

certain

718 for a review of the case by the court. A new date shall be set upon each review.

719 (x) In reviewing foster home placements, special attention shall be given to making  
720 adoptable minors available for adoption without delay.

721 (y) (i) The juvenile court may enter an order of permanent custody and guardianship  
722 with a relative or individual of a minor where the court has previously acquired

jurisdiction as

723 a result of an adjudication of abuse, neglect, or dependency[~~, excluding cases arising~~

under

724 ~~Subsection 78-3a-105 (4)].~~

725 (ii) Orders under Subsection (2)(y)(i):

726 (A) shall remain in effect until the minor reaches majority;

727 (B) are not subject to review under Section 78-3a-119 ; and

728 (C) may be modified by petition or motion as provided in Section 78-3a-903 .

729 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and  
730 permanent orders of custody and guardianship do not expire with a termination of

jurisdiction

731 of the juvenile court.

732 (3) In addition to the dispositions described in Subsection (2), when a minor comes

733 within the court's jurisdiction he may be given a choice by the court to serve in the

National

734 Guard in lieu of other sanctions, provided:

735 (a) the minor meets the current entrance qualifications for service in the National

736 Guard as determined by a recruiter, whose determination is final;

737 (b) the minor is not under the jurisdiction of the court for any act that:

738 (i) would be a felony if committed by an adult;

739 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

740 (iii) was committed with a weapon; and

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(c) the court retains jurisdiction over the minor under conditions set by the court and

742 agreed upon by the recruiter or the unit commander to which the minor is eventually  
assigned.

743 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction  
of

744 the court as described in Subsection 53-10-403 (3). The specimen shall be obtained by

745 designated employees of the court or, if the minor is in the legal custody of the Division

of

746 Youth Corrections, then by designated employees of the division under Subsection

747 53-10-404 (5)(b).

748 (b) The responsible agency shall ensure that employees designated to collect the saliva

749 DNA specimens receive appropriate training and that the specimens are obtained in

accordance

750 with accepted protocol.

751 (c) Reimbursements paid under Subsection 53-10-404 (2)(a) shall be placed in the  
DNA 752 Specimen Restricted Account created in Section 53-10-407 .  
753 (d) Payment of the reimbursement is second in priority to payments the minor is  
754 ordered to make for restitution under this section and treatment under Section 78-3a-  
318 .  
755 Section 16. Section **78-3a-305** is amended to read:  
756 **78-3a-305. Petition filed.**  
757 (1) Any interested person may file a petition to commence proceedings in the juvenile  
758 court alleging that a minor is abused, neglected, or dependent. *The person shall first S*  
~~file~~ *MAKE s a*  
759 *formal referral with the division.*  
760 ~~[(2) Any interested person may file a petition seeking a protective order on behalf of a~~  
761 ~~minor who is alleged to be an abused child or a neglected child, except as provided in~~  
Sections 762 ~~78-3a-104 and 78-3a-105.]~~  
763 ~~[(3)] (2)~~ If the child who is the subject of a petition was removed from his home by  
the 764 Division of Child and Family Services that petition shall be filed on or before the date of  
the 765 initial shelter hearing described in Section 78-3a-306 .  
766 ~~[(4)] (3)~~ The petition shall be verified, and contain all of the following:  
767 (a) the name, age, and address, if any, of the minor upon whose behalf the petition is  
768 brought;  
769 (b) the names and addresses, if known to the petitioner, of both parents and any  
770 guardian of the minor;  
771 (c) a concise statement of facts, separately stated, to support the conclusion that the

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minor upon whose behalf the petition is being brought is abused, neglected, or dependent; and  
773 (d) a statement regarding whether the minor is in protective custody, and if so, the  
date 774 and precise time the minor was taken into protective custody.  
775 Section 17. Section **78-3h-101** is enacted to read:  
776

**CHAPTER 3h. CHILD PROTECTIVE ORDERS**

777 **78-3h-101. Definitions.**  
778 *As used in this chapter:*  
779 *(1) "Court" means the juvenile court.*  
780 *(2) "Division" means the Division of Child and Family Services.*  
781 Section 18. Section **78-3h-102** is enacted to read:  
782 **78-3h-102. Petition -- Ex parte determination -- Guardian ad litem -- Referral to**  
783 **division.**

784 (1) Any interested person may file a petition for a protective order on behalf of a child  
 785 who has been abused, sexually abused, neglected, or abandoned or is in imminent  
*danger of*  
 786 being abused, sexually abused, neglected, or abandoned. The petitioner shall first S  
**[file] MAKE s a formal**  
 787 referral, as defined in Subsection 78-3a-103 (1), to the division.  
 788 (2) Upon the filing of a petition, the court shall immediately determine, based on the  
 789 evidence and information presented, whether the minor has been abused, sexually  
*abused,*  
 790 neglected, or abandoned or is in imminent danger of being abused, sexually abused,  
*neglected,*  
 791 or abandoned. If so, the court shall enter an ex parte child protective order.  
 792 (3) The court may appoint an attorney guardian ad litem for the child who is the  
*subject*  
 793 of the petition.  
 794 Section 19. Section **78-3h-103** is enacted to read:  
 795 **78-3h-103. Hearing.**  
 796 (1) The court shall schedule a hearing within 20 days after the ex parte determination.  
 797 (2) The petitioner shall serve a copy of the petition, ex parte child protective order,  
*and*  
 798 notice of hearing on the respondent, the minor's parent or guardian, and the guardian  
*ad litem.*  
 799 The notice shall contain:  
 800 (a) the name and address of the person to whom it is directed;  
 801 (b) the date, time, and place of the hearing;  
 802 (c) the name of the minor on whose behalf a petition is being brought; and

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(d) a statement that a person is entitled to have an attorney present at the hearing.  
 804 (3) The court shall provide an opportunity for any person having relevant knowledge  
*to*  
 805 present evidence or information. The court may hear statements by counsel.  
 806 (4) An agent of the division served with a subpoena in compliance with the Utah Rules  
 807 of Civil Procedure shall testify in accordance with the Utah Rules of Evidence.  
 808 (5) If the court determines, based on a preponderance of the evidence, that the minor  
 809 has been abused, sexually abused, neglected, or abandoned or is in imminent danger of  
*being*  
 810 abused, sexually abused, neglected, or abandoned, the court shall enter a child  
*protective order.*  
 811 A child protective order does not constitute an adjudication of abuse, neglect, or  
*dependency*  
 812 under Title 78, Chapter 3a, Part 3, Abuse Neglect and Dependency Proceedings.  
 813 Section 20. Section **78-3h-104** is enacted to read:  
 814 **78-3h-104. Content of order.**  
 815 (1) A child protective order or an ex parte child protective order may contain the

816 *following provisions the violation of which is a class A misdemeanor under Section 77-*  
 36-2.4 :  
 817 *(a) enjoin the respondent from threatening to commit or committing abuse or neglect*  
 of *the minor;*  
 818 *(b) prohibit the respondent from harassing, telephoning, contacting, or otherwise*  
 819 *communicating with the minor, directly or indirectly;*  
 820 *(c) prohibit the respondent from entering or remaining upon the residence, school, or*  
 821 *place of employment of the minor and the premises of any of these or any specified place*  
 822 *frequented by the minor;*  
 823 *(d) upon finding that the respondent's use or possession of a weapon may pose a*  
 824 *serious threat of harm to the minor, prohibit the respondent from purchasing, using, or*  
 825 *possessing a firearm or other specified weapon; and*  
 826 *(e) determine ownership and possession of personal property and direct the*  
 827 *appropriate*  
 828 *law enforcement officer to attend and supervise the petitioner's or respondent's removal*  
 of *personal property.*  
 829 *(2) A child protective order or an ex parte child protective order may contain the*  
 830 *following provisions the violation of which is contempt of court:*  
 831 *(a) determine temporary custody of a minor who is the subject of the petition;*  
 832 *(b) determine parent-time with a minor who is the subject of the petition, including*  
 833

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*denial of parent-time if necessary to protect the safety of the minor, and require supervision of*  
 835 *parent-time by a third party;*  
 836 *(c) determine support in accordance with Title 78, Chapter 45, Uniform Liability for*  
 837 *Support Act; and*  
 838 *(d) order any further relief the court considers necessary to provide for the safety and*  
 839 *welfare of the minor.*  
 840 *(3) A child protective order and an ex parte child protective order shall include:*  
 841 *(a) a statement that violation of a criminal provision is a class A misdemeanor and*  
 842 *violation of a civil provision is contempt of court; and*  
 843 *(b) information the petitioner is able to provide to facilitate identification of the*  
 844 *respondent, such as Social Security number, driver license number, date of birth,*  
 address, *telephone number, and physical description.*  
 845 *(4) A child protective order shall include:*  
 846 *(a) a statement that:*  
 847 *(i) three years from entry of the order, the respondent may petition to dismiss the*  
 848 *criminal portion of the order;*  
 849 *(ii) the petitioner should, within the 30 days prior to the end of the three-year period,*  
 850 *advise the court of the petitioner's address for notice of any hearing; and*  
 851 *(iii) the address provided by the petitioner will not be made available to the*  
 852 *respondent;*  
 853

854 *(b) the date when the civil portion of the order will expire or be reviewed; and*  
 855 *(c) the following statement: "Respondent was afforded notice and opportunity to be*  
 856 *heard in the hearing that gave rise to this order. Pursuant to the Violence Against*  
*Women Act*  
 857 *of 1994, P.L. 103-322, 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the*  
*United*  
 858 *States, the District of Columbia, tribal lands, and United States territories."*  
 859 Section 21. Section **78-3h-105** is enacted to read:  
 860 **78-3h-105. Service -- Income withholding -- Expiration.**  
 861 *(1) If the court enters an ex parte child protective order or a child protective order,*  
*the*  
 862 *court shall:*  
 863 *(a) make reasonable efforts to ensure that the order is understood by the petitioner*  
*and*  
 864 *the respondent, if present;*

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865  
 866 *(b) as soon as possible transmit the order to the county sheriff for service; and*  
 867 *(c) by the end of the next business day after the order is entered transmit a copy of the*  
*domestic*  
 868 *violence network described in Section 30-6-8.*  
 869 *(3) The county sheriff shall serve the order and transmit verification of service to the*  
 870 *statewide domestic violence network described in Section 30-6-8 in an expeditious*  
*manner.*  
 871 *Any law enforcement agency may serve the order and transmit verification of service to*  
*the*  
 872 *statewide domestic violence network if the law enforcement agency has contact with the*  
 873 *respondent or if service by that law enforcement agency is in the best interests of the*  
*child.*  
 874 *(4) When an order is served on a respondent in a jail, prison, or other holding facility,*  
 875 *the law enforcement agency managing the facility shall notify the petitioner of the*  
*respondent's*  
 876 *release. Notice to the petitioner consists of a prompt, good faith effort to provide notice,*  
 877 *including mailing the notice to the petitioner's last-known address.*  
 878 *(5) Child support orders issued as part of a child protective order are subject to*  
 879 *mandatory income withholding under Title 62A, Chapter 11, Part 4, Income Withholding*  
*in*  
 880 *IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non IV-D Cases.*  
 881 *(6) After notice and hearing a court may modify or vacate a child protective order*  
 882 *without a showing of substantial and material change in circumstances, except that the*  
*criminal*  
 883 *provisions of the child protective order may not be vacated within three years of*  
*issuance*  
 884 *unless the petitioner is personally served with notice of the hearing as provided in Rule*

4, Utah

885 *Rules of Civil Procedure.*  
 886 *(7) The civil provisions of the child protective order expire 150 days after the date of*  
 887 *the pretrial hearing unless a different date is set by the court. The court may not set a*  
*date more*  
 888 *than 150 days after the date of the pretrial hearing without a finding of good cause. The*  
*court*  
 889 *may review and extend the expiration date, but may not extend it to more than 150 days*  
*after*  
 890 *the date of the pretrial hearing without a finding of good cause. Any civil provision of*  
*the*  
 891 *child protective order assimilated into the disposition order remains effective until the*  
*minor is*  
 892 *18 years of age unless otherwise ordered by the court.*  
 893 Section 22. Section **78-3h-106** is enacted to read:  
 894 **78-3h-106. Statewide domestic violence network.**  
 895 *The Administrative Office of the Courts, in cooperation with the Department of Public*

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*Safety and the Criminal Investigations and Technical Services Division, shall post ex parte*  
 897 *child protective orders, child protective orders, and any modifications to them on the*  
*statewide*  
 898 *network established in Section 30-6-8.*  
 899 Section 23. Section **78-3h-107** is enacted to read:  
 900 **78-3h-107. Forms and assistance -- No fees.**  
 901 *(1) The Administrative Office of the Courts shall adopt and make available uniform*  
 902 *forms for petitions and orders conforming to this part. The forms shall notify the*  
*petitioner*  
 903 *that:*  
 904 *(a) a knowing falsehood in any statement under oath may subject the petitioner to*  
 905 *felony prosecution;*  
 906 *(b) the petitioner may provide a copy of the order to the principal of the minor's*  
*school;*  
 907 *and*  
 908 *(c) the petitioner may enforce a court order through the court if the respondent*  
*violates*  
 909 *or fails to comply with a provision of the order.*  
 910 *(2) If the petitioner is not represented, the clerk of the court shall provide, directly or*  
 911 *through an agent:*  
 912 *(a) the forms adopted pursuant to Subsection (1);*  
 913 *(b) clerical assistance in completing the forms and filing the petition;*  
 914 *(c) information regarding means for service of process;*  
 915 *(d) a list of organizations with telephone numbers that may represent the petitioner;*  
 916 *and*  
 917 *(e) information regarding the procedure for transporting a jailed or imprisoned*

- 918 *respondent to hearings, including transportation order forms when necessary.*
- 919 *(3) No fee may be imposed by a court, constable, or law enforcement agency for:*
- 920 *(a) filing a petition under this chapter;*
- 921 *(b) obtaining copies necessary for service or delivery to law enforcement officials; or*
- 922 *(c) service of a petition, ex parte child protective order, or child protective order.*
- 923 **Section 24. Repealer.**
- 924 This act repeals:
- 925 **Section 30-6-4.8, Electronic monitoring of domestic violence offenders.**

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**Legislative Review Note**  
**as of 1-13-03 11:45 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

[\[Bill Documents\]](#)[\[Bills Directory\]](#)



**From:** <wake@xmission.com>  
**To:** <aliciad@email.utcourts.gov>  
**Date:** 1/29/03 10:18AM  
**Subject:** Juvenile Rules

Not to belabor the point, but I figure I should make a token effort once a year to bring this issue up for further discussion. So perhaps sometime during 2003 if we run out of other things to talk about, we could consider the following:

- Rule 15(c) is inconsistent with Rule 25, Utah Code § 78-3a-117, and pretty much the entire set of rules and the Juvenile Court Act as a whole, in that Rule 15(c) speaks of "guilt" but the rules and the statute speak of admissions or denials, of the court making an adjudication that the allegations in a petition are established, and of most juvenile delinquency proceedings being civil proceedings rather than criminal proceedings. In other words, 15(c) stands out as unusual in that it mixes a criminal justice term in with juvenile justice terms.

- Rule 15(c), read as a whole and also read in context with Rule 7-301 and other related rules and statutory provisions, deals with preliminary inquiries. The concern was raised that there is confusion about which offenses it applies to, normal delinquency cases or Serious Youth Offender cases. It should be clear that the rule deals with P.I.'s, nonjudicial adjustments, and dispositional recommendations, which take place in the context of normal delinquency cases, not SYO cases. Cleaning up the rule's language to make it consistent throughout each subsection, and consistent with the rest of the rules and with the Juvenile Court Act, would actually reduce the possibility for confusion, by eliminating a criminal justice system term that suggests the rule may encompass SYO cases.

- Rule 15(c) might be too broad in that it could be used to keep confidential any disclosures about any offense, not just disclosures about the offense at issue in the preliminary inquiry interview. I don't know whether the original intent was protection of disclosures limited to the offense charged, or a blanket protection for anything said about any offense committed including unreported offenses. If the original point was to limit the protection of disclosures to only what is said about the referred offense, the rule needs to further clarify that point.

In view of this I propose that we make the following change to the middle of 15(c), which deals with the first two points above:

Old--

"any information disclosed that could tend to incriminate the minor cannot be used against the minor in court on the issue of guilt or innocence but may be used as part of a dispositional recommendation"

New--

"any information disclosed that could tend to incriminate the minor cannot be used against the minor in court to prove whether the minor committed the offense alleged in the referral but may be used as part of a dispositional recommendation"

app'd  
2-1-03



Date: Wed, 29 Jan 2003 10:19:17 -0700

From: wake@xmission.com

To: aliciad@email.utcourts.gov

Subject: Juvenile Rules

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Paul Wake