Rule 47. Reviews and modification of orders.

(a) Reviews.

(a)(1) At the time of disposition in any case wherein a minor is placed on probation, under protective supervision or in the legal custody of an individual or agency, the court shall also order that the individual supervising the minor or the placement, submit a written report to the court at a future date and appear personally, if directed by the court, for the purpose of a court review of the case. If a date certain is not scheduled at the time of disposition, notice by mail of such review shall be given by the petitioner, if the review is a mandatory review, or by the party requesting the review to the supervising agency not less than 5 days prior to the review. Such notice shall also be given to the guardian ad litem, if one was appointed.

(a)(2) No modification of a prior dispositional order shall be made at a paper~~report~~ review that would have the effect of further restricting the rights of the parent, guardian, custodian or minor, unless the affected parent, guardian custodian or minor waives the right to a hearing and stipulates ~~in open court or in writing~~ to the modification. If a guardian ad litem is representing the minor, the court shall give a copy of the submitted documents ~~report~~ to the guardian ad litem prior to the paper~~report~~ review.

(b) Review hearings.

(b)(1) Any party in a case subject to review may request a review hearing. The request must be in writing and the request shall set forth the facts believed by the requesting party to warrant a review by the court. If the court determines that the alleged facts, if true, would justify a modification of the dispositional order, a review hearing shall be scheduled with notice, including a copy of the request, to all other parties. The court may schedule a review hearing on its own motion.

(b)(2) The court may modify a prior dispositional order in a review hearing upon the stipulation of all parties and upon a finding by the court that such modification would not be contrary to the best interest of the minor and the public.

(b)(3) The court shall not modify a prior order in a review hearing that would further restrict the rights of the parent, guardian, custodian or minor if any party objects to the modification.~~the modification is objected to by any party prior to or in the review hearing. The court shall schedule the case for an evidentiary hearing and require that a motion for modification be filed with notice to all parties in accordance with Section 78A-6-1103.~~ Upon objection, the court shall schedule the matter for a motion hearing and require that a motion be filed with notice to all parties. A party requesting an evidentiary hearing shall state the request in the motion to modify the prior order or the response to the motion.

(b)(4) All cases which require periodic review hearings under Title 78A Chapter 6 shall be scheduled for court review not less than once every six months from the date of disposition.

(c) Disposition reviews. Upon the written request~~petition~~ of any agency, individual or institution vested with legal custody or guardianship by prior court order, the court shall conduct a review hearing to determine if the prior order should remain in effect. Notice of the hearing, along with a copy of the written request,~~petition,~~ must be provided to all parties not less than 5 days prior to the hearing, unless the hearing is expedited.

(d) Review of a case involving abuse, neglect, or dependency of a minor shall be conducted also in accordance with Section 78A-6-117, Section 78A-6-314 and Section 78A-6-315.

(e) Intervention plans.

Intervention plans are plans prepared by the probation department or agencies assuming custody of the minor designed to assist the minor and/or the parent, guardian or custodian to address or correct issues that caused the court to be involved with the minor and his or her family.

(e)(1) In all cases where the disposition order places temporary legal custody or guardianship of the minor with an individual, agency, or institution, a proposed intervention plan shall be submitted by the probation department when probation has been ordered; by the agency having custody or guardianship; or by the agency providing protective supervision, within 30 days following the date of disposition. This intervention plan shall be updated whenever a substantial change in conditions or circumstances arises.

(e)(2) In cases where both parents have been permanently deprived of parental rights, the intervention plan shall identify efforts made by the child placing agency to secure the adoption of the minor and subsequent review hearings shall be held until the minor has been adopted or permanently placed.

(f) Progress reports.

(f)(1) A written progress report relating to the intervention plan shall be submitted to the court and all parties by the agency, which prepared the intervention plan at least two working days prior to the review hearing date.

(f)(2) The progress report shall contain the following:

(f)(2)(i) A review of the original conditions, which invoked the court's jurisdiction.

(f)(2)(ii) Any significant changes in these conditions.

(f)(2)(iii) The number and types of contacts made with each family member or other person related to the case.

(f)(2)(iv) A statement of progress toward resolving the problems identified in the intervention plan.

(f)(2)(v) A report on the family's cooperation in resolving the problems.

(f)(2)(vi) A recommendation for further order by the court.

(g) In substantiation proceedings, a party may file a motion to set aside a default judgment or dismissal of a substantiation petition for failure to appear, within thirty days after the entry of the default judgment or dismissal. On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party from a default judgment or dismissal if the court finds good cause for the party's failure to appear. The filing of a motion under this Subdivision does not affect the finality of a judgment or suspend its operation.

[Document Revision Date: 9/27/2013]

Tab 2

Comments: Rules of Juvenile Procedure

URJP Rule 47(a)(2) as amended will require a waiver and stipulation from the parent if parental rights are further restricted by a modification of the prior order in a paper review. May we assume a waiver and stipulation if a parent is non-responsive? (I'm thinking of the parent who never attends a hearing or files anything.) Perhaps we should say that such a modification can be done in a paper review and the parent has X days to object, in which case they are entitled to a hearing.
Subsection (b)(3) raises the same issue. Should we have to have a hearing anyway if the parent objects to the modification but files no motion as required by the rule? Or may we deem failure to file the motion as required as a stipulation and waiver?

Posted by judge johansen   November 1, 2013 09:54 AM

Tab 3

Rule 23A. Hearing on conditions of Section 78A-6-702; bind over to district court.

(a) If a criminal indictment under Section 78A-6-702 alleges the commission of a felony, the court shall, upon the request of the minor, hear evidence and determine whether the conditions of paragraph (c) exist.

(b) If a criminal information under Section 78A-6-702 alleges the commission of a felony, after a finding of probable cause in accordance with Rule 22, the court shall hear evidence and consider the conditions in paragraph (c).~~determine whether the conditions of paragraph (c) exist~~.

(c) The minor shall have the burden of going forward and presenting evidence of the following conditions as provided in Section 78A-6-702, ~~as to the existence of the following conditions as provided by Section 78A-6-702~~:

(c)(1) the minor has not been previously adjudicated delinquent for an offense involving the use of a dangerous weapon which would be a felony if committed by an adult;

(c)(2) that if the offense was committed with one or more other persons, the minor appears to have a lesser degree of culpability than the codefendants; ~~and~~

(c)(3) that the minor's role in the offense was not committed in a violent, aggressive, or premeditated manner;

(c)(4) the number and nature of the minor's prior adjudications in the juvenile court; and

(c)(5) that public safety is better served by adjudicating the minor in the juvenile court or in the district court.

(d) At the conclusion of the minor's case, the state may call witnesses and present evidence on the conditions required by Section 78A-6-702. The minor may cross-examine adverse witnesses.

(e) If the court does not find by clear and convincing evidence that it would be contrary to the best interest of the minor and the best interests of the public to bind the minor over to the jurisdiction of the district court, the court shall enter an order directing the minor to answer the charges in district court.

(f)(1) Upon entry of an order directing the minor to answer the charges in district court, the court shall comply with the requirements of Title 77, Chapter 20, Bail. By issuance of a warrant of arrest or continuance of an existing warrant, the court may order the minor committed to jail in accordance with Section 62A-7-201. The court shall enter the appropriate written order.

(f)(2) The clerk of the juvenile court shall transmit to the clerk of the district court all pleadings in and records made of the proceedings in the juvenile court.

(f)(3) The jurisdiction of the court shall terminate as provided by statute.

(g) If the court finds probable cause to believe that a felony has been committed and that the minor committed it and also finds that all of the conditions of Section 78A-6-702

are present, the court shall proceed upon the information as if it were a petition. The court may order the minor held in a detention center or released in accordance with Rule 9.

78A-6-702. Serious youth offender -- Procedure.

(1) Any action filed by a county attorney, district attorney, or attorney general charging a minor 16 years of age or older with a felony shall be by criminal information and filed in the juvenile court if the information charges any of the following offenses:

(a) any felony violation of:

(i) Section 76-6-103, aggravated arson;

(ii) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;

(iii) Section 76-5-302, aggravated kidnapping;

(iv) Section 76-6-203, aggravated burglary;

(v) Section 76-6-302, aggravated robbery;

(vi) Section 76-5-405, aggravated sexual assault;

(vii) Section 76-10-508.1, felony discharge of a firearm;

(viii) Section 76-5-202, attempted aggravated murder; or

(ix) Section 76-5-203, attempted murder; or

(b) an offense other than those listed in Subsection (1)(a) involving the use of a dangerous weapon, which would be a felony if committed by an adult, and the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon, which also would have been a felony if committed by an adult.

(2) All proceedings before the juvenile court related to charges filed under Subsection (1) shall be conducted in conformity with the rules established by the Utah Supreme Court.

(3) (a) If the information alleges the violation of a felony listed in Subsection (1), the state shall have the burden of going forward with its case and the burden of proof to establish probable cause to believe that one of the crimes listed in Subsection (1) has been committed and that the defendant committed it. If proceeding under Subsection (1)(b), the state shall have the additional burden of proving by a preponderance of the evidence that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon.

(b) If the juvenile court judge finds the state has met its burden under this Subsection (3), the court shall order that the defendant be bound over and held to answer in the district court in the same manner as an adult unless the juvenile court judge finds that it would be contrary to the best interest of the minor and to the public to bind over the defendant to the jurisdiction of the district court.

(c) In making the bind over determination in Subsection (3)(b), the judge shall consider only the following:

(i) whether the minor has been previously adjudicated delinquent for an offense involving the use of a dangerous weapon which would be a felony if committed by an adult;

(ii) if the offense was committed with one or more other persons, whether the minor appears to have a greater or lesser degree of culpability than the codefendants;

(iii) the extent to which the minor's role in the offense was committed in a violent, aggressive, or premeditated manner;

(iv) the number and nature of the minor's prior adjudications in the juvenile court; and

(v) whether public safety is better served by adjudicating the minor in the

juvenile court or in the district court.

(d) Once the state has met its burden under Subsection (3)(a) as to a showing of probable cause, the defendant shall have the burden of going forward and presenting evidence that in light of the considerations listed in Subsection (3)(c), it would be contrary to the best interest of the minor and the best interests of the public to bind the defendant over to the jurisdiction of the district court.

(e) If the juvenile court judge finds by clear and convincing evidence that it would be contrary to the best interest of the minor and the best interests of the public to bind the defendant over to the jurisdiction of the district court, the court shall so state in its findings and order the minor held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

(4) If the juvenile court judge finds that an offense has been committed, but that the state has not met its burden of proving the other criteria needed to bind the defendant over under Subsection (1), the juvenile court judge shall order the defendant held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

(5) At the time of a bind over to district court a criminal warrant of arrest shall issue. The defendant shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

(6) If an indictment is returned by a grand jury charging a violation under this section, the preliminary examination held by the juvenile court judge need not include a finding of probable cause that the crime alleged in the indictment was committed and that the defendant committed it, but the juvenile court shall proceed in accordance with this section regarding the additional considerations listed in Subsection (3)(b).

(7) When a defendant is charged with multiple criminal offenses in the same information or indictment and is bound over to answer in the district court for one or more charges under this section, other offenses arising from the same criminal episode and any subsequent misdemeanors or felonies charged against him shall be considered together with those charges, and where the court finds probable cause to believe that those crimes have been committed and that the defendant committed them, the defendant shall also be bound over to the district court to answer for those charges.

(8) When a minor has been bound over to the district court under this section, the jurisdiction of the Division of Juvenile Justice Services and the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against the minor, except as provided in Subsection (12).

(9) A minor who is bound over to answer as an adult in the district court under this section or on whom an indictment has been returned by a grand jury is not entitled to a preliminary examination in the district court.

(10) Allegations contained in the indictment or information that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon, or is 16 years of age or older, are not elements of the criminal offense and do not need to be proven at trial in the district court.

(11) If a minor enters a plea to, or is found guilty of, any of the charges filed or

any other offense arising from the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

(12) The juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

Amended by Chapter 186, 2013 General Session

Katie Gregory <katieg@utcourts.gov>

Fwd: check off orders

1 message

Dawn Marie Rubio <dawnr@utcourts.gov> Wed, Jan 22, 2014 at 9:35 AM
To: Katie Gregory <katieg@utcourts.gov>, Neira Siaperas <neiras@utcourts.gov>

FYI. Thanks. DMR

Dawn Marie Rubio, J.D.
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---------- Forwarded message ----------
From: **Judge Janice Frost** <jfrost@utcourts.gov>
Date: Wed, Jan 22, 2014 at 9:24 AM
Subject: Fwd: check off orders
To: Judge Elizabeth Lindsley <elindsley@email.utcourts.gov>, Judge Mark May <mwmay@utcourts.gov>, Judge Jeffrey 'R' Burbank <jburbank@email.utcourts.gov>, Judge Paul Lyman <plyman@email.utcourts.gov>, Judge Mary Noonan <mnoonan@email.utcourts.gov>, Judge Suchada Bazzelle <sbazzelle@email.utcourts.gov>, Dawn Marie Rubio <dawnr@utcourts.gov>

After our discussion about protective orders, I contacted Colin to let him know what we decided. This was his reply. Just want to update you.

---------- Forwarded message ----------
From: **Colin Winchester** <cwinchester@utah.gov>
Date: Wed, Jan 22, 2014 at 8:39 AM
Subject: Re: check off orders
To: Judge Janice Frost <jfrost@utcourts.gov>

Thanks for the update. Upon closer inspection of the rule, I noticed that URCP 7(f)(2) states:

. . . unless otherwise directed by the court, the prevailing party shall, within fifteen days after the court's decision, serve upon the other parties a proposed order in conformity with the court's decision. Objections to the proposed order shall be filed within five days after service. The party preparing the order shall file the proposed order upon being served with an objection or upon

expiration of the time to object.

Based on the highlighted language, the Conduct Commission took the position that the use of check-off orders happens as "otherwise directed by the court" and consequently, voted to dismiss the allegation that raised the issue.

On Tue, Jan 21, 2014 at 9:39 AM, Judge Janice Frost <jfrost@utcourts.gov> wrote:

> I don't think I updated you on the discussion we had at the board meeting. Everyone except 3rd district uses them. No one has ever had a complaint about it and so we don't think it needs any rule or statutory change.
>
> Everyone has the position that if there is an error in the order, we amend the order. We are likely to either start telling people if they have any concern they may file an objection within 5 days or just having the order passed around in the hearing before it is signed.
>
> If you have any questions, let me know. If I already sent you this before, ignore it.

--

Colin R. Winchester
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