Thoughts on Rule 29A, and *Crawford*

Paul Wake

February 6, 2009

The following page, beginning "Proposed procedure," provides Judge Steele's thoughts on broadening Rule 29A to include more juvenile court-specific possibilities.

Behind that is a copy of my last cover sheet and proposed revision of the rule.

Behind that is a memo from a few meetings back raising some concerns about the rule.

Recall that the rule has three parts: one allowing in some circumstances the use of previously made videotape at trial in lieu of live testimony (such as CJC videotape, for which there can be *Crawford*-related concerns), another part which allows testimony to be taken at trial via closed circuit TV from a witness sitting in another room, and a third part which has something to do with taking testimony out of the courtroom and recording it for use at trial. The revision I had done earlier included the new paragraph in the first part that the criminal rules committee used to respond to *Crawford*, and Judge Steele wants to discuss more generally whether we should broaden the rule to allow other means of taking testimony.

Proposed procedure:

Child in separate room with person of trust chosen at discretion of judge after input from parties.

Person to ask questions is chosen at the discretion of the judge after input from all parties.

Closed circuit television to court room viewed by judge, accused minor, all attorneys and all parties.

Child to be viewed and heard over circuit television. Attorneys, accused minor and parties can hear and observe questions and responses.

Non-intrusive two way communication into an earpiece of the person asking questions and the court room so he/she can ask questions stated by parties in court room, he/she can stop any question when objection is raised, can listen in on argument in court room and then resume questioning when instructed to do so. This allows a full real time cross examination outside of the presence of the child witness, but with the witness in full view of the parties.

In the alternative, the questioning could be done at a time separate from court and recorded. This could be done at a child justice center where the accused minor and attorneys are in a viewing room. They could view the witness and participate in the questioning similar to the above. Or breaks could be taken from time to time to marshal questions from each party. These proceedings could be recorded and then viewed by the judge.

Often an attorney for the accused is more aggressive and his presence and questioning is more traumatic to a child victim or witness than the presence of the accused minor. Our procedures should allow for protection from aggressive attorneys.

A Proposal Regarding Rule 29A, and *Crawford*

Paul Wake

October 2, 2008

The following is the same as the redline from last meeting, except that two code citations are corrected, the word "child" is restored in (a), and the word "person" is used in (b)(1) per the discussion at that last meeting. I did not make any changes with regard to making it possible to take testimony in the courtroom with the defendant being in another room. I did not change (d) to match what the criminal rules committee did (see my 9/5/08 memo), because I think they got it wrong.

Rule 29A. ~~Visual recording~~ Out of court statement ~~or~~ and testimony of child victims or child witnesses of sexual or physical abuse - Conditions of admissibility.

(a) In any delinquency proceeding or proceeding under Section ~~78-3a-602~~ 78A-6-702 or Section ~~78-3a-603~~ 78A-6-703 concerning a charge of child abuse or of a sexual offense against a child, the oral statement of a victim or other witness younger than 14 years of age ~~may be~~ which was recorded prior to the filing of a petition~~, and~~ is, upon motion and for good cause shown, ~~is~~ admissible as evidence in any court proceeding regarding the offense if all of the following conditions are met:

(a)(1) the child is available to testify and to be cross-examined at trial, either in person or as provided by law, or the child is unavailable to testify at trial, but the minor had a previous opportunity to cross-examine the child concerning the recorded statement, such that the minor's rights of confrontation are not violated;

(a)(2) no attorney for either party is in the child's presence when the statement is recorded;

(a)(3) the recording is visual and aural and is recorded on film, ~~or~~ videotape or ~~by~~ other electronic means;

(a)(4) ~~the recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and~~ the recording is accurate and has not been altered;

(a)(5) each voice in the recording is identified;

(a)(6) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify and be cross-examined by either party;

(a)(7) the minor and the minor's attorney are provided an opportunity to view the recording before it is shown to the court; and

(a)(8) the court views the recording and determines that it is sufficiently reliable and trustworthy and that the interest of justice will best be served by admission of the statement into evidence~~, and~~.

~~(a)(9) the child is available to testify and to be cross-examined at trial, either in person or as provided by Subsection (b) or (c), or the court determines that the child is unavailable as a witness to testify at trial under the Utah Rules of Evidence. For purposes of this subsection "unavailable" includes a determination, based on medical or psychological evidence or expert testimony, that the child would suffer serious emotional or mental strain if required to testify at trial.~~

(b) In any proceeding concerning a charge of child abuse or of a sexual offense against a child, the court ~~may order~~, upon motion of ~~the prosecution~~ a party and for good cause shown, may order that the testimony of any ~~witness or~~ victim or other witness younger than 14 years of age be taken in a room other than the courtroom. All of the following conditions shall be observed:

(b)(1) Only the judge, attorneys for each party and the testifying child (if any), persons necessary to operate equipment, and a ~~counselor or therapist~~ person whose presence contributes to the welfare and emotional well-being of the child may be ~~with~~ in the room during the ~~child during the~~ child's

testimony. ~~The minor may also be present during the child's testimony unless~~ A minor who consents to be hidden from the child's view may also be present unless ~~or~~ the court determines that the child will suffer serious emotional or mental strain if required to testify in the minor's presence, or that the child's testimony will be inherently unreliable if required to testify in the minor's presence. If the court makes that determination, or if the minor consents:

(b)(1)(A) the minor may not be present during the child's testimony;

(b)(1)(B) the court shall ensure that the child cannot hear or see the minor ;

(b)(1)(C) the court shall advise the child prior to testifying that the minor is present at the trial and may listen to the child's testimony;

(b)(1)(D) the minor shall be permitted to observe and hear the child's testimony, and the court shall ensure that the minor has a means of two-way telephonic communication with defense counsel during the child's testimony; and

(b)(1)(E) the conditions of a normal court proceeding shall be approximated as nearly as possible.

(b)(2) Only the judge and ~~attorneys~~ an attorney for each party may question the child.

(b)(3) As much as possible, persons operating equipment shall be confined to an adjacent room or behind a screen or mirror so the child cannot see or hear them.

(c) In any case concerning a charge of child abuse or of a sexual offense against a child, the court may order, upon motion of ~~the prosecution~~ a party and for good cause shown, that the testimony of any ~~witness or~~ victim or other witness younger than 14 years of age be taken outside the courtroom and be recorded. That testimony is admissible as evidence, for viewing in any court proceeding regarding the charges if the provisions of Subsection (b) are observed, in addition to the following provisions:

(c)(1) the recording is ~~both~~ visual and aural and recorded on film, ~~or~~ videotape or by other electronic means;

(c)(2) ~~the recording equipment is capable of making an accurate recording, the operator is competent, and~~ the recording is accurate and is not altered;

(c)(3) each voice on the recording is identified; and

(c)(4) each party is given an opportunity to view the recording before it is shown in the courtroom.

(d) If the court orders that the testimony of a child be taken under Subsection (b) or (c), the child may not be required to testify in court at any proceeding where the recorded testimony is used.

A Proposal Regarding Rule 29A, and *Crawford*

Paul Wake

9/5/08

Illustrious Committee Members:

I knocked out the following this morning quickly, but I think it accurately tracks most of the changes made to the final version of the similar criminal rule, rule 15.5. These changes to our rule 29A mainly incorporate the criminal rule's new paragraph designed to respond to *Crawford*, which I think we should include in our rule just as the criminal people did in theirs: the new subsection (a)(1) (with a semicolon added). Note that the criminal people forgot to renumber their rule—this version is corrected and that's why some numbering may not match. The criminal people also cleaned up some awkward provisions, which I changed here also. Our rule already had some improvements over the criminal rule, and they actually changed theirs to match ours in some ways, but the two rules are still slightly different to reflect things like that we don't have juries. I did tinker with our rule to change two references to "defendant" and one to "child" so they became "minor," since "minor" is used elsewhere in the rule to mean "defendant" ("child" in the rule means the witness).

There are three additional issues I would be like to bring to the committee about this rule.

First, in (b)(1) the list of who can be there when testimony is being taken by closed circuit TV, seems restrictive. It doesn't mention court security. Also, it doesn't mention that a parent (as opposed to a counselor or therapist) can be there to support a child. I'm wondering if we should add something?

Second, this rule was apparently originally modeled on the criminal rule, which apparently assumed that for purposes of subsection (b) proceedings involving testimony by closed circuit TV, the jury and spectators would stay in the courtroom, and the judge and attorneys would go into another room and question the witness from there. I have found in juvenile court that sometimes it's easier to keep everyone in the courtroom and to send the defendant (and his attorney, if that's what the attorney wants) into another room to watch testimony from there, with the ability to communicate back to the courtroom. Would it be appropriate to make that option available under the rule? Perhaps through something like: "(b)(4) Alternatively, if the judge and the attorneys for the parties agree, the testimony of the child witness can be taken in court, with the minor viewing the testimony from another room, provided the minor has means for direct communication with the courtroom."

Third, the criminal people changed their subsection (d) so that instead of referring to subsections (2) and (3) (whatever that was supposed to mean) it now refers to subsections (a) and (b). I'm wondering if that's wrong. It seems like the logical thing would be for it to refer to subsections (b) and (c) as our rule currently does. Therefore, I didn't change my proposed 29A to match 15.5; if that's wrong, please let me know.

From: Paul Wake
To: Gregory, Katie; Verdoia, Carol
Date: 2/4/2009 8:32 AM
Subject: Fwd: Re: Rule 29A
Attachments: Re: Rule 29A; 29A Redilne 4.pdf

Judge Steele and I exchanged some e-mails. Please see the e-mail I'm forwarding; you'll see that he's wondering if instead of just adding a paragraph to better deal with Crawford, we as a committee discuss whether to add some more substantial changes. FYI, the document I sent him is also attached below (it has blank pages in it so that when I run it to my printer and do double sided printing, it prints out how I want it to).
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Paul Wake

Katie Gregory - Fwd: Re: Rule 29A

From: Paul Wake
To: Gregory, Katie; Verdoia, Carol
Date: 2/4/2009 8:32 AM
Subject: Fwd: Re: Rule 29A
Attachments: Re: Rule 29A; 29A Redilne 4.pdf

Paul - great job. Let's present your written discussion to the group and see what they want to do. I would like to know if they have the stomach for diverging from the adult criminal before fine tuning a proposed rule. I would personally like to state in a rule some of the alternatives we actually use instead of a rule reciting procedures I never use. If we establish a special need to protect in a case and provide a meaningful constitutional cross examination, it seems we would be OK. Thanks.

>>> Paul Wake 02/03/2009 2:37 PM >>>
I'm back from running around talking to witnesses and so forth. But thinking of going home early and taking a nap. I don't know that I can come up with much by Friday to flesh out your ideas, although it would seem good to add a provision to our rule at least letting judges approve a variety of alternative means of remote testimony provided it meets certain standards. Do you have something specific in mind? Would it be appropriate to provide the attached to the committee and just have a discussion? I'll be in Wednesday morning if you want to talk (direct line is (801) 851-8016).

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Paul Wake
Deputy Utah County Attorney

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 ~~78-3a-113~~ 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. 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) 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.

(e) 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.

(f) 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.

(g) 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. If the court determines that reasonable cause exists for continued detention, it may order continued detention, place the minor on home detention, or order the minor's release upon compliance with certain conditions pending further proceedings. Such conditions may include:

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

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

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

(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.

(i) If the court determines that the offense is one governed by Section ~~78-3a-601~~ 78A-6-701, Section ~~78-3a-602~~ 78A-6-702,or Section ~~78-3a-603~~ 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.

(j) Any predisposition order ~~of~~ to detention ~~or home 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 programs 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.

home detention may be subject to cuts
judges feel (HD) is a key service
strike(j) entirely to cut service - waste of time

minor has been brought to detention pursuant to a judicial order or division warrant pursuant to Section 62A-7-504.

(d) If a minor taken to detention does not qualify for admission under the guidelines established by the division under Section 62A-7-104, detention staff shall arrange appropriate placement.

(e) If a minor is taken into custody and admitted to a secure detention or shelter facility, facility staff shall:

(i) immediately notify the minor's parents, guardian, or custodian; and

(ii) promptly notify the court of the placement.

(f) If the minor is admitted to a secure detention or shelter facility outside the county of the minor's residence and it is determined in the hearing held under Subsection 78A-6-113(3) that detention shall continue, the judge or commissioner shall direct the sheriff of the county of the minor's residence to transport the minor to a detention or shelter facility as provided in this section.

(g) A person may be taken into custody by a peace officer without a court order if the person is in apparent violation of a protective order or if there is reason to believe that a child is being abused by the person and any of the situations outlined in Section 77-7-2 exist. 2008

78A-6-113. Placement of minor in detention or shelter facility — Grounds — Detention hearings — Period of detention — Notice — Confinement for criminal proceedings — Bail laws inapplicable, exception.

(1) (a) A minor may not be placed or kept in a secure detention facility pending court proceedings unless it is unsafe for the public to leave the minor with the minor's parents, guardian, or custodian and the minor is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.

(b) A child who must be taken from the child's home but who does not require physical restriction shall be given temporary care in a shelter facility and may not be placed in a detention facility.

(c) A child may not be placed or kept in a shelter facility pending court proceedings unless it is unsafe to leave the child with the child's parents, guardian, or custodian.

(2) After admission of a child to a detention facility pursuant to the guidelines established by the Division of Juvenile Justice Services and immediate investigation by an authorized officer of the court, the judge or the officer shall order the release of the child to the child's parents, guardian, or custodian if it is found the child can be safely returned to their care, either upon written promise to bring the child to the court at a time set or without restriction.

(a) If a child's parent, guardian, or custodian fails to retrieve the child from a facility within 24 hours after notification of release, the parent, guardian, or custodian is responsible for the cost of care for the time the child remains in the facility.

(b) The facility shall determine the cost of care.

(c) Any money collected under this Subsection (2) shall be retained by the Division of Juvenile Justice Services to recover the cost of care for the time the child remains in the facility.

(3) (a) When a child is detained in a detention or shelter facility, the parents or guardian shall be informed by the person in charge of the facility that they have the right to a prompt hearing in court to determine whether the child is to be further detained or released.

(b) When a minor is detained in a detention facility, the minor shall be informed by the person in charge of the facility that the minor has the right to a prompt hearing in court to determine whether the minor is to be further detained or released.

(c) Detention hearings shall be held by the judge or by a commissioner.

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

(e) If a child is released, and the child remains in the facility, because the parents, guardian, or custodian fails to retrieve the child, the parents, guardian, or custodian shall be responsible for the cost of care as provided in Subsections (2)(a), (b), and (c).

(4) (a) A minor may not be held in a detention facility longer than 48 hours prior to a detention hearing, excluding weekends and holidays, unless the court has entered an order for continued detention.

(b) A child may not be held in a shelter facility longer than 48 hours prior to a shelter hearing, excluding weekends and holidays, unless a court order for extended shelter has been entered by the court after notice to all parties described in Section 78A-6-306.

(c) A hearing for detention or shelter may not be waived. Detention staff shall provide the court with all information received from the person who brought the minor to the detention facility.

(d) If the court finds at a detention hearing that it is not safe to release the minor, the judge or commissioner may order the minor to be held in the facility or be placed in another appropriate facility, subject to further order of the court.

(e) (i) After a detention hearing has been held, only the court may release a minor from detention. If a minor remains in a detention facility, periodic reviews shall be held pursuant to the Utah State Juvenile Court Rules of Practice and Procedure to ensure that continued detention is necessary.

(ii) After a detention hearing for a violent felony, as defined in Section 76-3-203.5, or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, the court shall direct that notice of its decision, including any disposition, order, or no contact orders, be provided to designated persons in the appropriate local law enforcement agency and district superintendent or the school or transferee school, if applicable, that the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iii) Any employee of the local law enforcement agency, school district, and the school that the minor attends who discloses the court's order of probation is not:

(A) civilly liable except when the disclosure constitutes fraud or willful misconduct as provided in Section 63G-7-202; and

(B) civilly or criminally liable except when disclosure constitutes a knowing violation of Section 63G-2-801.

(5) A minor may not be held in a detention facility, following a dispositional order of the court for nonsecure substitute care as defined in Section 62A-4a-101, or for community-based placement under Section 62A-7-101 for longer than 72 hours, excluding weekends and holidays. The period of detention may be extended by the court for one period of seven calendar days if:

(a) the Division of Juvenile Justice Services or another agency responsible for placement files a written petition with the court requesting the extension and setting forth good cause; and

(b) the court enters a written finding that it is in the best interests of both the minor and the community to extend the period of detention.

Judge Oddone issue gave some proposed language to Judge Lindsley. wants less reviews on kids who are on home detention. First review 15 days.

Judge Lindsley reviewed with Dan Maldonado and Sal Mendez
his questions were:
does term exceeding 15 days modify both DT and home DT or just home DT?
Need a regular review date for kids with special needs so they don't languish in DT for 15 days.
Sal-no major concerns. Only comment regarding kids reviewed after 15 days typically email judge and PO regarding youth's progress and if that need s to change let him know.

Concern are kids sitting in DT without review or on home DT for months on end trying to make sure it does get reviewed.
Judge Oddone's concern was not to have to review all every 7 days.
If in DT center review every 7 days and if on home DT every 15 days. Statute allows you to put youth on home DT for first 30 days without review, but most feel this does not occur.

In some areas of state there are different names for alternative detention programs. Home detention. Per Judge Lindsley, now every week as PJ she has PO weekly report on who is on home DT and whether they need review. Don't want kids on home DT for 50, 60 ,70 days. If they're going to violate home DT they do it fairly quickly, and then begin to understand that it is serious.

Alternative programs ie. EIP (Early Intervention), Lightening Peak (3 levels of supervision). Must draft to cover every district's practice. Took out "home detention" in first sentence because those who don't work in this area think an "order to detention" would include home detention.

"Detention" is defined in statute as "home detention and secure detention." Term "secure" causes confusion with "secure care" which is a term of art. [Debate on predisposition right to bail if youth is 18. Some exceptions for out of state, etc]

Seconded added sentence added to clarify that home DT review is not reviewed first at 15 days and then every 7 days. Committee decided that the home and alternative DT will be reviewed every 15 days. Predisposition orders. 30 day for alternative comes out completely.

Practice varies -some districts like 2nd district are reviewing every 7 days. But that made kids and parents have to come to court every 7 days–take off work, etc. Others are letting kids drift. On motion of any party sometimes lets youth fall through cracks because everyone assumes someone else will make motion.

78-3a-114(4)(e) ⇒ 78A-6-113(4)(e)(i)

Katie Gregory - Re: URJP 36

From: Tim Shea
To: Katie Gregory; Rick Smith
Date: 1/30/2009 2:16 PM
Subject: Re: URJP 36

Talk with Katie. She staffs the committee responsible for those rules.

>>> Rick Smith 1/30/2009 1:24 PM >>>
Tim, I noticed that Rule 36 of the Rules of Juvenile Procedure still refers to the process of "certifying" issues from the District Court to the Juvenile Court. The underlying statute, now numbered 78A-6-104, was amended 4 or 5 years ago, and no longer includes a provision for the District Court to certify issues to the Juvenile Court. Instead, the statute outlines the procedure for the Juvenile Court to "acquire jurisdiction". (Certification is no longer required). Has anyone looked at amending Rule 36 to conform to the statutory change? If not, how would I go about initiating that process?

transferred

Rule 36.Cases ~~certified~~ from district court.

(a) Pleadings and hearings before juvenile court.

transfer

(a)(1) When an issue of support, custody or visitation has been ~~certified~~ by the district court to the juvenile court pursuant to Section78A-6-104, the juvenile court shall schedule the matter for a pre-trial hearing and notify all parties. At such hearing, the juvenile court shall consider issues relating to discovery, custody evaluations and interim orders and shall schedule a trial hearing on all issues to be tried.

transferred

(a)(2) All pleadings and orders prepared subsequent to the ~~certification~~ shall contain the caption for the case in both courts.

(a)(3) The rules concerning discovery, admissibility of evidence and standard of proof applicable to such proceedings in the district court shall be followed in the juvenile court.

(a)(4) The juvenile court may appoint a guardian ad litem for the child in such proceedings and assess the cost to one or both parties.

(b) Modification of prior district court decrees and orders.

transferred

(b)(1) Orders and decrees entered by the juvenile court in proceedings ~~certified~~ from the district court for a determination of issues regarding custody, support and visitation shall constitute a modification of any prior district court order or decree concerning such issues involving the same minor. Certified copies of such juvenile court orders and decrees shall contain the captions of both courts and be filed with the clerk of the district court for inclusion in the district court file.

(b)(2) In cases where a support, custody or visitation determination has been made by the district court and jurisdiction of the district court is continuing, and an order has been entered in a subsequent juvenile court proceeding that is inconsistent with the prior district court order, on motion of any party or upon the juvenile court's own motion, a certified copy of the juvenile court's order shall be filed with the clerk of the district court.

78A-6-104. Concurrent jurisdiction -- District court and juvenile court.

(1) The district court or other court has concurrent jurisdiction with the juvenile court as follows:

(a) when a person who is 18 years of age or older and who is under the continuing jurisdiction of the juvenile court under Section **78A-6-117** violates any federal, state, or local law or municipal ordinance; and

(b) in establishing paternity and ordering testing for the purposes of establishing paternity, in accordance with Title 78B, Chapter 15, Utah Uniform Parentage Act, with regard to proceedings initiated under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 5, Termination of Parental Rights Act.

(2) The juvenile court has jurisdiction over petitions to modify a minor's birth certificate if the court otherwise has jurisdiction over the minor.

(3) This section does not deprive the district court of jurisdiction to appoint a guardian for a child, or to determine the support, custody, and parent-time of a child upon writ of habeas corpus or when the question of support, custody, and parent-time is incidental to the determination of a cause in the district court.

(4) (a) Where a support, custody, or parent-time award has been made by a district court in a divorce action or other proceeding, and the jurisdiction of the district court in the case is continuing, the juvenile court may acquire jurisdiction in a case involving the same child if the child is dependent, abused, neglected, or otherwise comes within the jurisdiction of the juvenile court under Section **78A-6-103**.

(b) The juvenile court may, by order, change the custody, subject to Subsection **30-3-10**(4), support, parent-time, and visitation rights previously ordered in the district court as necessary to implement the order of the juvenile court for the safety and welfare of the child. The juvenile court order remains in effect so long as the jurisdiction of the juvenile court continues.

(c) When a copy of the findings and order of the juvenile court has been filed with the district court, the findings and order of the juvenile court are binding on the parties to the divorce action as though entered in the district court.

(5) The juvenile court has jurisdiction over questions of custody, support, and parent-time, of a minor who comes within the court's jurisdiction under this section or Section **78A-6-103**.

Renumbered and Amended by Chapter 3, 2008 General Session
Download Code Section Zipped WordPerfect 78A06_010400.ZIP 2,856 Bytes

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Last revised: Friday, December 12, 2008

Rule 25 and Withdrawal of Pleas
(the original discussion before *K.M.* went somewhere else)

The Current Criminal Withdrawal of Plea Language	What the Juvenile Rule Would Look like If it Were Written like the Criminal Statute	What the Juvenile Rule Should Look like
§ 77-13-6. Withdrawal of plea. (1) A plea of not guilty may be withdrawn at any time prior to conviction. (2)(a) A plea of guilty or no contest may be withdrawn only upon leave of the court and a showing that it was not knowingly and voluntarily made. (b) A request to withdraw a plea of guilty or no contest, except for a plea held in abeyance, shall be made by motion before sentence is announced. Sentence may not be announced unless the motion is denied. For a plea held in abeyance, a motion to withdraw the plea shall be made within 30 days of pleading guilty or no contest. (c) Any challenge to a guilty plea not made within the time period specified in Subsection (2)(b) shall be pursued under Title 78B, Chapter 9, Post-Conviction Remedies Act, and Rule 65C, Utah Rules of Civil Procedure.	Rule 25. Pleas. ... (g)(1) A denial may be withdrawn at any time prior to adjudication. (g)(2) An admission or a plea of no contest may be withdrawn only upon leave of the court and a showing that it was not knowingly and voluntarily made. A request to withdraw an admission or a plea of no contest, except for an admission or plea of no contest held in abeyance, shall be made before disposition is announced. Disposition may not be announced unless the motion is denied. For an admission or plea of no contest held in abeyance, a motion to withdraw the admission or plea of no contest shall be made within 30 days of making the admission or pleading no contest.	[Beats me. We could do nothing. We could pass a rule mimicking the criminal statute, if we don't think that the code of criminal procedure statute clearly applies. That would depend on the rule being procedural in nature rather than substantive, I believe. Also, as a committee member pointed out earlier, disposition usually immediately follows an admission, so such a rule usually wouldn't apply to real life situations (although it is possible to have a disposition hearing later, in which case such a rule would be more useful); in the criminal system it is probably more likely that there would be time between the plea and the sentencing. We could pass a rule broadening withdrawal of plea grounds, or just stating that it's within the discretion of the judge.]

Paul Wake

From: Judge Elizabeth Lindsley
To: Katie Gregory
Date: 1/6/2009 9:40 AM
Subject: Fwd: Re: Revised Rule 9

that is correct it is a new or additional issue.

>>> Katie Gregory 1/6/2009 9:38 AM >>>
So it sounds like this is a new or additional Rule 9 issue rather than one the URJP created by making the most recent revisions? Is this accurate? If so, we could probably send our change to the S. Ct. as is and deal with the 3 misdemeanors separately in another discussion.
Katie

>>> Judge Elizabeth Lindsley 1/6/2009 8:34 AM >>>
I just looked over the rule again and can see where Judge Oddone is looking about holding on the felony. I don't know why it doesn't deal with the misdemeanors. That is not anything we have ever addressed. You can book a juvenile into DT on three misdemeanors that occur in the same criminal episode. If there are other reasons to hold the minor under Rule 9 then they can be held. If not then they should be released. Sometimes the booking officer is really searching for three misdemeanors to book the kid so that could be why you can't just hold them on those. You have to find another reason to hold them under the rule.

>>> Katie Gregory 1/5/2009 4:37 PM >>>
Judge Lindsley,
I sent the URJP revised Rule 9 to Judge Oddone--attached is his question about the three misdemeanors. Do you know the answer?
The comment period on Rule 9 closed without any comments. I am going to review it with the Board of Juvenile Court Judges on Friday, immediately before our URJP meeting--just to see if they have any additional thoughts. If not, Carol and I will take it to the Supreme Court for final review.
Katie

>>> Judge Frederic Oddone 11/21/2008 11:08 AM >>>
Thank you. A minor can be booked into detention by law enforcement or a probation officer on any felony or three misdemeanors. The rule allows hold for one felony but omits any reference to the three misdemeanors. Was this intentional?

Katie Gregory - Re: Revised Rule 9

From: Judge Frederic Oddone
To: Katie Gregory
Date: 11/21/2008 11:08 AM
Subject: Re: Revised Rule 9
Attachments: Judge Frederic Oddone2.vcf

Thank you. A minor can be booked into detention by law enforcement or a probation officer on any felony or three misdemeanors. The rule allows hold for one felony but omits any reference to the three misdemeanors. Was this intentional?