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February 4, 2009

Chief Justice Christine M. Durham
Utah Supreme Court
450 S. State Street
PO Box 140210
Salt Lake City, UT 84111-0210

Re: Proposed Amendments to URJP 9-Detention hearings; scheduling; hearing procedure.
Proposed Amendments to URJP 25-Pleas

Dear Chief Justice Durham:

On behalf of the Utah Rules of Juvenile Procedure Committee, I am enclosing the revised versions of URJP 9 and 25, which are now before the Court for your review and final action. The Committee did not receive any comments related to revised URJP 9. A review of the revisions is outlined below. The revised version of URJP 25 was approved by the Court in September 2008, and subsequently sent out for comment. The Committee received one comment from a Committee member. The comment concerned issues already addressed by the Committee and the Committee does not propose any additional revisions to URJP 25 at this time.

The Committee reviewed Rule 9 at the request of one of the juvenile judges. Rule 9 addresses the use of detention, including home detention and the use of alternative detention programs such as the Early Intervention Program used in 3rd District and the Lightening Peak Program used in 4th District. The concern expressed to the Committee was that Rule 9 currently requires that all predisposition orders to any form of detention must be reviewed once every seven days. The Committee felt that orders to home detention or alternative detention programs could effectively be reviewed once every 15 days and the Committee reflected this change in the proposed revisions to Rule 9(j). To allow discretion for individual cases, however, the Committee retained the final sentence of subparagraph (j) allowing the court or a party to make a motion to schedule a detention review at any time.

The Committee also made technical revisions to subparagraphs (a) and (I) to conform the rule to the recodification of Title 78.

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Please feel free to contact me if you have any questions or concerns regarding the revised rules or the work of the Utah Rules of Juvenile Procedure Committee.

Sincerely,

Carol Verdoia

Carol Verdoia
URJP Committee Chair

cc: Matty Branch
Katie Gregory

Rule 25. Pleas.

(a) A minor may tender a denial of the alleged offense, may tender an admission of the alleged offense, or may, with the consent of the court, tender a plea of no contest which shall have the effect set forth in Utah Code § 77-13-2. If the minor declines to plead, the court shall enter a denial. Counsel for the minor may enter a denial in the absence of the minor, parent, guardian or custodian.

(b) When denial is entered, the court shall set the matter for a trial hearing or for a pre-trial conference.

(c) The court may refuse to accept an admission or a plea of no contest and may not accept such plea until the court has found:

(c)(1) that the right to counsel has been knowingly waived if the minor is not represented by counsel;

(c)(2) that the plea is voluntarily made;

(c)(3) that the minor and, if present, the minor's parent, guardian, or custodian, have been advised of, and the minor understands and has knowingly waived, the right against compulsory self-incrimination, the right to be presumed innocent, the right to a speedy trial, the right to confront and cross-examine opposing witnesses, the right to testify and to have process for the attendance of witnesses;

(c)(4) that the minor and, if present, the minor's parent, guardian, or custodian have been advised of the consequences which may be imposed after acceptance of the admission of the alleged offense or plea of ~~guilty or~~ no contest;

(c)(5) that the minor understands the nature and elements of the offense to which the plea is entered, that upon trial the prosecution would have the burden of proving each of those elements beyond a reasonable doubt, and that the plea is an admission of all those elements; and

(c) ~~(5)~~ (6) that there is a factual basis for the plea; and

(c) ~~(6)~~ (7) where applicable, the provisions of paragraph (e) have been met.

(d) The minor may be allowed to tender an admission to a lesser included offense, or an offense of a lesser degree or a different offense which the court may enter, after amending the petition.

(e) Plea discussions and agreements are authorized in conformity with the provisions of Utah Rule of Criminal Procedure 11. The prosecuting attorney may enter into discussions and reach a proposed plea agreement with the minor through the minor's counsel, or if the minor is not represented by counsel, directly with the minor.

However, the prosecuting attorney may not enter into settlement discussions with a minor not represented by counsel unless the parent, guardian or custodian is advised of the discussion and given the opportunity to be present.

(f) A minor may tender an admission which is not entered by the court for a stated period of time. Conditions may be imposed upon the minor in that period of time and successful completion of the conditions set shall result in dismissal upon motion. If the minor fails to complete the conditions set, the admission shall be entered and the court shall proceed to order appropriate dispositions.

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 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.

Utah State Courts Rules - Published for Comment

Comments: Rules of Juvenile Procedure

I have a couple of comments I'll mention here online, rather than providing them directly to the rules committee at its next meeting, in the hope that by posting them here these two thoughts will stimulate a discussion of the proposed Rule 25 change among members of the bar who are not on the rules committee.

First, "the minor understands the nature and elements" language should be changed to "the minor, or the minor's parent or guardian on behalf of the minor, understands the nature and elements...." That may not be completely consistent with the dreadful K.M. decision, but it's time the Supreme Court fixed that decision. Expecting kids to be as clued in as adults is nuts; if kids are capable of thinking as clearly as adults, we should just get rid of the juvenile justice system. We don't do that because kids are kids, so we shouldn't pretend that they have adult-level comprehension. If a kid doesn't understand the law, it should be enough that a responsible and caring adult does. All the kid needs to know is that he did something wrong, and that the system is going to try to help him not do it again.

Second, the rules committee's originally drafted revision to Rule 25 had what is essentially Alford plea language, which the Supreme Court stripped out before sending the rest of the Rule 25 revision out for public comment. The originally proposed revision to Rule 25(c)(6) had said not just "that there is a factual basis for the plea" but added that "[a] factual basis is sufficient if it establishes that the charged offense was actually committed by the minor or, if the minor refuses or is otherwise unable to admit culpability, that the prosecution has, and the minor understands that the prosecution has, sufficient evidence to establish a substantial risk that the offense would be found true...." Some juvenile judges did not like the Alford plea language because they viewed it as going beyond what was required by K.M., and thought it made the juvenile system too much more like the criminal system. It is true that the Alford plea language was not required by K.M; I don't know that anyone on the rules committee thought it was. Also, I am sympathetic to not further criminalizing the juvenile justice system. However, not everything in the Rule 25 revision was a response to the K.M. decision. Some, like the rights added to (c)(3), were simply improving a rule by putting in some language that probably should have been there all along. I believe that the Alford plea language in particular was put there not so much because anyone thought it was required by K.M., but because some judges in various areas of the state were so spooked by K.M. that they were refusing to accept Alford-type pleas. That's a real problem, which the Alford language was designed to fix. In my opinion, it is not apparent to some judges in at least two different judicial districts that Alford pleas are acceptable post-K.M., and it seems as if this language would clarify that such pleas can be accepted. It would be good to hear from practitioners about whether there needs to be further discussion on this question.

Posted by Paul Wake October 2, 2008 09:03 AM

11/20

This is the only comment to Rule 25

no comments to Rule 9

deadline was 11/19