

AGENDA

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

Matheson Courthouse
Education Room (3rd Floor AOC)
October 4, 2019
Noon – 2:00 p.m.

- | | | |
|-------------|--|---------------|
| 12:00-12:10 | Welcome and Approval of Minutes
<i>(Draft Minutes of August 2, 2019—Tab 1)</i> | David Fureigh |
| 12:10-12:15 | Rule 27A-Admissibility of Statements Given by Minors
<i>Ms. Gregory will provide an update on Rule 27A</i> | Katie Gregory |
| 12:15-1:15 | Rule 9-Detention Hearings; scheduling; hearing procedure
<i>The Utah Supreme Court has directed the committee to give additional consideration to how the standard of “reasonable basis” is defined in Rule 9 and its comparison to the adult standard of “probable cause.” (Current Draft of Rule 9, Tab 2)</i> | David Fureigh |
| 1:15-1:50 | Continued Discussion of Tribal Participation in Juvenile Court
<i>Letter to State Bar regarding pro hac vice fees
URJP Rule regarding participation (Arek Butler)
Juvenile Court Form for Intervention (Judge Lindsley)</i> | David Fureigh |
| 1:50-2:00 | Old or New Business | All |
| 2:00 | Adjourn | |

Next Meeting: November 1, 2019

TAB 1

Utah Rules of Juvenile Procedure Committee- Meeting Minutes

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

MEMBERS:	Present	Absent	Excused	MEMBERS:	Present	Absent	Excused
David Fureigh	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Michelle Jeffs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judge Elizabeth Lindsley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sophia Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judge Mary Manley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Mikelle Ostler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Arek Butler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Jordan Putnam	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Trish Cassell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Janette White	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Diaz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Chris Yannelli	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kristin Fadel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Carol Verdoia (Non-voting Emeritus Member)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Daniel Gubler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
AOC STAFF:	Present	Excused	GUESTS:		Present	Absent	
Katie Gregory	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Jacqueline Carlton	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Jean Pierce	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Joseph Wade	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Keegan Rank	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Judge Steven Beck	<input checked="" type="checkbox"/>	<input type="checkbox"/>		

AGENDA TOPIC

I. Welcome & Approval of Minutes	CHAIR: DAVID FUREIGH
<p>David Fureigh welcomed members and introduced new members Michelle Jeffs and Janette White. All members completed the professional practice disclosures required by Rule 11-101 of the Supreme Court Rules of Professional Practice. The committee approved the minutes of June 7, 2019 as written.</p>	
Motion: To approve the minutes of June 7, 2019	By: Judge Manley Second: Daniel Gubler
Approval	<input checked="" type="checkbox"/> Unanimous <input type="checkbox"/> Vote: In Favor _____ Opposed _____

AGENDA TOPIC

II. Rule 27A-Admissibility of Statements Given by Minors	DAVID FUREIGH
<p>David Fureigh reviewed the history of the Committee's work on Rule 27A and recent instructions received from the Supreme Court. At the last meeting the Committee considered policy issues regarding the age distinctions set forth in Rule 27A and the Supreme Court's request that members consider the articles cited in <i>In re R.G. v. State</i>, footnote 6 regarding juvenile brain development. The Supreme Court declined the Committee's request to delete paragraph (a)(2) regarding minors 14 years of age and older. The Court requested that the Committee rephrase the paragraph in more neutral terms to meet the Committee's concerns about any unconstitutional burden shifting in the original language of paragraph (a)(2).</p>	
<p>Judge Lindsley made a motion to:</p> <ol style="list-style-type: none"> 1) Reinstate the numbering of paragraph (a)(1) and (a)(2), which was deleted in the prior draft; 2) Replace the previously deleted language of (a)(2) with the following new language: "If the minor is 14 years of age or older, a parent, guardian, or legal custodian does not 	

need to be present during the waiver.”

- 3) Revise paragraph (b) to read: “The presumption outlined in paragraph (a)(1) may be overcome by a preponderance of the evidence showing the ability of a minor to comprehend and waive the minor's rights.”

Michelle Jeffs seconded the motion. The Committee discussed the proposal and alternatives, emphasizing the importance of simplicity and clarity for law enforcement. Some members expressed concern regarding whether the revised language would discourage law enforcement from seeking to have a parent present during questioning. Members also considered adding an Advisory Committee note, but ultimately determined it could be more confusing than helpful.

The Committee voted in favor of the motion by a vote of 8 to 3 with Ms. Moore, Ms. Diaz and Mr. Gubler voting against the motion.

Action Item:	Review the revisions to Rule 27A with the Supreme Court and seek further direction.
<ol style="list-style-type: none">1) Motion: to reinstate the numbering of paragraph (a)(1) and (a)(2), which was deleted in the prior draft;2) Replace the previously deleted language of (a)(2) with the following new language: “If the minor is 14 years of age or older, a parent, guardian, or legal custodian does not need to be present during the waiver.”3) Revise paragraph (b) to read: “The presumption outlined in paragraph (a)(1) may be overcome by a preponderance of the evidence showing the ability of a minor to comprehend and waive the minor's rights.”	By: Judge Lindsley Second: Michelle Jeffs
Approval	<input type="checkbox"/> Unanimous <input checked="" type="checkbox"/> Vote: In Favor 8: Opposed 3 (with Sophia Moore, Monica Diaz and Daniel Gubler voting in opposition).

AGENDA TOPIC

III. Rule 9-Detention hearings; scheduling; hearing procedures	DAVID FUREIGH
<p>Carol Verdoia reviewed prior discussions with the Supreme Court regarding the history of Rule 9 and the timeline of the rule's review, as well as the Committee's desire to hear from the Board of Juvenile Court Judges' subcommittee on Rule 9 prior to making further revisions. Recently the Board issued a memo stating its position on the Rule 9 issues, which was presented to all members of the Committee and attached to the meeting packet. The current amendments to Rule 9 contained in the meeting packet include both the approved amendments to the rule and the language sent out for comment to date. Ms. Gregory provided a brief overview of the work of the Board and its Rule 9 subcommittee.</p> <p>The Committee first discussed whether to add a new paragraph (b) providing for judicial review with 24 hours when a minor is admitted into a detention facility without a warrant. Members agreed to bifurcate the discussion and consider the appropriate standard of review for the admission later in the meeting.</p> <p>Monica Diaz made a motion to create a new paragraph (b) stating "If a minor is admitted into a detention facility without a warrant, the court shall make a determination whether there is a reasonable basis for admission within 24 hours including weekends and holidays" and to renumber subsequent paragraphs. Sophia Moore seconded the motion. The motion passed on a vote of 9 to 2, with Judge Lindsley and Judge Manley voting against the motion.</p> <p>Katie Gregory reminded members of the Supreme Court's request that Advisory Committee's consider the impact of rule changes on court programming resources. The Committee had a lengthy discussion on how a 24-hour review could work in practice. Judge Manley reviewed the district court practice for adults, which was utilized in Seventh District prior to the current probable cause process.</p> <p>Sophia Moore introduced a discussion on whether the standard should be probable cause, reasonable basis or reasonable grounds. Members reviewed the Memorandum from the Board of Juvenile Court Judges, which recommended that the standard not be changed to probable cause to avoid the rule conflicting with 78A-6-112. However, members also noted that the statutory standard in 78A-6-112 is "reasonable grounds" rather than "reasonable basis." The case of <i>State v. Velasquez</i>, 372 P.2d 1259 (Utah 1983) describes reasonable grounds as a "middle ground approach" more akin to a reasonable suspicion. Several members expressed that reasonable basis and reasonable grounds were not different standards, but that a reasonable grounds standard was preferable because it is defined in case law and used in statute.</p> <p>Arek Butler made a motion to change all references in Rule 9 from "reasonable basis" to "reasonable grounds." Michelle Jeffs seconded the motion and it passed unanimously. Monica Diaz was not present for the vote.</p>	
Action Item:	Katie Gregory will add today's revisions to the Rule 9 draft and circulate it to all members by email for a quick review. She and David Fureigh will then discuss the draft with the Supreme Court and request permission to send it out for an additional 45-day comment period.
Motion #1: to create a new paragraph (b) stating "If a minor is admitted into a detention facility without a warrant, the court shall make a	By: Monica Diaz Second: Sophia Moore

determination whether there is a reasonable basis for admission within 24 hours including weekends and holidays” and to renumber subsequent paragraphs.	
Approval	<input type="checkbox"/> Unanimous × Vote: # In Favor 9: # Opposed 2 (with Judge Manley and Judge Lindsley voting in opposition)
Motion #2: to change all references in Rule 9 from “reasonable basis” to “reasonable grounds.”	By: Arek Butler Second: Michelle Jeffs
Approval	× Unanimous (Ms. Diaz had left the meeting and was absent for the vote).

AGENDA TOPIC	
IV. Old or New Business	DAVID FUREIGH
The issue of tribal participation will be place on the agenda for the September 6, 2019 meeting. <i>[Staff Note: The September 6 meeting was later cancelled and postponed to October 4, 2019]</i>	

DRAFT

TAB 2

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) If a minor is admitted into a detention facility without a warrant, the court shall make a determination whether there are reasonable grounds for admission within 24 hours including weekends and holidays.

(c)(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

25 shall notify the minor, parent, guardian or custodian and attorney of the date, time, place and
26 manner of such hearing.

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

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

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

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

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

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

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

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

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

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

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

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

63 | ~~(j)(hg)~~(3) other requirements deemed reasonably necessary and consistent with the criteria for
64 | detaining the minor.

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

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

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

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Advisory Committee Notes

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~~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.~~