUESTS:	Present	Absent
Katie Gregory	☒	☐	Bridget Koza	☒	☐
Jean Pierce	☒	☐	Jacqueline Carlton	☒	☐
Keegan Rank	☒	☐		☐	☐

AGENDA TOPIC

I. Welcome & Approval of Minutes	CHAIR: CAROL VERDOIA
Carol Verdoia welcomed members and called for approval of the minutes of March 1, 2019.	
Motion: To approve the minutes of March 1, 2019.	By: Chris Yannelli Second: Mikelle Ostler
Approval	☒ Unanimous ☐ Vote: In Favor_____ Opposed _____

AGENDA TOPIC

II. Membership Vacancies and Renewals. Supreme Court Direction Re: Publishing Committee Materials.	KATIE GREGORY & CAROL VERDOIA

Carol Verdoia and Katie Gregory discussed committee membership. Ms. Verdoia will complete her term as chair on June 30, 2019. The Supreme Court has appointed David Fureigh to chair the committee effective July 1, 2019 and has appointed Ms. Verdoia to emeritus status beginning July 1, 2019. The Committee expressed its appreciation for Ms. Verdoia's 22 years of service as the Committee's chairperson.

The following members have been appointed for additional 4-year terms: Mikelle Ostler, Kristin Fadel, Chris Yannelli and Daniel Gubler. Trish Cassell will complete her service to the committee on June 30, 2019. The Supreme Court is currently accepting applications through 5:00 p.m. on May 17 to fill the positions vacated by Ms. Verdoia and Ms. Cassell.

Katie Gregory reported that the Supreme Court asked staff to its Advisory Rules Committees to publically post Committee agendas and meeting materials on the website of the Utah State Courts. Ms. Gregory will post materials beginning with the June 7, 2019 meeting packet. Posting will be located through a link in the website section under "Boards and Committees."

In addition, the Supreme Court would like Advisory Committees to consider the potential impact of new rules and rule revisions on court resources such as IT programming needs and let affected departments know of anticipated impacts.

AGENDA TOPIC

III. Rule 9 and Rule 32 (Discussion Following Public Comment Period)	CAROL VERDOIA
Both Rule 9 and Rule 32 were sent out for public comment. The comment period closed on April 28, 2019. One comment was received on Rule 9 and no comments were received on Rule 32. Carol Verdoia addressed the comment received. Katie Gregory also informed the Committee that a subcommittee of the Board of Juvenile Court Judges is reviewing issues pertaining to Rule 9. The Committee will begin its review of the comment at the June 7 meeting when all members can be present. The Committee discussed options for moving forward including requesting the Juvenile Law Clerks provide research on why the statute and rule chose to use the term "reasonable basis" rather than probable clause. A member asked that the law clerks consider whether probable cause fits in juvenile court since there is no right to a preliminary hearing and why probable cause is used in 3rd District and not in other areas of the state. Members gave feedback to the law clerks on current practice in their respective areas. The law clerks will review these questions for discussion at the June 7, 2019 meeting of the Committee. The Committee also reviewed Section 78A-6-113 and the need to hold a hearing and make findings if the court determines that the youth should be detained. This issue will be placed on the agenda for the Committee's August meeting. A discussion followed regarding the number of youth who are actually detained following the implementation of H.B 239.	
Action Item:	Present Rule 32 to Supreme Court for final action. Place Rule 9 comments on the agenda for the June 7, 2019 meeting.

AGENDA TOPIC

IV. Discussion of Tribal Participation in Juvenile Court	CAROL VERDOIA AND BRIDGET KOZA
Bridget Koza reviewed the memo she provided to the Committee, which contained research on what other states have done on the issue of creating rules pertaining to tribal participation in juvenile court. She reviewed the various ways that tribes can participate in hearings by formal intervention or informally because the court hearings are presumed open to the public in some jurisdictions such as Utah. A number of states are also waiving *pro hac vice* requirements by either waiving the fee for an out-of-state attorney or the overall duty to request *pro hac vice* status for attorneys representing tribal participants. California is discussing legislation to provide counsel to tribes. While *pro hac vice fees* are not the purview of the Juvenile Rules Committee, the Committee could send recommendations to the State Bar that fees be waived for an attorney representing a tribe. Members discussed how often tribes engage out-of-state attorneys. Several committee members supported recommending that *pro hac vice* fees be waived for these attorneys. Discussion took place on whether the term "participation" needs to be defined and whether or not defining the term invites litigation. Kristin Fadel made a motion to send the following recommendation to the committee overseeing the Rules Governing the Utah State Bar: "In order to encourage tribal participation through counsel in cases involving the Indian Child Welfare Act in juvenile court and to meet the purposes of the Indian Child Welfare Act, the Rules of Juvenile Procedure Committee recommends that the Rules Governing the Utah	

State Bar Committee waive *pro hac vice* fees and the requirement that such attorneys associate with "local counsel" (Rule 14-806) for attorneys representing tribes and appearing in cases pertaining to the Indian Child Welfare Act in the juvenile court." Daniel Gubler seconded the motion, and the motion passed unanimously.

The Committee discussed the second issue of whether it should create a simple rule encouraging tribes to participate in juvenile court. Arek Butler agreed to draft a simple rule for discussion at the June 7 meeting, which rule will encourage/allowed tribal participation and memorialize current practice.

The Committee discussed the possibility of creating a Motion to Intervene form that could be used by tribes. The form would need to be filed by clerical staff rather than eFiled. Bridget Koza agreed to look for form examples from other states and either email these out to members or bring them to the next meeting.

Action Item:	Arek Butler to draft a rule encouraging tribal participation in juvenile court. Bridget Koza will distribute sample form motions to intervene. Katie Gregory to prepare draft letter to Utah State Bar regarding waiving *pro hac vice* fees.
Motion: to send the following recommendation to the committee overseeing the Rules Governing the Utah State Bar: "In order to encourage tribal participation through counsel in cases involving the Indian Child Welfare Act in juvenile court and to meet the purposes of the Indian Child Welfare Act, the Rules of Juvenile Procedure Committee recommends that the Rules Governing the Utah State Bar Committee waive *pro hac vice* fees and the requirement that such attorneys associate with "local counsel" (Rule 14-806) for attorneys representing tribes and appearing in cases pertaining to the Indian Child Welfare Act in the juvenile court."	By: Kristin Fadel Second: Daniel Gubler
Approval	× Unanimous □ Vote: # In Favor_____ # Opposed _____

AGENDA TOPIC

V. Old or New Business	ALL

Old Business:
The Supreme Court reviewed the proposed changes to Rule 27A, but declined to approve the revisions as submitted. The Supreme Court reread the *In re RG* case in which the Court recommended in a footnote that Rule 27A be reviewed. The Supreme Courts directed the Committee to discuss the policy issue of having an adult present for waivers of children over the age of 14 after reading the literature cited in the R.G. case. (*In re R.G.*, 416 P.3d 478 f. 6(Utah 2017)).

New Business:
The Committee set the following meeting dates for the remainder of 2019: August 2, September 6, October 4, November 1 and December 6. All meetings will be held from Noon to 2:00 p.m.

Action Item:	Place Rule 27A on the June 7 agenda. Katie Gregory will send the In re RG case out to entire committee to review literature cited in footnote 6.The Committee will report back to the Supreme Court regarding its opinion on the policy issue of setting an age for a young person's ability to waive rights without an adult present.

TAB 2

Draft: March 1, 2019

Rule 9. Detention hearings; scheduling; hearing procedure.

(a) The officer in charge of the detention facility shall provide to the court a copy of the report required by Section 78A-6-112. ~~At a detention hearing, the court shall order the release of the minor to the parent, guardian or custodian unless there is reason to believe:~~

~~(a)(1) the minor will abscond or be taken from the jurisdiction of the court unless detained;~~

~~(a)(2) the offense alleged to have been committed would be a felony if committed by an adult;~~

~~(a)(3) the minor's parent, guardian or custodian cannot be located;~~

~~(a)(4) the minor's parent, guardian or custodian refuses to accept custody of the minor;~~

~~(a)(5) the minor's parent, guardian or custodian will not produce the minor before the court at an appointed time;~~

~~(a)(6) the minor will undertake witness intimidation;~~

~~(a)(7) the minor's past record indicates the minor may be a threat to the public safety;~~

~~(a)(8) the minor has problems of conduct or behavior so serious or the family relationships are so strained that the minor is likely to be involved in further delinquency; or~~

~~(a)(9) the minor has failed to appear for a court hearing within the past twelve months.~~

(b) The court shall hold a detention hearing within 48 hours of the minor's admission to detention~~,~~. ~~weekends and holidays excluded.~~ A minor may not be held in a detention facility longer than 48 hours before a detention hearing, excluding weekends and holidays, unless the court has entered an order for continued detention. The officer in charge of the detention facility shall notify the minor, parent, guardian or custodian and attorney of the date, time, place and manner of such hearing.

(c) The court may at any time order the release of a minor whether a detention hearing is held or not.

(d) The court may order a minor to be held in the detention facility or be placed in another appropriate facility, subject to further order of the court, only if the court finds at a detention hearing that:

(d)(1) releasing the minor to minor's parent, guardian, or custodian presents an unreasonable risk to public safety;

(d)(2) less restrictive non-residential alternatives to detention have been considered and, where appropriate, attempted; and

(d)(3) the minor is eligible for detention under the division guidelines for detention admissions established by the Division of Juvenile Justice Services, under Section 62A-7-202 and under Section 78A-6-112.

(ed) At the beginning of the detention hearing, the court shall advise all persons present as to the reasons or allegations giving rise to the minor's admission to detention and the limited scope and purpose of the hearing as set forth in paragraph (g). If the minor is to be arraigned at the detention hearing, the provisions of Rules 24 and 26 shall apply.

(fe) The court may receive any information, including hearsay and opinion, that is relevant to the decision whether to detain or release the minor. Privileged communications may be introduced only in accordance with the Utah Rules of Evidence.

(gf) A detention hearing may be held without the presence of the minor's parent, guardian or custodian if they fail to appear after receiving notice. The court may delay the hearing for up to 48 hours to permit the parent, guardian or custodian to be present or may proceed subject to the rights of the parent, guardian or custodian. The court may appoint counsel for the minor with or without the minor's request.

(hg) If the court determines that no reasonable basis exists for the offense or condition alleged as required in Rule 6 as a basis for admission, it shall order the minor released immediately without restrictions.

(i) If the court determines that ~~reasonable cause exists for continued detention,~~ a less restrictive alternative to detention is appropriate it may ~~order continued detention,~~ place the minor on home detention, another alternative program, or order the minor's release upon compliance with certain conditions pending further proceedings. Such conditions may include:

(i~~hg~~)(1) a requirement that the minor remain in the physical care and custody of a parent, guardian, custodian or other suitable person;

(i~~hg~~)(2) a restriction on the minor's travel, associations or residence during the period of the minor's release; and

(i~~hg~~)(3) other requirements deemed reasonably necessary and consistent with the criteria for detaining the minor.

(ji~~h~~) If the court determines that a reasonable basis exists as to the offense or condition alleged as a basis for the minor's admission to detention but that the minor can be safely left in the care and custody of the parent, guardian or custodian present at the hearing, it may order release of the minor upon the promise of the minor and the parent, guardian or custodian to return to court for further proceedings when notified.

(k~~ji~~) If the court determines that the offense is one governed by Section 78A-6-701, Section 78A-6-702, or Section 78A-6-703, the court may by issuance of a warrant of arrest order the minor committed to the county jail in accordance with Section 62A-7-201.

(l~~kj~~) Any predisposition order to detention shall be reviewed by the court once every seven days, unless the minor is ordered to home detention or an alternative detention program. Predisposition orders to home detention or an alternative detention program shall be reviewed by the court once every 15 days. The court may, on its own motion or on the motion of any party, schedule a detention review hearing at any time.

~~Advisory Committee Notes~~

~~Paragraph (j) of this Rule is a change to permit the court to review the detention order without waiting for a party to bring the issue to the court.~~

Steven Beck
April 18, 2019 at 10:21 pm

I urge the Committee on the Rules of Juvenile Procedure to change Rule 9 to require a judicial finding of probable cause within 48 hours, including weekends and holidays, of when a child is admitted to detention without a warrant. Furthermore, I recommend that the rule either use the term "probable cause" or define the term "reasonable basis."

THE UNITED STATES SUPREME COURT HAS HELD THAT INDIVIDUALS SUBJECT TO A WARRANTLESS ARREST SHOULD RECEIVE A JUDICIAL DETERMINATION OF PROBABLE CAUSE WITHIN 48 HOURS INCLUDING WEEKENDS AND HOLIDAYS

For decades, United States Supreme Court precedent has held that individuals subject to a warrantless arrest should receive a judicial determination of probable cause within 48 hours, including weekends and holidays. In Gerstein v. Pugh, 420 U.S. 103, 126 (1975), the Court held that "the Fourth Amendment requires a timely judicial determination of probable cause as a prerequisite to detention…." In County of Riverside v. McLaughlin, 500 U.S. 44, 56 (1991), the Court held that "a jurisdiction that provides judicial determinations of probable cause within 48 hours of arrest will, as a general matter, comply with the promptness requirement of Gerstein." Furthermore, while noting that some extraordinary circumstances may justify additional delay, the Court held "[t]he fact that in a particular case it may take longer than 48 hours to consolidate pretrial proceedings does not qualify as an extraordinary circumstance. Nor, for that matter, do intervening weekends. A jurisdiction that chooses to offer combined proceedings must do so as soon as is reasonably feasible, but in no event later than 48 hours after arrest." Id. at 57.

Rule 9 of the Utah Rules of Criminal Procedure recognizes this precedent and provides for a judicial determination of probable cause for all adults in the State of Utah within 24 hours of arrest. However, despite the fact that this issue was raised – at least 15 months ago – at the Committee on the Rules of Juvenile Procedure and more recently as a comment to the last proposed (but not adopted) version of Rule 9, the Committee has refused to propose a version of Rule 9 that would provide for a judicial determination of probable cause for all juveniles in the State of Utah within 48 hours of arrest. Without a rule providing for a probable cause determination within 48 hours, according to data recently provided to the Utah Board of Juvenile Court Judges, on average, 59 children per month are held for more than 48 hours before they have a probable cause determination. Additionally, on average, 8 children per year are held in detention for longer than 48 hours when there was not a "reasonable basis" (to use the term in the current and proposed rule) for them to be admitted to detention in the first place.

THE CURRENT AND PROPOSED VERSIONS OF RULE 9 CONFLATE THE CONSTITUTIONALLY-REQUIRED PROBABLE CAUSE DETERMINATION WITH THE STATUTORILY-MANDATED DETENTION HEARING

It has been suggested that the juvenile court may not make a probable cause determination outside of the statutorily-mandated detention hearing. While Rule 9 currently combines the constitutionally-required probable cause determination with the statutorily-mandated detention hearing, nothing requires them to occur simultaneously. In fact, Utah Code Ann. 78A-6-

113(3)(d) explicitly recognizes that in some cases, a juvenile court may need to order the release of a child prior to a detention hearing: “The court may, at any time, order the release of the minor, whether a detention hearing is held or not.”

The combination of pretrial proceedings (such as the detention hearing) with the probable cause determination was exactly the issue that was before the United States Supreme Court in County of Riverside v. McLaughlin. In that case, the United State Supreme Court said, “Gerstein permits jurisdictions to incorporate probable cause determinations into other pretrial procedures” such as the detention hearing in juvenile court. Id. at 55. “But flexibility has its limits; Gerstein is not a blank check. A State has no legitimate interest in detaining for extended periods individuals who have been arrested without probable cause.” Id.

Again, while Rule 9 in its current and proposed forms combines the probable cause determination with the detention hearing, nothing in statute requires that combination. During weekdays, detention hearings are routinely scheduled within 48 hours after arrest. However, by excluding weekends and holidays from the calculation, Rule 9 – in both its current and proposed form – justifies routine delays of the probable cause determination merely to facilitate its combination with the detention hearing in violation of United States Supreme Court precedent.

It has been suggested that a separate probable cause determination by a judge that results in continued detention of a child would trigger the need for a detention hearing in order to make the statutorily-required findings for continued detention. That is not correct and is evidence of the conflation of the probable cause determination with the detention hearing. If a judicial officer makes a probable cause determination prior to a detention hearing, there is no order – implied or otherwise – that the minor is held subject to further order of the court. Rather, a finding of probable cause is just that – a finding of probable cause. Even if a judicial officer makes a finding of probable cause prior to a detention hearing, the minor only remains detained on the authority of the “designated facility staff person” pursuant to UCA 78A-6-112(5)(b)(i) and the minor may, in fact, still be released by a probation officer pursuant to UCA 78A-6-113(2) and Probation Policy 2.9(3) (“The probation officer may review the minor’s detention status and determine if it is appropriate to release the minor to the minor’s parent/guardian/custodian prior to the initial detention hearing”) (approved by the Judicial Council and effective December 17, 2018).

The proposed probable cause determination could take place electronically. For example, the probable cause statement could be communicated electronically from the detention center to the on-call judge (in those districts which have adopted a magistrate rotation). The result of the probable cause determination could be electronically communicated from the on-call judge back to the detention center. See generally Rule 9 of the Utah Rules of Criminal Procedure. Furthermore, since detention hearings are routinely scheduled within 48 hours after arrest during weekdays, the electronic probable cause determinations could be limited to weekends and holidays.

While Utah Code Ann. 78A-6-113(4) excludes weekends and holidays from the calculation of when a detention hearing must occur, it does not prohibit a judicial determination of probable cause during that time period. I would urge the Committee to enact a version of Rule 9 that

would require a judicial determination of probable cause within 48 hours including weekends and holidays. In the alternative, I would urge the Committee to end the debate about whether Gerstein and County of Riverside apply to juveniles in the State of Utah by including a definitive statement within Rule 9 explaining why juveniles are not entitled to a probable cause determination within 48 hours of arrest, especially in light of recent juvenile justice statutory reform efforts as discussed in the next section.

THE COMMITTEE'S DEFERENCE TO STATUTE IN MATTERS OF COURT PROCEDURE IS IMPROPER GIVEN THE SUPREME COURT'S CONSTITUTIONAL MANDATE TO "ADOPT RULES OF PROCEDURE…TO BE USED IN THE COURTS OF THE STATE"

It has been suggested that since the current and proposed versions of Rule 9 use the same or similar language contained in the Utah Code, the Committee cannot make certain changes to Rule 9 without a legislative change. That suggestion is directly contradictory to the Utah Supreme Court's constitutional mandate found in Article VIII, Section 4 of the Utah Constitution: "The Supreme Court shall adopt rules of procedure and evidence to be used in the courts of the state and shall by rule manage the appellate process. The Legislature may amend the Rules of Procedure and Evidence adopted by the Supreme Court upon a vote of two-thirds of all members of both houses of the Legislature…." See also Maxfield v. Herbert, 2012 UT 44, ¶15 ("[W]e note that our rules of procedure are not necessarily subordinate to the provisions of state statutes. It is this court's constitutional prerogative to 'adopt rules of procedure and evidence to be used in the courts of the state,' subject to the legislature's power to 'amend' our rules 'upon a vote of two-thirds of all members of both houses.'‖ UTAH CONST. art. VIII, § 4").

Furthermore, even if the Legislature proposed new detention hearing procedures by amending current statutes, it's entirely likely that the Judicial Council through its Liaison Committee would oppose such legislation on grounds that it encroaches on the Court's constitutional authority to "adopt rules of procedure…to be used in the courts of the state." See Rule 3-106(1)(D) of the Utah Code of Judicial Administration ("The Council may endorse, oppose, amend or take no position on proposed legislative initiatives. The Council shall limit its consideration of legislative matters to those which affect the Constitutional authority, the statutory authority, the jurisdiction, the organization or the administration of the judiciary"). Additionally, the enactment of a rule providing for the protections outlined in Gerstein and County of Riverside is entirely consistent with the philosophy underlying recent juvenile justice statutory reform efforts. See generally, Utah Juvenile Justice Working Group Final Report (accessible at **https://justice.utah.gov/Documents/CCJJ/Justice%20Policy/Research/Final%20Report/Utah%20JJ%20Final%20Report.pdf**).

THE COMMITTEE SHOULD ACTIVELY INDICATE WHETHER PROBABLE CAUSE OR REASONABLE BASIS IS REQUIRED FOR WARRANTLESS ADMISSION OF CHILDREN TO DETENTION

Utah Code Ann. 78A-6-112(1)(b) provides that "A minor may be taken into custody by a peace officer without order of the court if there are reasonable grounds to believe the minor has committed an act which if committed by an adult would be a felony." The authority for peace officers to take minors into custody without order of the court also extends to misdemeanor

offenses in which "the minor is seriously endangered in the minor's surroundings; or seriously endangers others; and immediate removal appears to be necessary for the minor's protection or the protection of others." (See UCA 78A-6-112(1)(c) and Rule 6 of the Utah Rules of Juvenile Procedure).

Notwithstanding the fact that the lesser standard of "reasonable grounds" is usually reserved for those with a diminished liberty interest, such as for those on probation or parole, the Committee has extended the term "reasonable basis" as the standard to apply to all children booked into detention without a warrant by incorporating it into the current and proposed versions of Rule 9. See State v. Burningham, 2000 UT App 229 at ¶9. The United States Supreme Court has emphasized that in juvenile cases, "it would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase 'due process.'" In re Gault, 387 U.S. 1, 27-28 (1967). While the United States Supreme Court has undoubtedly recognized that juveniles have a diminished privacy interest in certain circumstances (with regard to searches at school, for example; see New Jersey v. T.L.O., 469 U.S. 325 (1985)), the Committee's adoption of the "reasonable basis" standard in Rule 9 affects the liberty interest of all juveniles admitted to detention without the benefit of a warrant. Additionally, the impact extends to the liberty interests of parents, as well, since it allows for the admission of their children to detention under a standard lower than probable cause. See In re D.G., 2017 UT 79, fn. 5 ("While not raised in this case, we note that juveniles are not entirely 'independent actors with individual rights. . . . [P]olice questioning of minors also threatens the rights of parents, "perhaps the oldest of the fundamental liberty interests recognized by [the Supreme] Court."' Note, Juvenile Miranda Waiver and Parental Rights, 126 HARV. L. REV. 2359, 2359 (2013) (third alteration in original) (quoting Troxel v. Granville, 530 U.S. 57, 65 (2000) (plurality opinion)). When government actors 'threaten[] to break "familial bonds, [they] must provide the parents with fundamentally fair procedures."' Id. (quoting Santosky v. Kramer, 455 U.S. 745, 754 (1982)). Interrogation without the presence of an interested adult 'creates a substantial risk that children will be removed from their parents after confessing falsely' and may also 'cause psychological harm that damages the parent-child relationship.' Id.").

The use of the term "reasonable basis" in the current and proposed versions of Rule 9 adds further confusion given the use of "probable cause" in Rule 7. Under Rule 7, a judge may issue a warrant based on the standard of probable cause. However, under the current and proposed versions of Rule 9, continued detention after a warrantless arrest is based on the standard of "reasonable basis."

As such, if the Committee intends for a lower standard than probable cause to apply to children admitted to detention without a warrant, I would recommend that said intention be expressed actively by defining "reasonable basis" rather than passively expressing such intention by enacting the proposed rule which does not define that term. If the Committee does not intend for a lower standard than probable cause to apply to children admitted to detention without a warrant, I would recommend that Rule 9 be amended to use the term "probable cause" rather than "reasonable basis."

In conclusion, for the reasons stated above, I would strongly urge the Committee on the Rules of Juvenile Procedure to change Rule 9 to require a judicial finding of probable cause within 48

hours, including weekends and holidays, of when a child is admitted to detention without a warrant. On the other hand, if it is the Committee's position that juveniles in the State of Utah are not entitled to a probable cause determination within 48 hours of a warrantless arrest, I would recommend a change to the rule to affirmatively express that conclusion. Furthermore, if it is the Committee's intention for a lower standard than probable cause to apply to children admitted to detention without a warrant, I would recommend that said intention be expressed actively by defining the term "reasonable basis," rather than passively expressing such intention by enacting the proposed rule which does not define "reasonable basis." The changes I propose are not prohibited by Utah statute. Rather, they are consistent with the constitutionally-mandated role of the Utah Supreme Court to adopt rules of procedure to be used in the juvenile courts of the state.

Law Clerk Memorandum

To: The Supreme Court's Advisory Committee on the Rules of Juvenile Procedure

From: Jean Pierce, Juvenile Court Law Clerk

Re: History on the Statute Governing Warrantless Arrests of Juveniles

Date: May 30, 2019

This memo provides the history of the Utah statute authorizing the warrantless arrest of a juvenile, the Utah case law examining the statute in question, the case law establishing the meaning of the probable cause and reasonable grounds standards, and the summaries of several United States Supreme Court decisions impacting the juvenile court.

I. History of Utah Statutes Authorizing the Warrantless Arrests of Juveniles

In the 1943 Utah Code, **Arrest of a Child** was coded as section 14-7-19 and **Without Warrant** was coded as 14-7-21. However, both sections read exactly the same as the 1953 Utah Code version except for the explanation titled **Right to custody of child** which was added to the 1953 Utah Code.

1953	1965
Utah Code § 55-10-20 and § 55-10-22	Utah Code § 55-10-90
Arrest of a child. – Whenever any officer takes a child into custody he shall, unless it is impracticable or has been otherwise ordered by the court, accept the written promise of the parent, guardian or custodian to bring the child to the court at the time fixed. Whereupon such child may be released to the custody of the parent, guardian or custodian. If not so released, such child shall be placed in the custody of a probation officer or other person designated by the court, or taken immediately to the court or place of detention designated by the court, and the officer taking him shall immediately notify the court and shall file a petition when directed to do so by the court. (**Right to custody of child.** This section recognizes the preferential right of a parent to the custody of the child until adjudicated otherwise. Throughout the Juvenile Code of this state repeated warnings are given of this preferential right, and such emergency provisions as section 55-10-22 . . . were not intended as a convenient	**Child taken into custody by peace officer, private citizen or probation officer –Grounds– Notice Requirements–Release or detention. -** A child may be taken into custody by a peace officer without order of the court (a) when in the presence of the officer the child has violated a state law, federal law or local law or, municipal ordinance; (b) when there are reasonable grounds to believe that he has committed an act which if committed by an adult would be a felony; (c) when he is seriously endangered in his surroundings, or when he seriously endangers others, and immediate removal appears to be necessary for his protection or the protection of others; (d) when there are reasonable grounds to believe that he has run away or escaped from his parents, guardian, or custodian. . . When an officer or other person takes a child into custody, he shall without unnecessary delay notify the parents, guardian, or custodian. The child shall then be released to the care of his parent or other responsible adult unless his

vehicle for nullifying that preference.) **Without warrant. –** Any peace officer, police officer or probation officer may immediately take into custody, without a warrant, any child who is found violating any law or ordinance , or who is reasonably believed to be a fugitive from his parents or from justice, or whose surroundings are such as to endanger his health, morals or welfare unless immediate action is taken. In every such case the officer taking the child into custody shall immediately report the fact to the court and the case shall then be proceeded with as provided in this chapter.	immediate welfare or protection of the community requires that he be detained. Before the child is released, the parent or other person to whom the child is released may be required to sign a written promise, on forms supplied by the court, to bring the child to the court at a time set or to be set by the court. A child shall not be detained by the police any longer than is reasonably necessary to obtain his name, age, residence and other necessary information, and to contact his parents, guardian or custodian. If he is not thereupon released as provided in the preceding paragraph, he must be taken to the court or to the place of detention or shelter designated by the court without unnecessary delay. The officer or other person who takes a child to a detention or shelter facility must notify the court at the earliest opportunity that the child has been taken into custody and where he was taken; he shall also promptly file with the court a brief written report stating the facts which appear to bring the child within the jurisdiction of the juvenile court and giving the reason why the child was not released.

Highlights

- The 1965 Utah Code is when the reasonable grounds standard for arrest of a minor is set pertaining to felony offenses and if the child is a runaway.
- Prior to 1965, a minor could be taken into custody without a warrant for violating any law or ordinance or if it was reasonably believed that the minor was a fugitive from justice or his parents.
- Release of the child to the parents is preferred unless the child's welfare or protection of the community requires detainment.

Case Law

Myers v. Collett, 268 P.2d 432 (Utah 1954).

Three boys were arrested for a "violation of curfew and investigation of activities" by police officers investigating a prowler complaint. *Id.* at 433. The boys' parents were telephoned informing them that their sons were in custody. The boys were confined in a detention home and not released until the next day even though one father asked for his son to be immediately released to his custody. *Id.* There was considerable evidence that the boys would not have been detained if it had not been for the antagonism felt by one of the officers because of the attitude of one of the boys. One boy brought an action for damages for false arrest and false imprisonment.

The Court held there was no question that the statute gave officers the power to arrest the boys because the boys were violating the curfew ordinance in the presence of the officers. *Id.*

Also, the statute gives arresting officers “a certain amount of discretion” in deciding whether or not to release a child to the custody of their parents, but “the officer's discretion will not extend so far as to allow him to impose a policeman's sentence.” *Id.* at 435. In the present case, the plaintiff is the father of one of the other boys detained and not the not the father who requested the release of his son; thus, the plaintiff cannot prevail in the action for false imprisonment. *Id.*

1983	1996
Utah Code § 78-3a-29	Utah Code § 78-3a-508
Child taken into custody by peace officer, private citizen or probation officer–Grounds–Notice requirements–Release or detention. (1) A child may be taken into custody by a peace officer without order of the court: (a) If in the presence of the officer the child has violated a state law, federal law, local law, or municipal ordinance; (b) If there are reasonable grounds to believe that the child has committed an act which if committed by an adult would be a felony; (c) If the child is seriously endangered in his surroundings, or if the child seriously endangers others, and immediate removal appears to be necessary for his protection or the protection of others; (d) If there are reasonable grounds to believe that the child has run away or escaped from his parents, guardian, or custodian ; or (c) under section 53-24-2.3. . . (3) If an officer or other person takes a child into custody, he shall without unnecessary delay notify the parents, guardian, or custodian. The child shall then be released to the care of his parent or other responsible adult unless his immediate welfare or the protection of the community requires his detention. Before the child is released, the parent or other person to whom the child is released may be required to sign a written promise, on forms supplied by the court, to bring the child to the court at a time set or to be set by the court. (4) A child shall not be detained any longer than is reasonably necessary to obtain his name, age, residence, and other necessary information, and to contact his parents, guardian, or custodian. If the child is not then released as provided in subsection (3), he must be taken to the court or to	**Minor taken into custody by peace officer, private citizen, or probation officer - Grounds - Notice requirements - Release or detention - Grounds for peace officer to take adult into custody.** (1) A minor may be taken into custody by a peace officer without order of the court if: (a) in the presence of the officer the minor has violated a state law, federal law, local law, or municipal ordinance; (b) there are reasonable grounds to believe the minor has committed an act which if committed by an adult would be a felony; (c) the minor is seriously endangered in his surroundings or if the minor seriously endangers others, and immediate removal appears to be necessary for his protection or the protection of others; (d) there are reasonable grounds to believe the minor has run away or escaped from his parents, guardian, or custodian; or (e) there is reason to believe the minor is subject to the state's compulsory education law and that the minor is absent from school without legitimate or valid excuse, subject to Section 53A-11-105. . . (3) (a) If an officer or other person takes a minor into temporary custody, he shall without unnecessary delay notify the parents, guardian, or custodian. The minor shall then be released to the care of his parent or other responsible adult, unless his immediate welfare or the protection of the community requires his detention. (b) Before the minor is released, the parent or other person to whom the minor is released shall be required to sign a written promise on forms

the place of detention or shelter designated by the court without unnecessary delay. (5) The person who takes a child to a detention or shelter facility must notify the court at the earliest opportunity that the child has been taken into custody and where he was taken. The person shall also promptly file with the court a brief written report stating the facts which bring the child within the jurisdiction of the juvenile court and the reason why the child was not released.	supplied by the court to bring the minor to the court at a time set or to be set by the court. (4) (a) A minor may not be held in temporary custody by law enforcement any longer than is reasonably necessary to obtain his name, age, residence, and other necessary information and to contact his parents, guardian, or custodian. (b) If the minor is not released under Subsection (3), he shall be taken to a place of detention or shelter without unnecessary delay. (5) (a) The person who takes a minor to a detention or shelter facility shall promptly file with the detention or shelter facility a written report on a form provided by the division stating the details of the presently alleged offense, the facts which bring the minor within the jurisdiction of the juvenile court, and the reason the minor was not released by law enforcement. (b) (i) The designated youth corrections facility staff person shall immediately review the form and determine, based on the guidelines for detention admissions established by the Division of Youth Corrections under Sections 62A-7-104 and 62A-7-205, whether to admit the minor to secure detention, admit the minor to home detention, place the minor in a placement other than detention, or return the minor home upon written promise to bring the minor to the court at a time set, or without restriction.

Highlights

- The 1983 version of the statute is when the authority to take a child into custody for truancy is given.
- The 1996 statute mandates that admission of the minor into detention must adhere to the guidelines established by the Division of Youth Corrections.
- The 1996 statute is when the option of placing the minor on home detention or another placement is first allowed.

Case Law

State v. Hunt, 607 P.2d 297 (Utah 1980).

Defendant, at the age of 16 years and 11months, was tried as an adult and convicted of aggravated robbery. *Id*. at 298. Defendant appeals contending that the interrogation by police during the six and a half hour drive from Colorado violates Utah Code section 78-3a-29 (the warrantless arrest of a minor statute) and makes the juvenile's statements during that time inadmissible. *Id.* In subsection 4, the statute in question mandates that any minor not released to the custody of a parent "must be taken to the court or to the place of detention or shelter

designated by the court without unnecessary delay," and Defendant would like the Court to interpret the statute to mean the police can *only* interrogate a juvenile after the "juvenile has been presented to the juvenile authorities." *Id.* at 301-2.

The court holds that the statute in question does not govern police interrogation of juveniles. *Id.* at 302. "The statute provides for arrest and detention of juveniles on four separate and dissimilar grounds; i.e., when a child has committed (a) a misdemeanor, (b) a felony, (c) is abused, and is in need of protection, or (d) has committed a status offense." *Id.* The statute dictates that detention by police of a juvenile for interrogation must not extend past what is "reasonably necessary," and the drive from Colorado was done within normal driving time and was not unreasonable under the circumstances. *Id.*

In re K.K.C., 636 P.2d 1044 (Utah 1981).

Juvenile appeals the finding of the juvenile court that he was in unlawful possession of a controlled substance, an alcoholic beverage and tobacco. *Id.* at 1045. The juvenile appeals the subsequent search of his truck upon arrest under the Fourth Amendment right to be free from unreasonable searches and seizures. *Id.* Although a juvenile adjudication is not a criminal conviction, "courts have extended many protections of the criminal justice system to juveniles who have allegedly violated the law," so the Court decides to address the juvenile's purported constitutional infringement in the present case. *Id.*

Officers approach the juvenile's truck when he and a friend were seated and parked in a junior high school parking lot after 11:00 p.m. *Id.* An officer approached the driver's side of the truck, shined a flashlight in the window, and knocked on the window. *Id.* When the juvenile rolled down the window, the officer could see "two open and partially empty bottles of beer on the seat between the juveniles" and "a 'roach clip' hanging from the vehicle's rear view mirror." *Id.* When the two occupants were out of the truck, officers searched the cab and bed of the truck and found two bags of marijuana and several unopened bottles of beer. *Id.* The juvenile challenges the search of the pickup. *Id.* at 1046.

The general rule is that searches without a warrant are per se unreasonable. *Id.* One exception to this rule is a warrantless search and seizure incident to a lawful arrest. *Id.* The Court then analyzes whether the juveniles arrest was lawful; however the Court cites the statute giving police the authority to make a warrantless arrest in the Code of Criminal Procedure rather than the statute in the Juvenile Court Act which provides the standard for a minor to be taken into custody without a court order. *Id.* The Court holds that the warrantless arrest of the juvenile was appropriate under the Code of Criminal Procedure statute. *Id.* at 1047.

2008	**2019**
Utah Code § 78A-6-112	Utah Code § 78A-6-112
Minor taken into custody by peace officer, private citizen, or probation officer–Grounds–Notice requirements–Release or detention–Grounds for peace officer to take adult into custody. (1) A minor may be taken into custody by a peace officer without order of the court if:	**Minor taken into custody by peace officer, private citizen, or probation officer–Grounds–Notice requirements–Release or detention–Grounds for peace officer to take adult into custody.** (1) A minor may be taken into custody by a peace officer without order of the court if:

(a) in the presence of the officer the minor has violated a state law, federal law, local law, or municipal ordinance; (b) there are reasonable grounds to believe the minor has committed an act which if committed by an adult would be a felony; (c) the minor: (i) (A) is seriously endangered in the minor's surroundings; or (B) seriously endangers others; and (ii) immediate removal appears to be necessary for the minor's protection or the protection of others; (d) there are reasonable grounds to believe the minor has run away or escaped from the minor's parents, guardian, or custodian; or (e) there is reason to believe that the minor is: (i) subject to the state's compulsory education law; and (ii) absent from school without legitimate or valid excuse, subject to Section 53A-11-105. . . (3) (a) (i) If an officer or other person takes a minor into temporary custody, he shall without unnecessary delay notify the parents, guardian, or custodian. (ii) The minor shall then be released to the care of the minor's parent or other responsible adult, unless the minor's immediate welfare or the protection of the community requires the minor's detention. . . (d) Before the minor is released, the parent or other person to whom the minor is released shall be required to sign a written promise on forms supplied by the court to bring the minor to the court at a time set or to be set by the court. (4) (a) A child may not be held in temporary custody by law enforcement any longer than is reasonably necessary to obtain the child's name, age, residence, and other necessary information and to contact the child's parents, guardian, or custodian. (b) If the minor is not released under Subsection (3), the minor shall be taken to a place of detention or shelter without unnecessary delay. (5) (a) The person who takes a minor to a detention or shelter facility shall promptly file	(a) in the presence of the officer the minor has violated a state law, federal law, local law, or municipal ordinance; (b) there are reasonable grounds to believe the minor has committed an act which if committed by an adult would be a felony; (c) the minor: (i)(A) is seriously endangered in the minor's surroundings; or (B)seriously endangers others; and (ii) immediate removal appears to be necessary for the minor's protection or the protection of others; (d) there are reasonable grounds to believe the minor has run away or escaped from the minor's parents, guardian, or custodian; or (e) there is reason to believe that the minor is: (i) subject to the state's compulsory education law; and (ii) absent from school without legitimate or valid excuse, subject to Section 53G-6-208. . . (3) (a) (i) If an officer or other person takes a minor into temporary custody under Subsection (1) or (2), the officer or person shall without unnecessary delay notify the parents, guardian, or custodian. (ii) The minor shall then be released to the care of the minor's parent or other responsible adult, unless the minor's immediate welfare or the protection of the community requires the minor's detention. . . (d) Before the minor is released, the parent or other person to whom the minor is released shall be required to sign a written promise on forms supplied by the court to bring the minor to the court at a time set or to be set by the court. (4) (a) A child may not be held in temporary custody by law enforcement any longer than is reasonably necessary to obtain the child's name, age, residence, and other necessary information and to contact the child's parents, guardian, or custodian. (b) If the minor is not released under Subsection (3), the minor shall be taken to a place of detention or shelter without unnecessary delay. (5) (a) The person who takes a minor to a

with the detention or shelter facility a written report on a form provided by the division stating the details of the presently alleged offense, the facts which bring the minor within the jurisdiction of the juvenile court, and the reason the minor was not released by law enforcement. (b) (i) The designated youth corrections facility staff person shall immediately review the form and determine, based on the guidelines for detention admissions established by the Division of Juvenile Justice Services under Section 62A-7-202, whether to admit the minor to secure detention, admit the minor to home detention, place the minor in a placement other than detention, or return the minor home upon written promise to bring the minor to the court at a time set, or without restriction.	detention or shelter facility shall promptly file with the detention or shelter facility a written report on a form provided by the division stating: (i) the details of the presently alleged offense; (ii) the facts that bring the minor within the jurisdiction of the juvenile court; (iii) the reason the minor was not released by law enforcement; and (iv) the eligibility of the minor under the division guidelines for detention admissions established by the Division of Juvenile Justice Services under Section 62A-7-202 if the minor is under consideration for detention. (b) (i) The designated facility staff person shall immediately review the form and determine, based on the guidelines for detention admissions established by the Division of Juvenile Justice Services under Section 62A-7-202, the results of the detention risk assessment, and the criteria for detention eligibility under Section 78A-6-113, whether to: (A) admit the minor to secure detention; (B) admit the minor to home detention; (C) place the minor in another alternative to detention; or (D) return the minor home upon written promise to bring the minor to the court at a time set, or without restriction. . . (iv) The person who takes a minor to a detention facility or the designated facility staff person may release a minor to a less restrictive alternative even if the minor is eligible for secure detention under this Subsection (5).

Highlights

- In 2008, the name of the organization establishing the guidelines for detention admission is changed from the Division of Youth Corrections to the Division of Juvenile Justice Services.
- The additional pre-detention step of the detention risk assessment and the adherence to the statutory guidelines in the Juvenile Court Act became part of the statute in 2018.
- The option for the facility person to release the minor to a less restrictive alternative even when the minor is eligible for admission went into effect in 2018.

Utah Administrative Code

1996	2019
R547-13. Guidelines for Admission to Secure Detention Facilities.	R547-13. Guidelines for Admission to Secure Youth Detention Facilities.
R547-13-3. General Rules. (1) A youth may be detained in a secure detention facility: (a) if the alleged offense is on the Holdable Offense List, Section R547-13-14: (b) if none of the offenses are on the Holdable Offense List but three or more non-status criminal offenses are currently alleged in a single criminal episode; (c) if one or more of the following conditions exist: (i) The youth is an escapee from a Youth Corrections' observation and assessment unit. (ii) The youth has been verified as a fugitive (absconder from probation or parole) or a runaway from another state and a formal request has been received (such as a TWX/National Crime Information Center (NCIC) or a telephone call/FAX from a law enforcement officer or a verified call/FAX/ from the institution) to hold pending return to the other jurisdiction, whether or not an offense is currently charged. (d) If a youth is not detainable under any of the above criteria, but a non-status law violation has been alleged and one of the following document conditions exists; (i) The youth's record discloses two or more prior adjudicated offenses on the Holdable Offense List in which the offenses were found to be true in the past twelve months. (ii) The youth, under continuing court jurisdiction (excluding those whose ONLY involvement is as a victim of abuse, neglect, abandonment, or dependency), has run away from court-ordered placement, including his own home. (iii) The youth has failed to appear at a court hearing within the past twelve months after receiving legal notice and officials have reason to believe that the youth is likely to abscond unless held.	**R547-13-4. General Rules** (1) A youth age 10 or 11 may be detained in a secure detention facility if arrested for any felony violation of Section 76-3-203.5(c), violent felony (2) A youth age 12 or over may be detained in a secure detention facility if: (a) A youth is arrested for any of the following state or federal equivalent criminal offenses: (i) Any offense which would be a felony if committed by an adult; (ii) Any attempt, conspiracy, or solicitation to commit a felony offense; (iii) Any class A misdemeanor violation of 76-5 Part 1, offense against the person; assault and related offenses; (iv) Any class A or B misdemeanor violation of 76-10 Part 5, offenses against public health, safety, welfare, and morals; weapon offenses; (v) A class A misdemeanor violation of Section 76-5-206, negligent homicide; (vi) A class A misdemeanor violation of Section 58-37-8(1)(b)(iii), a controlled substance violation; (vii) Any criminal offense defined as domestic violence (cohabitant) by 77-36-1(4), and 78B-7-102(2) and (3); (viii) A class A or B misdemeanor violation of Section 76-6-104(1)(a) or (b), reckless burning which endangers human life; (ix) A class A misdemeanor violation of Section 76-6-105, causing a catastrophe; (x) A class A misdemeanor violation of Section 76-6-106(2)(b)(i)(a), criminal mischief involving tampering with property that endangers human life; (xi) A class A misdemeanor violation of Section 76-6-406, theft by extortion; (xii) A class A misdemeanor violation of Section 76-9-702.1, sexual battery;

(2) A youth not otherwise qualified for detention in a secure detention facility shall not be detainable for any of the following: (a) ungovernable or runaway behavior; (b) neglect, abuse, abandonment, dependency, or other status requiring protection for any other reason; (c) status offenses such as curfew, possession/consumption of alcohol, tobacco, minor-in-a-tavern, truancy; (d) attempted suicide. (3) No youth under the age of ten years may be detained in a secure detention facility. **R547-13-14. Holdable Offense List.** 110 Offenses are listed.	(xiii) A class A misdemeanor violation of Section 76-5-401.3(2)(c) or (d), unlawful adolescent sexual activity; (xiv) A class A misdemeanor violation of Section 76-9-702.5, lewdness involving a child; (xv) A class A misdemeanor violation of Section 76-9-702.7(1), voyeurism with recording device; (xvi) A class A misdemeanor violation of Section 41-6A-401.3(2), leaving the scene of an accident involving injury; and (xvii) A class A misdemeanor violation of Section 41-6A-503(1)(b)(i) or (ii), driving under the influence involving injury; driving under the influence with a passenger under 16 years of age. (b) The youth is an escapee or absconder from a Juvenile Justice Services secure facility or community placement. (c) The youth has been verified as a fugitive (absconder from probation or parole) or a runaway from another state and a formal request has been received (such as a TWX/National Crime Information Center (NCIC) or a telephone call/FAX/email from a law enforcement officer or a verified call/FAX/email from the institution) to hold, pending return to the other jurisdiction, whether or not an offense is currently charged. (3) A youth not otherwise qualified for admission to a secure detention facility shall not be detained for any of the following: (a) ungovernable or runaway behavior; (b) neglect, abuse, abandonment, dependency, or other status requiring protection for any other reason; (c) status offenses such as curfew, possession/consumption of alcohol, tobacco, minor-in-a-tavern, truancy; or (d) attempted suicide. (4) No youth under the age of ten years may be detained in a secure detention facility.

II. Case Law Establishing the Reasonable Cause/Probable Cause Standard

State v. Hatcher, 495 P.2d 1259 (Utah 1972).

When pertaining to the authority of an officer to make a warrantless arrest, "reasonable cause" is an objective standard based on "whether from the facts known to the officer, and the inferences which fairly might be drawn therefrom, a reasonable and prudent person in his position would be justified in believing that the suspect had committed the offense." *Id.* at 1260.

Draper v. United States, 358 U.S. 307 (1959).

"Probable cause exists where the facts and circumstances within (the arresting officers') knowledge and of which they had reasonably trustworthy information (are) sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *Id.* at 313 (quoting Carroll v. United States, 267 U.S. 132, 162 (1924)).

III. Case Law Establishing the Reasonable Grounds Standard

State v. Velasquez, 672 P.2d 1254 (Utah 1983).

Parole officers failed to obtain a warrant before searching a parolee's apartment. *Id.* at 1256. The Utah Supreme Court held that while warrantless searches usually require probable cause, a parole officer need only have reasonable grounds to believe the parolee has committed a crime to conduct a search. *Id.* at 1260. In defining the standard of "reasonable grounds," the Utah Supreme Court considered the standard to be the "middle ground approach." *Id*. The Court further explained, "The term 'reasonable grounds' does not mean that which would be necessary for probable cause. Rather, it means a reasonable suspicion that a parolee has committed a parole violation or crime." *Id.*

New Jersey v. T.L.O., 469 U.S. 325 (1985).

This U.S. Supreme Court case involved the standard for searching a student's property when the search is done by a public school official. The Supreme Court held there is no violation of a student's Fourth Amendment right when a search of a student by a teacher or other school official is done when "there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school." *Id.* at 342. The Court reasoned that lessor standard of reasonable grounds, rather than the higher standard of probable cause, balanced the need of accommodating "the privacy interests of schoolchildren with the substantial need of teachers and administrators . . . to maintain order in the schools." *Id*. at 341.

IV. United States Supreme Court Juvenile Cases

Kent v. United States, 383 U.S. 541 (1966).

A 16-year-old minor was tried and convicted as an adult in the District of Columbia for housebreaking and robbery. The defendant appealed challenging compliance of the required procedure for the juvenile court to waive jurisdiction. The Court held that "the Juvenile Court should have considerable latitude within which to determine whether it should retain jurisdiction over a child or—subject to the statutory delimitation—should waive jurisdiction. But this latitude

is not complete. At the outset, it assumes procedural regularity sufficient in the particular circumstances to satisfy the basic requirements of due process and fairness." *Id.* at 552-3.

In re Gault, 387 U.S. 1 (1967).

This case arose on appeal of the dismissal of a petition for a writ of habeas corpus seeking the release of a 15-year-old boy who had been committed to the State Industrial School on delinquency charges. *Id.* at 4. The Court concludes that previous U.S. Supreme Court cases involving juveniles "unmistakably indicate" that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." *Id.* at 13. The Court closely examines the juvenile court system and determines there are legitimate reasons for treating juveniles and adults differently. *Id.* at 14-17.

Ultimately, though, the Supreme Court holds, "Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the state may exercise." *Id.* at 20. Thus, juveniles facing delinquency charges have many of the same legal rights as adults in criminal court, including the right to notice of charges filed against them, the right to counsel, the right to confrontation of witnesses, the right against self-incrimination, the right to cross-examine witnesses, and the right to appellate review and a transcript of the proceedings. *Id.* at 31, 34, 42, 57.

In re Winship, 397 U.S. 358 (1970).

At 12-years-old, appellant was found delinquent to a charge of larceny based on the preponderance of the evidence standard. *Id.* at 360. The Supreme Court held "the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt" and an adjudication of delinquency requires the same proof standard as criminal cases or proof beyond a reasonable doubt. *Id.* at 364.

McKeiver v. Pennsylvania, 403 U.S. 528 (1971).

Several juveniles charged with varying acts of juvenile delinquency request jury trials which are denied. Juveniles appeal the denials and inquire whether there is a constitutional right to a jury trial in juvenile court. *Id.* at 535. The Supreme Court discusses previous cases which have emphasized due process factors protecting juveniles and emphasizes, "The Court, however, has not yet said that all rights constitutionally assured to an adult accused of crime also are to be enforced or made available to the juvenile in his delinquency proceeding. Indeed, the Court specifically has refrained from going that far." *Id.* at 533. Additionally, the Court found that "the applicable due process standard in juvenile proceedings, as developed by *Gault* and *Winship*, is fundamental fairness." *Id.* at 543. The Court ultimately concludes that jury trials are not constitutionally required in juvenile court adjudications. *Id.* at 545.

Schall v. Martin, 467 U.S. 253 (1984).

Juveniles in New York brought a habeas corpus action asserting a statute allowing for pretrial detention violates the Due Process Clause of the Fourteenth Amendment. *Id.* The New York statute in question allows for a juvenile to be detained at an initial appearance until a probable cause hearing is held "not more than three days after the conclusion of the initial appearance or four days after the filing of the petition, whichever is sooner." *Id.* at 270. The Court begins its decision by reviewing past Supreme Court decisions on juveniles and states:

> There is no doubt that the Due Process Clause is applicable in juvenile proceedings. The problem, we have stressed, is to ascertain the precise impact of the due process requirement upon such proceedings. We have held that certain basic constitutional protections enjoyed by adults accused of crimes also apply to juveniles. But the Constitution does not mandate elimination of all differences in the treatment of juveniles. The State has a *parens patriae* interest in preserving and promoting the welfare of the child which makes a juvenile proceeding fundamentally different from an adult criminal trial. We have tried, therefore, to strike a balance—to respect the informality and flexibility that characterize juvenile proceedings, and yet to ensure that such proceedings comport with the fundamental fairness demanded by the Due Process Clause.

Id. at 263 (internal citations and quotation marks omitted).

In the present case, the Court must decide if the statute allowing for preventative detention of juveniles both serves a legitimate state objective and provides adequate procedural protection. *Id.* at 263-64. While examining the adequacy of the procedural protections, the Court addresses the appellees' argument that the decision in *Gerstein v. Pugh* required a probable cause finding before any incarceration. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). The Court noted, in *Gerstein*, the Court held "a judicial determination of probable cause is a prerequisite to any extended restraint on the liberty of an adult accused of a crime." *Schall*, 467 U.S. at 274-75.

However, the Court concludes that New York statute in question provides more procedural protection than the Court had required in *Gerstein* and these preventative procedures are constitutionally adequate under the Fourth Amendment and the Due Process Clause. *Id.* at 276-77. The procedures afforded to juveniles that protect against an "erroneous and unnecessary deprivation of liberty" include notice, a hearing, a statement of facts and reasons prior to any detention, and a formal probable cause hearing "if the factfinding hearing is not itself scheduled within three days." *Id.*

TAB 3

FORM PACKET

MOTION TO INTERVENE IN ICWA CINA CASE

Form Number	*Form Name*
WHAT IS INCLUDED IN THIS PACKET?	
CN-555	**Motion to Intervene in ICWA CINA Case with proposed Order**
CN-560	**Designation of Tribal Representative**
CN-565	**Affidavit of Tribal Membership**
CN-570	**Certificate of Service for Motion to Intervene**
WHERE CAN I FIND MORE INFORMATION?	
Online	Alaska Tribes Homepage
Online	State Court's Homepage
Online	Alaska Legal Services Corporation Homepage
Online	State Court's Locations and Hours

March 2019
Alaska Court System

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT _____

In the matter of:	)	
	)	
	)	
_____,	)	
A minor under 18 years of age.	)	CASE NO. _____
	)	
Date of birth: _____	)	**MOTION TO INTERVENE**
_____	)	**IN ICWA CINA CASE, AND ORDER**

MOTION TO INTERVENE

Tribe or Indian Custodian making this motion: _____

The Tribe or Indian Custodian named above moves to intervene in this State court case. This is a child custody proceeding about an Indian child as defined by the *Indian Child Welfare Act of 1978* ("ICWA"), 25 U.S.C. § 1903(1). Grounds for this motion are as follows:

1. The child is an Indian child as defined by ICWA § 1903(4) because the child is:
   A. under age 18
   B. not married
   C. ☐ a member of the Tribe
   D. ☐ eligible for membership in the Tribe and the biological child of a member of the Tribe whose name is _____
2. The Tribe is an Indian tribe as defined by ICWA § 1903(8).
3. The Tribe is the Indian child's tribe as defined by ICWA § 1903(5) because the child is a member of the Tribe; eligible for membership in the Tribe; or eligible for membership in more than one tribe and has more significant contacts with this Tribe.
4. ICWA § 1911(c) gives the Tribe the right to intervene at any time in a State court case for foster care placement of, or termination of parental rights to, an Indian child.

The Tribe or Indian Custodian requests that all documents, pleadings, notices, and other papers be promptly provided to the Tribe's or Tribal Custodian's designated representative. A proposed order is included below. A designation of tribal representative, affidavit of tribal membership, and certificate of service are also being filed with this *Motion*.

Date: _____ Signature: _____

Phone: _____ Print Name: _____

Email: _____ Title: _____

Mailing Address: _____

ORDER

The *Motion to Intervene* in this ICWA CINA case is GRANTED. The petitioner is permitted to intervene as a party in this case.

Date: _____ Judge's Signature: _____

I certify that on _____ a copy of this order was sent to:

By Court Clerk: _____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT _____

In the matter of:	)	
	)	
	)	
_____,	)	
A minor under 18 years of age.	)	CASE NO. _____
	)	
Date of birth: _____	)	**DESIGNATION OF TRIBAL REPRESENTATIVE**
_____	)	

TO ALL PARTIES:

1. Indian Tribe making this designation: _____
2. I represent the Indian Tribe named in paragraph 1 above. The Tribe is a federally recognized Indian Tribe listed in the Federal Register.
3. Under ICWA, the Tribe designates the following person as the Tribe's representative:
   Name: _____
   Title: _____
4. The Tribe asks that notice of all proceedings be sent to the Tribe's designated representative using the contact information below:
   Phone: _____ Email: _____
   Address: _____
   _____
5. ☐ The Tribe also asks for notice to be sent to the Tribal council at the address below:
   Address: _____
   _____
6. The Tribe authorizes its designated representative to do the following:
   - ☐ Receive notice of hearings;
   - ☐ Be present at hearings;
   - ☐ Address the court;
   - ☐ Examine all court documents relating to the case;
   - ☐ Submit written reports and recommendations to the court;
   - ☐ Request transfer of the case to the tribe's jurisdiction; and
   - ☐ Intervene at any point in a proceeding as authorized.

I swear or affirm that the above statements and any attachments are true to the best of my knowledge and belief.

Date: _____ Signature: _____
Phone: _____ Print Name: _____
Email: _____ Title: _____
Mailing Address: _____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT _____

In the matter of:	)	
	)	
	)	
_____,	)	
A minor under 18 years of age.	)	CASE NO. _____
	)	
Date of birth: _____	)	**AFFIDAVIT OF TRIBAL MEMBERSHIP**
_____	)	

My full name is: _____

I swear or affirm that the following facts are true to the best of my knowledge and belief:

1. I am making this affidavit on behalf of the Indian Tribe (Tribe) named below:
   _____
2. My position with the Tribe is: _____
3. This is an affidavit concerning the tribal membership or eligibility for tribal membership of the minor named above.
4. The name of the minor's father is: _____
   The minor's father ☐ is a member of the Tribe ☐ is not a member of the Tribe.
5. The name of the minor's mother is: _____
   The minor's mother ☐ is a member of the Tribe ☐ is not a member of the Tribe.
6. The minor named above:
   ☐ is a member of the Tribe or is eligible for membership in the Tribe.
   ☐ is not a member of the Tribe or is not eligible for membership in the Tribe.
7. _____
   _____
   _____

SIGNATURE AND NOTARY

Phone: _____ Signature: _____
(Only sign in front of a notary or court clerk.)

Subscribed and sworn to or affirmed before me at _____, Alaska on _____.

_____
Clerk of Court, Notary Public, or other person authorized to administer oaths.
My commission expires: _____

CERTIFICATION IF NO NOTARY IS AVAILABLE

I certify under penalty of perjury that all of the information in this *Affidavit* is true, and a notary public or other official empowered to administer oaths is not available.

Date: _____ Place: _____ Signature: _____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT _____

In the matter of:)
)
)
_____,)
A minor under 18 years of age.) CASE NO. _____
)
Date of birth: _____)
_____) **CERTIFICATE OF SERVICE: FOR MOTION TO INTERVENE IN ICWA CINA CASE**

[Instructions: The *Motion to Intervene in ICWA CINA Case, Designation of Tribal Representative, Affidavit of Tribal Membership,* and this *Certificate of Service* must be served on the other parties or attorneys for the parties. Anyone at least 18 years old EXCEPT A PARTY in this action may personally serve or mail the *Motion*. The person who serves the *Motion* must fill out and sign this *Certificate of Service*.]

1. At the time of service I was at least 18 years old and not a party to the legal action.

2. I certify that I delivered a copy of the *Motion to Intervene in ICWA CINA Case* with proposed *Order*, *Designation of Tribal Representative*, *Affidavit of Tribal Membership,* and this *Certificate of Service* on the following as indicated:

	Name	*Date served*	*Served by mail*	*Personally served*
Child's attorney				
Child's advocate				
Parent or parent's attorney				
Other Parent or parent's attorney				
Indian custodian or child's caregiver				
Social worker				
Prosecutor				
OCS attorney				
Other potential tribes				

Date: _____ Signature: _____

Phone: _____ Print Name: _____

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE INTEREST OF:

Name _____ **Case No. _____**
Year of Birth _____ A □ male □ female

INDIAN CHILD WELFARE ACT
NOTICE OF INTERVENTION
Pursuant to K.S.A. 38-2203(a) and 25 U.S.C. § 1901 *et seq.*

The _____ Tribe intervenes in this proceeding as the Indian Tribe of the child named above.

DATED this ____ day of _____, _____.

For the _____ Tribe
_____, General Counsel
Name
Supreme Court Number
Address
Telephone Number
[Fax Number]
[E-mail Address]

_____
Associate Counsel/ Authorized Representative
Name
[Supreme Court Number]
Address
Telephone Number
[Fax Number]
[E-mail Address]

Authority

K.S.A. 38-2203(a) and 25 U.S.C. § 1901 *et seq.*

Notes on Use

At any stage in the proceedings, regardless of whether notice has been given, the Tribe has the right to participate as a party in the child in need of care proceedings. The Kansas statutes governing the intervention of a party in a case do not apply to the child's Tribe. ICWA controls and gives the child's Tribe the right to intervene in the case at any time regardless of whether the Tribe has participated before or ever motioned the court to intervene. The Tribe is **not required** to make a written or oral motion to intervene; however, if a Tribe does wish to intervene the Tribe may use this form. 25 U.S.C. 1911(c).

The Indian Child Welfare Act and associated regulations and guidelines are silent on whether an attorney is required to represent a Tribe in court. An attorney can be helpful in an ICWA proceeding, but an attorney is not mandated by federal law. The Oregon Court of Appeals held that due to economic and procedural barriers, requiring a Tribe to obtain legal counsel effectively burdens the intervention rights of the Tribe and essentially den[ies] that right in many cases. *In re Shuey*, 850 P.2d 378 (Or. Ct. App. 1993). The court reasoned that [t]he states interest in requiring attorney representation is not as substantial as the tribal interests in ICWA proceedings. *Id*. at 381. If it is economically feasible, an attorney versed in the ICWA should be consulted.

If an Indian child is a member of more than one Tribe or is eligible for membership in more than one Tribe, the court must provide the opportunity for the Tribes to determine which Tribe should be designated as the Indian child's Tribe for the purposes of ICWA. If the Tribes reach an agreement, the agreed-upon Tribe should be designated as the Indian child's Tribe. 25 C.F.R. 23.109. If the Tribes are unable to reach an agreement, the court must make a determination pursuant to the factors provided in 25 C.F.R. 23.109.

TAB 4

Rule 27A. Admissibility of statements given by minors.

(a) If a minor is in custody for the alleged commission of an offense that would be a crime if committed by an adult, any statement given by a minor in response to questions asked by a police officer is inadmissible unless the police officer informed the minor of the minor's rights before questioning begins. ~~(a)(1)~~ If the child is under 14 years of age, the child is presumed not adequately mature and experienced to knowingly and voluntarily waive or understand a child's rights unless a parent, guardian, or legal custodian is present during waiver.

~~(a)(2) If the minor is 14 years of age or older, the minor is presumed capable of knowingly and voluntarily waiving the minor's rights without the benefit of having a parent, guardian, or legal custodian present during questioning.~~

(b) The presumption~~s~~ outlined in paragraph~~s~~ (a~~)(1) and (a)(2)~~ may be overcome by a preponderance of the evidence showing the ability ~~or inability~~ of a minor to comprehend and waive the minor's rights.

~~**Advisory Committee Notes**~~

~~This rule is intended to recognize the right to counsel, and the right against self-incrimination as established by statute, constitution, or caselaw.~~

416 P.3d 478
Supreme Court of Utah.

R.G. and D.G., [1] Appellants,
v.
STATE of Utah, Appellee.

Nos. 20141046 and 20141047
|
Filed: November 15, 2017

Synopsis

Background: State filed petition alleging aggravated sexual assault against juveniles, and juveniles moved to suppress their post-*Miranda* statements regarding the sexual assault to a police detective during an interview at their high school. The Third Juvenile Court, Nos. 1095932 and 1095934, Kimberly K. Hornak, J., denied motions and following bench trial adjudicated juveniles delinquent. Juveniles appealed, and the Court of Appeals certified the case to the Supreme Court.

The Supreme Court, Durham, J., held that juveniles, who were 15 years of age, knowingly, intelligently, and voluntarily waived their *Miranda* rights during interview with police detective at school regarding sexual assault.

Affirmed.

***480** On Certification from the Court of Appeals, Third Juvenile Court, The Honorable Kimberly K. Hornak, Nos. 1095932 and 1095934

Attorneys and Law Firms

Sam N. Pappas, Monica Maio, Salt Lake City, for appellants

Sean D. Reyes, Att'y Gen., John J. Nielsen, Asst. Sol. Gen., Kristin L. Zimmerman, Salt Lake City, for appellee

Justice Durham authored the opinion of the Court, in which Chief Justice Durrant, Associate Chief Justice Lee, Justice Himonas, and Justice Pearce joined.

Justice Durham, opinion of the Court:

INTRODUCTION

¶ 1 D.G. and R.G. were accused of aggravated sexual assault in juvenile court. Both D.G. and R.G. filed a motion to suppress their post-*Miranda* statements regarding the sexual assault to a detective during an interview at their school. The juvenile court held an evidentiary hearing and denied the motion to suppress the post-*Miranda* statements. Both interviews with the detective regarding the sexual assault were introduced at trial. D.G. and R.G. were adjudicated delinquent for committing aggravated sexual assault. The court of appeals certified the case to this court; we have jurisdiction pursuant to Utah Code section 78A-3-102(3)(b).

¶ 2 We hold that the juvenile court did not err in denying D.G.'s and R.G.'s motion to suppress their post-*Miranda* statements. And, considering the totality of the circumstances surrounding their waivers, we hold that D.G. and R.G. knowingly and voluntarily waived their *Miranda* rights during the interview with the detective at their school. [2]

BACKGROUND

¶ 3 Near the beginning of the school year in 2013, two fourteen-year-old boys, D.G. and R.G. went over to another male friend's house after school. After receiving a phone call from R.G., the victim and her friend, also both fourteen years of age, took the bus and joined D.G. and R.G. at the friend's house. D.G., R.G., and the third friend drove to the bus stop to pick up the two girls. While at the house, R.G. held a box cutter to the victim's throat and engaged in nonconsensual sexual intercourse with the victim. D.G., the other boy in the room during the sexual assault, also engaged in nonconsensual oral sex with the victim.

***481** ¶ 4 A few months later, the victim reported the sexual assault involving D.G. and R.G. to the West Valley City police. A West Valley City detective conducted individual interviews with D.G. and R.G. at their school in the school resource officer's office without a parent

present for either minor. D.G. was interviewed first, and R.G.'s interview followed.

¶ 5 At the beginning of D.G.'s interview, the detective told D.G. why he was there and described his role as a detective. He asked D.G.: "You know what we do, right, police detectives? You know, we investigate things that may be crimes." The detective told D.G., "I just have to let you know that you don't have to talk to me." He then recited the *Miranda* rights to D.G. without pausing to check for understanding until after the rehearsed speech. Following the warning, the detective informed D.G. that he could "stop answering questions at any time and [he could] request counsel at any time during questioning." He asked D.G., "Do you understand those rights?" Then, the detective informed D.G. that he was not under arrest and he was not telling him anything to make him scared. The detective again asked, "Having those rights in mind, can I let you know [why] I'm here, you want to talk to me, tell me what is going on?" D.G. agreed to talk with the detective and eventually confessed to participating in non-consensual sex with the victim at the request of R.G.

¶ 6 As R.G.'s interview began, the detective said to R.G.: "The law makes sure and requires me to tell you what your rights are, okay?" The detective then recited the *Miranda* warning to R.G. from memory. His recitation was without the intonation and inflections that normally gives meaning and nuance in verbal speech. The volume of his voice lowers, and he speaks quickly in a well-rehearsed speech. The detective then asked R.G. the following questions: "Do you understand those rights?" "Having those rights in mind, can I talk to you?" and "Do you want to talk to me?" R.G. then proceeded to talk to the detective, eventually confessing to actions that amount to aggravated sexual assault.

¶ 7 In February 2014, the state filed a petition in juvenile court alleging aggravated sexual assault against D.G. and R.G. based on testimony from the victim and the confessions obtained in these interviews. D.G. and R.G. each filed a Motion to Suppress Statements and Request for Evidentiary Hearing, arguing that their *Miranda* waivers to the detective during the interviews at the school were not "made knowingly and voluntarily in violation of the Fifth and Fourteenth Amendments." Each later filed an amended motion to suppress.

¶ 8 The juvenile court held an evidentiary hearing regarding the *Miranda* waivers and the motion to suppress. Both of the boys' mothers and the detective testified at the hearing. The juvenile court denied D.G.'s and R.G.'s motions to suppress their testimony given during their interviews with the detective, and the statements were later introduced at trial. The juvenile court found that the detective asked D.G. and R.G. questions to be sure they understood their rights and that D.G. and R.G. were honors students capable of understanding their rights, and held that the *Miranda* rights waivers were valid.

¶ 9 After a bench trial, the juvenile court adjudicated both D.G. and R.G. delinquent for committing aggravated sexual assault. D.G.'s sentence included state supervised probation, completion of an early intervention program, a five-day detention, a Sexual Behavior Risk Assessment (SBRA), 150 hours of community service, and a requirement to provide fingerprints, a photograph, and a DNA specimen. R.G.'s sentence included state supervised probation, 150 hours of community service, one day of detention, an SBRA, a requirement to provide fingerprints, a photograph, and a DNA specimen, a no-contact order with D.G., and completion of an early intervention program.[3] D.G. and ***482** R.G. filed motions to stay their sentence and timely appealed. The record is silent on the court's decision regarding D.G.'s motion to stay. The juvenile court granted R.G.'s Motion to stay the SBRA, DNA sample, and fingerprinting pending appeal, but not the community service.

¶ 10 The issue now before this court is whether D.G. and R.G. knowingly and voluntarily waived their *Miranda* rights during the interview with the detective at their school. We hold that the *Miranda* warnings given to D.G. and R.G. were sufficient according to the standards this court and the United States Supreme Court have set, and that both D.G. and R.G. knowingly and voluntarily waived their *Miranda* rights. Accordingly, we hold that the juvenile court did not err in denying the motion to suppress their post-*Miranda* statements.

STANDARD OF REVIEW

¶ 11 "We review for correctness a trial court's ultimate ruling regarding the validity of a *Miranda* waiver, while 'granting some degree of discretion to the trial court

because of the wide variety of factual settings possible.' " *State v. Bybee*, 2000 UT 43, ¶ 16, 1 P.3d 1087 (citations omitted). The findings of fact of the trial court are reviewed for clear error. *Id.*

ANALYSIS

¶ 12 We begin our analysis by discussing the unique purposes and development of the juvenile justice system. We then turn to a discussion of *Miranda* and its application to juvenile suspects. Finally, we analyze D.G.'s and R.G.'s rights with these sets of facts and under these particular circumstances.

I. JUVENILE COURTS AND MODERN-DAY JUSTICE

¶ 13 For more than 50 years, the juvenile court system in Utah has been "charged ... with the protection of other citizens and property from the wrongful acts of children, while recognizing the unique need to do all that is reasonable to salvage a child who has strayed from the path of acceptable behavior." *State ex rel. K.M.*, 2007 UT 93, ¶¶ 34–35, 173 P.3d 1279 (Wilkins, A.C.J., concurring). The purpose of juvenile courts is to "promote public safety and individual accountability," "order appropriate measures to promote guidance and control," adjudicate matters, and "consistent with the ends of justice, act in the best interest of the minor in all cases and preserve and strengthen family ties." UTAH CODE § 78A-6-102(5). [4]

¶ 14 The juvenile court systems across the United States have evolved from the idea of a grandfatherly figure (not necessarily a judge) providing guidance and counsel to wayward youth, to the use of courts that resemble adult courts in almost every aspect. In Utah, these reforms include the creation of the Utah Youth Court Diversion Act. *Id.* § 78A-6-1201 to -1210. This program provides alternative options for qualified juveniles to be referred out of the juvenile court system and receive varied dispositions of their case. *See Id.* § 78A-6-1205. Furthermore, specialized judges "steeped in the policy and theory of juvenile justice" are tasked with "select[ing] from the vast array of alternatives those most likely to meet the multiple goals of a juvenile court proceeding." *State ex rel. K.M.*, 2007 UT 93, ¶ 39, 173 P.3d 1279. The changes in the juvenile court system have led to improvements in constitutional protections for juveniles. But we acknowledge the difficult task juvenile courts face in ***483** balancing the need and desire to help and re-orient troubled youth with the demands of justice for their criminal behavior.

¶ 15 Although the juvenile court system now more closely resembles adult courts, some variances still exist. Recognizing the differences in adult and juvenile behavior and culpability, "we employ a slightly different system of justice" for each. *Id.* ¶ 38. For example, juvenile courts are closed proceedings, use different language and terminology, and require adult intervention (either through parents, legal guardians, or guardians ad litem). *Id.* ¶ 39. They also take age, experience, and emotional maturity into consideration when considering their ability to give consent, waive rights, and suffer consequences.

¶ 16 Because of the "significantly enhanced treatment and protection options, services, and reduced penalties available ... we do not extend to the child all of the adult protections of our criminal justice system." *Id.* ¶ 42 ("As a matter of state and national policy, we have declined to grant directly to children the full scope of criminal due process and other constitutional protections ordinarily afforded accused adults. Instead, we focus our efforts on protecting them from the life-long consequences of acts committed when adult judgment and mature experience are as yet not available to them."). For example, juveniles are not entitled to a jury of their peers and consequences in the juvenile courts are "measure[d] in part by the likelihood that a child's pattern of behavior can and will be modified in the direction of proper and acceptable behavior as a result" of the designated consequences. *Id.* ¶ 35.

II. *MIRANDA* WAIVERS AND MINORS

¶ 17 In *Haley v. Ohio*, the Supreme Court recognized that minors can be "easy victim[s] of the law" and cannot be "judged by the more exacting standards of maturity." 332 U.S. 596, 599, 68 S.Ct. 302, 92 L.Ed. 224 (1948). Later, in *Fare v. Michael C.*, the Supreme Court imported a totality of the circumstances test regarding whether a minor is able to waive *Miranda* rights, constitutionalizing a standard regarding minors' rights to knowingly, voluntarily, and intelligently waive their rights. 442 U.S. 707, 724–25, 99 S.Ct. 2560, 61 L.Ed.2d 197 (1979). [5]

¶ 18 In Utah, the process of determining whether juveniles are capable of knowingly and voluntarily waiving their rights begins with Utah Rule of Juvenile Procedure 27A, which governs the admissibility of statements given by minors without a parent or legal custodian present. When the minors are under 14, the presumption is that they are not capable of waiving their rights without a parent figure present under rule 27A(a)(1). Since both minors in this case were at least 14, we focus on rule 27A(a)(2), which states that "if the minor is 14 years of age or older, the minor is presumed capable of knowingly and voluntarily waiving the minor's rights without the benefit of having a parent, guardian, or legal custodian present during questioning." [6] Only after this determination ***484** do we proceed to the totality of the circumstances test to determine whether *Miranda* rights were validly waived by a minor as outlined in *State v. Bybee*, 2000 UT 43, ¶ 17, 1 P.3d 1087. This includes considering the following factors:

(1) Age,

(2) Intelligence,

(3) Education,

(4) Experience,

(5) The minor's ability to comprehend the meaning and effect of his statement,

(6) Whether the police used any coercive tactics in obtaining the waiver, and

(7) Whether a parent, adult friend, or attorney was present.

Id.

¶ 19 As in all *Miranda* waiver cases, "the State bears the burden of showing that the accused gave a valid waiver of his *Miranda* rights prior to making incriminating statements during custodial interrogation." *State v. Dutchie*, 969 P.2d 422, 427 (Utah 1998). This includes a consideration of "[a]ge" and "[w]hether a parent, adult friend, or attorney was present," regardless of the presumption established in Rule 27A(a)(2). *Bybee*, 2000 UT 43, ¶ 17, 1 P.3d 1087.

¶ 20 However, once the State has met the burden of showing that the waiver was otherwise valid (knowing, voluntary, and intelligent), the minor, along with being able to contest all factors in the totality of the circumstances test, can also offer evidence to overcome the presumption of rule 27A "by a preponderance of the evidence showing the ... inability of the minor to comprehend and waive the minor's rights." UTAH R. JUV. P. 27A(b).

III. THE JUVENILE COURT DID NOT ERR IN DENYING THE MOTION TO SUPPRESS THE POST-*MIRANDA* STATEMENTS

¶ 21 The juvenile court held an evidentiary hearing on D.G.'s and R.G.'s motion to suppress their post-*Miranda* statements. It addressed each of the seven factors to be considered in the totality of circumstances test in its Findings of Fact and Conclusions of Law regarding the evidentiary hearing. We now address each factor for each defendant in turn.

A. The Totality of the Circumstances Supports that D.G. Knowingly and Voluntarily Waived His Miranda *Rights*

¶ 22 First, the juvenile court found D.G. to be 15 years of age. There is nothing about D.G.'s age alone that overcomes his waiver. Additionally, D.G. affirmed that he understood his rights when asked by the detective. The court further found that there was "no evidence that [D.G.] did not understand the Detective," nor was there any evidence that "he was confused or scared." D.G. did not provide any evidence to rebut his affirmative statement that he understood his rights.

¶ 23 Second, as to D.G.'s intelligence, the juvenile court found that D.G. had "straight A's in school [and was] an honor student." The court also found that D.G. was of "above average intelligence." Nothing from these findings weighs against D.G.s ability to intelligently waive his rights.

¶ 24 Third, when considering education, the juvenile court found that D.G.'s education level was "appropriate for his age" and there was no evidence that "he ha[d] any learning or mental disabilities." D.G. also "read at a ninth grade or even higher level." These ***485** facts do not give any cause for concern regarding D.G.'s education that would weigh

against his ability to knowingly waive his rights under the totality of the circumstances test.

¶ 25 Fourth, the juvenile court found that D.G. had no prior experience with law enforcement or the court system. While this weighs against his ability to knowingly waive his rights, this factor alone is not enough to overcome the weight of the other factors that indicate a valid waiver.

¶ 26 Fifth, as to D.G.'s ability to comprehend the meaning and effect of his statements, the juvenile court also found that D.G. "understood his rights." Additionally, there is no evidence that during the interview D.G. was scared or confused or felt intimidated in any way so as to impair his comprehension.

¶ 27 Sixth, no coercive tactics were used by the officer during the interview. The juvenile court found that the detective asked D.G. questions to be sure he understood his rights. Specifically, the detective asked D.G. "Do you understand those rights?" "Does that make sense?" "Can I let you know why I'm here? You want to talk to me, tell me what is going on?" The detective also informed D.G. that he could stop answering questions at any time and request an attorney at any time during the interview. Additionally, the detective told D.G. that he was not telling him his rights "to make him scared" and that he was not under arrest. We find no evidence in the record that any intimidation tactics or coercion by the detective would invalidate D.G.'s waiver. The interview was relatively short and occurred at a place that was familiar to D.G. [7] There was no evidence of any threats or promises in exchange for speaking to the detective.

¶ 28 Last, we consider the fact that D.G. did not have a parent, legal guardian, or attorney present during the interview with the detective. D.G. did not ask for a parent or attorney to be present during the interview even though D.G. was informed he could have an attorney present. As we have previously stated, "while the presence of a parent or an attorney is a factor that should be considered by the court, it is not determinative, and the lack thereof does not make the waiver invalid per se." *State v. Dutchie*, 969 P.2d 422, 429 (Utah 1998). [8] This is only one factor to consider among the other factors.

¶ 29 The state met its burden of showing that the waiver was knowingly, intelligently, and voluntarily given in this case. D.G. did not offer adequate evidence that would counter a finding that he knowingly and voluntarily waived his rights. Considering the totality of the circumstances including D.G.'s age, intelligence, ability to comprehend the questions asked by the detective after giving the *Miranda* warnings, and lack of coercive tactics used by the detective, we hold that the *Miranda* warnings were sufficient.

¶ 30 Further, D.G. did not "overcome by a preponderance of the evidence" the presumption in rule 27A that D.G. is "capable of knowingly and voluntarily waiving [his] rights without the benefit of having a parent, guardian, or legal custodian present during questioning." UTAH R. JUV. P. 27A. The juvenile court did not err in denying D.G.'s motion to suppress his post-*Miranda* statements to the detective.

B. The Totality of the Circumstances Support that R.G. Knowingly and Voluntarily Waived His Miranda Rights

¶ 31 First, the juvenile court found that R.G. was 15 years of age, and that "the ***486** law clearly provides that a juvenile 14 or older can be interviewed without a parent," (citing *State v. Bybee*, 2000 UT 43, 1 P.3d 1087). Accordingly, without further evidence to the contrary, R.G.'s age by itself does not overcome the finding by the juvenile court that his *Miranda* waiver was valid.

¶ 32 Second, as to R.G.'s intelligence, "all the evidence would indicate that R.G. is of average intelligence." No evidence was presented to indicate that he had any learning disabilities or was failing any classes. Nothing about R.G.'s intelligence weighs in favor of invalidating his *Miranda* waiver.

¶ 33 Third, we consider R.G.'s education. All evidence indicates that he has the "appropriate education level of a fifteen-year-old." There is nothing in the record to indicate that he is in any resource or special classes or that there is any cause for concern regarding his education level.

¶ 34 The fourth factor is R.G.'s experience with law enforcement or the court system. R.G. has had no prior experience with law enforcement or the court system. However, this alone does not outweigh the other factors that favor a holding of validity.

¶ 35 Fifth, as to R.G.'s ability to comprehend the meaning and effect of his statements, the juvenile court found that R.G. "understood his rights." There is no evidence that R.G. was confused or scared during the interview. As the juvenile court found, R.G. answered the detective's questions affirmatively, that he understood his rights, and that he indicated that he wished to speak with the detective.

¶ 36 Sixth, no coercive tactics were used by the officer during the interview. The juvenile court found that the detective asked R.G. four questions to be sure he understood his rights. Specifically, the detective told R.G.

> The law makes sure and requires me to tell you what your rights are, okay? Not to scare you. It doesn't mean you're under arrest. You're not going anywhere. The law just says if I want to talk to you, I just have to tell you that, I'm required to do that. So that's what I'm going to do first, okay?

Then after giving the *Miranda* warning, the detective asked, "Do you understand those rights?" "Having those rights in mind, can I talk to you?" "Do you want to talk to me?" Nothing in the record indicates that the detective threatened R.G. in any way.

¶ 37 Seventh, we consider the fact that R.G. did not have a parent, legal guardian, or attorney present during the interview with detective. R.G. did not ask for a parent or attorney to be present during the interview even though R.G. was informed he could have an attorney present. The state also met its burden of showing that the waiver was knowingly, intelligently, and voluntarily given in R.G.'s case. R.G. did not provide evidence that would counter a finding that he knowingly and voluntarily waived his rights. Considering the totality of the circumstances including R.G.'s age, intelligence, ability to comprehend the questions asked by the detective after giving the *Miranda* warnings, and lack of coercive tactics used by the detective, we hold that the *Miranda* warnings were sufficient.

¶ 38 The State met its burden of showing that the waiver was knowingly, intelligently, and voluntarily given in this case. R.G. did not offer adequate evidence to counter a finding that he knowingly and voluntarily waived his rights. Considering the totality of the circumstances including R.G.'s age, intelligence, ability to comprehend the questions asked by the detective after giving the *Miranda* warnings, and the lack of coercive tactics used by the detective, we hold that the *Miranda* warnings were sufficient.

¶ 39 Further, R.G. did not "overcome by a preponderance of the evidence" the presumption in rule 27A that R.G. is "capable of knowingly and voluntarily waiving [his] rights without the benefit of having a parent, guardian, or legal custodian present during questioning." UTAH R. JUV. P. 27A. The juvenile court also did not err in denying R.G.'s motion to suppress his post-*Miranda* statements to the detective.

CONCLUSION

¶ 40 Although the interviews conducted by the detective might not be a model of best practices regarding the delivery of ***487** the *Miranda* warnings to a minor and the inquiry into the juvenile's understanding of his rights, [9] we hold that under the totality of the circumstances including the *Miranda* warnings were sufficient in these cases. The juvenile court did not err in denying D.G.'s or R.G.'s motions to suppress their post-*Miranda* statements to the detective. [10] The evidence surrounding the totality of the circumstances shows that both D.G. and R.G. knowingly, voluntarily, and intelligently waived their *Miranda* rights during their interviews with the detective at their school.

All Citations

416 P.3d 478, 852 Utah Adv. Rep. 16, 2017 UT 79

Footnotes

1 *In re R.G.* and *In re D.G.* have been consolidated for purposes of this opinion.

2 We emphasize that although our conclusion that the waiver in these cases was knowing and voluntary, this holding should not be read to foreclose the ability of juveniles in future cases to advance both case-specific and general evidence and argument, including expert testimony, to show either that they did not knowingly and voluntarily waive their rights or that the test we employ to assess the validity of a juvenile waiver is scientifically flawed and in need of modification or overhaul. We recognize that the science of juvenile development is a rich, relevant, and rapidly evolving area that bears directly on the issues before us. *See generally* Hayley M. D. Cleary, *Police Interviewing and Interrogation of Juvenile Suspects: A Descriptive Examination of Actual Cases*, 38 L. & HUM. BEHAV. 271 (2014); Eric Y. Drogin & Richard Rogers, *Juveniles and* Miranda*: Current Research and the Need to Reform How Children Are Advised of Their Rights*, 29-WTR CRIM. JUST. 13 (2015), Jean Pierce, Note, *Juvenile* Miranda *Waivers: A Reasonable Alternative to the Totality of the Circumstances Approach*, 2017 BYU L. Rev. 195. We acknowledge in these instances that these constitutional arguments and related evidence are not adequately before us. Based on the record evidence in these cases, we find no error in the proceedings below.

3 In this appeal, we have not been asked to review the sentence, but note the difficult and multivariate facets of sentencing juvenile delinquents. Aggravated sexual assault is a crime that if committed by an adult would lead to a sentence of 15 years to life. UTAH CODE § 76-5-405(2)(a)(i). Juvenile courts have the difficult task of balancing the consequences of the adjudicated delinquents with the hope for rehabilitation and providing victims assurance that the court takes personal violations such as this seriously, realizing the likely significant physical and psychological harm. *See infra* ¶¶ 13–16. We also note that juveniles adjudicated delinquent based on aggravated sexual assault are considered "sex offenders" under Utah Code section 77-41-102 and will likely be required to register as sex offenders, which has a significant negative impact on their future prospects for education and employment. *See* UTAH CODE § 77-41-105; *see also* Marsha Levick & Riya Saha Shah, *The Momentum Builds: Challenging Lifetime Registration of Juveniles Convicted of Sexual Offenses in the Post*-Roper *Era*, *N.Y.U. Review of Law & Social Change: Panel Series on Sex Offender Registration Laws*, 40 HARBINGER 115 (2016).

4 Many of the juvenile justice provisions in the Utah Code were amended in the 2017 general session and are in effect as of August 1, 2017. *See* H.B. 239, 62d Leg., Gen. Sess. (Utah 2017). These reforms are inapplicable here but may affect assessments in future cases.

5 While not raised in this case, we note that juveniles are not entirely "independent actors with individual rights. ... [P]olice questioning of minors also threatens the rights of parents, 'perhaps the oldest of the fundamental liberty interests recognized by [the Supreme] Court.' " Note, *Juvenile* Miranda *Waiver and Parental Rights*, 126 HARV. L. REV. 2359, 2359 (2013) (third alteration in original) (*quoting Troxel v. Granville*, 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000) (plurality opinion)). When government actors "threaten[ ] to break 'familial bonds, [they] must provide the parents with fundamentally fair procedures.' " *Id.* (*quoting Santosky v. Kramer*, 455 U.S. 745, 754, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982)). Interrogation without the presence of an interested adult "creates a substantial risk that children will be removed from their parents after confessing falsely" and may also "cause psychological harm that damages the parent-child relationship." *Id.*

6 D.G. and R.G. argued in their briefs that the presumption in Utah Rule of Juvenile Procedure 27A(a)(2) is unconstitutional under *Tague v. Louisiana*, 444 U.S. 469, 100 S.Ct. 652, 62 L.Ed.2d 622 (1980). We do not reach this issue because it was not preserved below. Counsel argued before this court that the exceptional circumstances exception to preservation applies because our court of appeals pointed this issue out in its certification to this court. But the court of appeals' identification of an issue *sua sponte* in a certification order is not the type of "rare procedural anomaly" that meets the exception to preservation rule. *In re Adoption of K.A.S.*, 2016 UT 55, ¶ 19, 390 P.3d 278. Additionally, while the juvenile court cited this rule as a factor in its analysis, it did not rely solely on this presumption to find that R.G. and D.G. validly waived their rights. Rather, it correctly weighed the elements outlined in *Bybee*. We do not decide the constitutional dimensions of this rule in this case, but it is within our domain to refer this rule to our rulemaking committee under the broader policy questions that exist in light of the growing body of research available on child and adolescent development and the ability of children to understand and waive their rights, and low recidivism rates. *See generally* Jenny E. Carroll, *Brain Science and the Theory of Juvenile* Mens Rea, 94 N.C. L. REV. 539 (2016); Christopher Northrop & Krisitina Rothley Rozan, *Kids Will Be Kids: Time for a "Reasonable Child" Standard for the Proof of Objective Mens Rea Elements*, 69 Me. L. Rev. 109 (2017); LAURENCE STEINBERG ET AL., U.S. DEP'T JUSTICE, OFFICE JUVENILE JUSTICE & DELINQUENCY PREVENTION, PSYCHOSOCIAL MATURITY AND DESISTANCE FROM CRIME IN A SAMPLE OF SERIOUS JUVENILE OFFENDERS (2015); Drogin & Rogers, *supra* note 2. *But see* Terry A. Maroney, *The False Promise of Adolescent Brain Science in Juvenile Justice*, 85 NOTRE DAME L. REV. 89 (2009).

7 We do not address the issue of custody or determine whether "a reasonable [student would] have felt he or she was at liberty to terminate the interrogation and leave." *J.D.B. v. North Carolina*, 564 U.S. 261, 270, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011) (citation omitted). However, in the future there may be an "opportunity to address the need to alter the custody analysis for interrogations taking place in the school setting." Kelli L. Ceraolo, Note, *Custody of the Confined: Consideration of the School Setting in* J.D.B. v. North Carolina, 91 NEB. L. REV. 979, 980 (2013).

8 Although not a decisive factor in this case, we note that neither the school nor the detective called D.G.'s nor R.G.'s parents to inform them that the interviews were taking place. This is concerning. This is a particular problem in school settings. Police officers in urban areas who interview juvenile suspects at school are less likely to contact the parents of juveniles than police officers in suburban areas. Note, *Juvenile* Miranda *Waiver and Parental Rights*, 126 HARV. L. REV. 2359, 2372–73 & nn. 150–52 (2013).

9 Best practices might include notifying a parent or guardian of the minor before he or she is interviewed; having a parent or guardian present during an interview; videotaping of interviews; providing the *Miranda* warning in "language comprehensi[ble] to a juvenile," as well as stopping to check for understanding after each right is explained, having the juvenile repeat each right in his own words; and interviewing the juvenile in a setting that is perceived as non-custodial (where the juvenile would feel free to leave) rather than in a setting where free movement of students is implicitly constricted, like a school setting. Ceraolo, *supra* note 7, at 991–96; *see also* Drogin & Rogers, *supra* note 2. R.G.'s and D.G.'s arguments appear to push this court to adopt a per se rule that these best practices must be followed for a juvenile to validly waive his *Miranda* rights. While these may be best practices that would make it much easier to find a valid waiver, the constitution does not mandate that these procedures be strictly followed in every case. The constitution only mandates that the juvenile knowingly, intelligently, and voluntarily waive his *Miranda* rights given the totality of the circumstances. *See Fare v. Michael C.*, 442 U.S. 707, 724–25, 99 S.Ct. 2560, 61 L.Ed.2d 197 (1979).

10 We note the problematic balance of affording a juvenile delinquent the benefits of rehabilitation—individualized assessment, adjudication, and consequences—with the demands of due process, particularly in the case of *Miranda* warnings. From a policy standpoint, it might be that encouragement of confession in the confines of a juvenile court is in the best interest of both the juvenile and society, upholding the ideal of supporting troubled youth who are more amenable to rehabilitation. *See supra* ¶ 13; *see also* LAURENCE STEINBERG ET AL., *supra* note 6. Parents also seem to agree with this stance, more often than not encouraging their child to confess. *See* Pierce, *supra* note 2, at 219. However, antithetical policy issues arise when juveniles are bound over to criminal court and tried as adults or receive consequences that last beyond their juvenile years (such as mandatory sex offender status). *See* UTAH CODE §§ 78A-6-602(3), -701 through -704 (describing when juveniles may be or must be removed from the jurisdiction of the juvenile court and transferred to a district court in Utah); *id*. § 77-41-102(17)(f) (describing juveniles who qualify as "[s]ex offender[s]"). Without the protective umbrella of the juvenile court in these cases especially, "admissions and confessions of juveniles require special caution," because "a mere child" is "an easy victim of the law." *In re Gault*, 387 U.S. 1, 45, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967) (citation omitted). *See also* Pierce, *supra* note 2, at 205–11, 217 (noting the research supporting the inability of children to voluntarily, knowingly, and intelligently waive their *Miranda* rights and advocating for "a fixed procedural requirement that juveniles must first consult with an attorney before making a valid waiver").