SUMMARY MINUTES (DRAFT)
SUPREME COURT'S ADVISORY COMMITTEE
ON THE
RULES OF JUVENILE PROCEDURE
Administrative Office of the Courts
450 South State Street
Executive Dining Room
Salt Lake City, Utah
May 4, 2007

Present	Excused	Staff
Carol Verdoia	Jeff Noland	Katie Gregory
Narda Beas-Nordell	Judge Steele	
Kristin Brewer	Matty Branch	Guests
Brent Bartholomew	Pam Vickery	Susan Eisenman
Paul Wake	Ed Peterson	
Alan Sevison	Brad Willis	
Judge Lindsley		

I. Minutes and Welcome

Carol Verdoia welcomed all members. The committee reviewed the minutes of April 6, 2007, but no motion was made due to the lack of quorum.

II. Rule 7--Search Warrants

The committee returned to its discussion of Rule 7-Search Warrants. Revisions to Rule 7 were approved by the Supreme Court and issued effective April 30, 2007, by emergency rule making procedures. Rule 7 is out for public comment until May 18, 2007.

Judge Lindsley mentioned that the Juvenile Court Judges had discussed the revisions at their bench meetings in April and had expressed two concerns. The first concern related to the deletion of paragraph (d)(7) on the issuance of verbal warrants. The second concern related to requirements for sealing the warrant.

A. Pick-Up Order Issue:

Judge Lindsley began with the first area of concern: Why were telephonic warrants during non-business hours removed from the rule? Judges frequently receive calls for verbal warrants when a youth runs from a placement such as ARTEC on the weekend. Carol expressed concern that the way the rule was written may be unconstitutional because it was not patterned after the criminal rules. The criminal rules require either sworn testimony over the phone with a follow

up affidavit or other written materials filed the next business day. Judge Lindsley stated her position that the pick up order is not a search warrant.

Some of the judges made a distinction because the request comes from a court employee (probation officer), not a police officer or other non-court employee, so reliability is less of an issue. Is it really a warrant if you are seeking detention for a minor already under court jurisdiction? If not, then we may not need to match the legal requirements in the Criminal Code. If it is, we need the recording over the phone followed up with an affidavit. Kristin noted that whether the situation involves a court employee should not be controlling. The important issue is being able to see what was relied upon by the judge when the warrant was issued.

Should we create an entirely separate rule for pick-up orders because kids under age 18 may be a safety risk to themselves and others? Carol suggested that one option is to incorporate into rule a requirement that the warrants be recorded. Section 78-3a-106 refers back to the criminal code by stating that the court has authority to issue search warrants, subpoenas, or investigative subpoenas pursuant to the same procedures set forth in the Code of Criminal Procedure. The committee then debated whether a separate rule could be created to deal with the pick up order issue, but determined it could not be created in time to meet the current need.

On the other hand, if it is not a warrant for custody and it doesn't fit within this rule, then the committee debated what these orders should be called. Judge Lindsley noted that the document the judge signs is called a "warrant for detention" and not a "pick up" order. Section 78-3a-106 says that Rule 40 of the Rules of Criminal Procedure applies to all search warrants and warrants for custody. The issue in *Anderson* was to make sure there is not tampering between verbal authorization and the time the document reaches the file. Here, we still have the *Anderson* issue, since relying on statements of others (such as detention center employees) cannot be safeguarded by the court. Discussion followed regarding whether a distinction should be made if the court has jurisdiction over the youth.

Rule 7 makes reference to section 77-7-10, which makes reference to "telephone authorization of execution of arrest warrants" and does not contain a recording requirement. However, Carol noted that the warrant in question a warrant for custody, not an arrest warrant. The question was "should it mean the same thing?" Some of the committee members felt that calling the warrant a "warrant for custody" only confused the issue when a youth is already under the jurisdiction of the court. The committee debated whether a difference exists between taking a child into the custody of a detention center when they are already under the jurisdiction of the court and otherwise placing a child in protective custody. Available dispositions including taking a child into custody and or placing them in detention. Judge Lindsley noted that the child will not go to detention unless the child has committed one of a number of bookable offenses or there is a warrant. Generally the detention center will not take a child without a warrant, merely on the assertion that the child is a risk to themselves. Kristin acknowledged the need for verbal warrants, but questioned whether *Anderson* requires the request to be recorded.

The committee then compared the Code of Criminal Procedure and the Rules of Criminal Procedure and noted that the code sections have now been stricken and incorporated into

Criminal Rule 40. The committee discussed whether the Rule 7 language could be changed to read "warrant for detention" instead of "warrant for custody." The committee also considered restoring Rule 7(d)(7), but including a reference to "warrant for detention," and obtaining an opinion from Brent Johnson as to whether this is sufficient or whether a recording is required under *Anderson.*

B. Sealing Issues:

Judge Lindsley then explained the judges' second concern regarding the requirement to retain and seal the document for 20 days. The purpose of sealing is to protect the execution by law enforcement and keep evidence from being destroyed. Frequently the juvenile court hearing is completed prior to the 20 day deadline however, especially in courts following the new Model Court Delinquency Guidelines. Juvenile court warrants may be different in nature, although situations may still arise where the parties do not want to release the documents before the warrant is executed. It was noted that in these cases, Rule 7 gives the judge discretion to reduce the time. The committee further discussed the meaning of "sealing" a warrant issued by a judge over the weekend.

The committee then considered the difference between issuance and execution of a warrant. A judge has a variety of ways to discover whether a warrant has been executed and can unseal it. It may be problematic, however, when one judge must unseal a document previously sealed by another judge.

It was noted that the 20 day requirement was adopted from Criminal Rule 40. Rule 40 requires the document be sealed for 20 days, but gives the judge discretion to reduce the time. Unsealing a document may not be a simple process as it requires the filing of a motion and notice to the law enforcement agency and the prosecution. In some cases, it may also require a hearing.

C. Additional Discussion Regarding the Pick-Up Order Issue:

The committee turned to the question of whether the Code of Criminal Procedure still applies to warrants for custody after the statute has been changed. Carol shared with the committee an email from Brent Johnson to Ray Wahl regarding the affect of statutory and rule changes on the use of pick up orders. Brent noted that a pick up order for a delinquent youth is most likely a warrant, but suggested that the question be researched. Brent further noted that even if it is not a warrant, it remains unclear whether they can be treated differently.

Alan noted that the Code of Criminal Procedure makes a distinction between search warrants and arrest warrants and treats them in different sections of the code. Carol argued that 78-3a-106 covers both types and therefore, the same procedures apply. Judge Lindsley clarified that a pick up order allows the probation officer to pick up kids on the street, but they can only enter a property/home with permission. They cannot search premises if parents or others refuse to let the officer enter.

The committee reviewed the status of the rule making procedures. The comment period will

expire May 18th, but Carol and Katie will meet with the Supreme Court one more time to review any comments received before the rule is ultimately finalized. The committee would like additional legal research to be performed before this process is completed.

The committee noted that some statutory changes may be needed. For now, the committee can only refer to the existing statute within the rule provisions and wait for further interpretation of the statute by others. Another question remains regarding whether exigent circumstances are outside the recording requirements. For example, telephonic arrest warrants for an adult do not require recording. The AG's office has not interpreted warrants for custody in this manner. Juvenile Probation Officers are not law enforcement officers and may not have authority to act in exigent circumstances.

The committee agreed to ask Brent Johnson to direct a law clerk to research the question and to help him clarify this for the committee and others. The current status of the emergency rule still allows verbal pick up orders with recordings under Rule 40. Judge Lindsley agreed to email Brent Johnson to request assistance on this issue. She will also ask him to consider if it is an exigent circumstance that a child has "gone on the run" and therefore no recording is necessary because a warrant is not needed. Kristin noted that a question remains as to who may "act" to pick up the child in an exigent circumstance, because probation officers may not be allowed to act in the exigent circumstances.

ISSUES: Does removing paragraph (d)(7) prevent juvenile judges from issuing verbal warrants for detention after hours (over the telephone)? The second question is "If so, what is the process that must be followed?" The committee did not reach consensus on whether a telephonic warrant is available under the rule. Members noted that it is a hybrid between a search warrant and an arrest warrant. Judge Lindsley stated that the second issue on sealing was not as concerning since there is a process in place for "unsealing" the document if requested. Judge Lindsley will also contact Judge Behrens, as chairmen of the Board of Juvenile Court Judges, regarding the concerns of the URJP.

III. Continued Discussion Regarding Definitions of Minor and Child

Katie distributed a copy of the entire URJP, redlined to reflect the status of the changes related to minor and child definitions. The committee began with comments by those who had reviewed the redlined version.

Rule 8.

Judge Lindsley noted two places where she believed the committee should reconsider earlier revisions to the Rules. She noted that in Rule 8(a) and (b) the references to "child" should actually be "minor." Occasionally we have someone over age 18 who is booked into detention. They should be able to contact their attorney and possibly their guardian/custodian if they are mentally not functioning as an 18 year old. If the rule is not worded as "minor," it may otherwise prevent the 18 year old from contacting their attorney. Susan Eisenman said that this reading is acceptable to JJS and Dan Maldonado. It is not a question of the court having to give the parent notice.

MOTION: Judge Lindsley made a motion that Rule 8 (a) & (b) remain as "minor," undoing the prior change to the term "child." Narda seconded the motion. The motion passed unanimously in the absence of a quorum. The vote must be reconsidered when a quorum is present.

Rule 16.
Judge Lindsley and Susan both had concerns regarding Rule 16. In Rule 16(a)(1) and (a)(2) the committee previously made a change to "child," and this erroneous eliminated a minor who cannot be located or the minor who denies an offense that was committed prior to age 18. Occasionally a minor over 18 is in state's custody and has the state as guardian.

MOTION: Judge Lindsley made a motion to insert a new subparagraph (a)(3) and renumber the subsequent subparagraphs accordingly. The new subparagraph will read "if a minor or the minor's custodian cannot be located or fails to appear after notice for the preliminary inquiry or indicates they plan to deny the offense alleged in the referral or requests an evidentiary hearing..." Narda seconded the motion and it passed unanimously, in the absence of a quorum.

Rule 47.
Susan expressed an additional concern regarding Rule 47(e)(2) and its reference to "an intervention plan." Susan asked what occurs if the child turns 18 during the adoption period?

MOTION: Judge Lindsley made a motion to strike in Rule 47(a)(1) the term "youth" and replace it with "minor" and in Rule 47(e)(2) to change both references from "child" to "minor." (Noting that in the original version the references were written as "youth" rather than "child"). Kristin seconded the motion and it passed unanimously in the absence of a quorum.

A discussion followed regarding the meaning of the term "intervention plan," which was unfamiliar to most committee members.

MOTION: Alan made a motion to change "intervention plan" to "permanency plan." Discussion followed regarding parts of the rule in which the language appears to be broader and includes delinquency issues. After discussion, Alan withdrew his motion.

Rule 8.
Paul Wake raised a question regarding Rule 8(d). Paul noted that 8(d) says "no person other than a probation officer can interview a minor age 14 or older in detention." The committee discuss how to handle a minor 14 years of age or older in this situation. All references in 8(d) should be changed to child, because if they are over age 18, we do not need the consent of a custodian and they will have to be advised of their rights either way under *Miranda*.

MOTION: Paul made a motion to change all references in Rule 8(d) from "minor" or "minor's" to "child" or "child's." Alan seconded the motion and it passed unanimously in the absence of a quorum.

Rule 9.
Paul raised an additional concern regarding changes to Rule 9. The committee clarified that an

individual over the age of 18 could be in DCFS custody and the committee agreed that Rule 9 should remain minor.

Rule 5.
Discussion followed regarding Rule 5c and whether to leave the phrase "minor over 18."
MOTION: Judge Lindsley made a motion to strike "over 18" in Rule 5c. Kristin seconded the motion and it passed unanimously in the absence of a quorum.

Carol noted that Kristin Brewer is moving to Olympia, Washington and this will be her last meeting. Carol thanked Kristin for all her years of service to the committee.

The committee set its next meeting for **July 13, 2007 from 11:30-1:30 p.m.**

Katie and Carol noted that the committee has lost some members this year and others have terms that will expire on July 1, 2007. Katie agreed to update the roster and determine if an advertisement should be placed for additional members.

The meeting adjourned.