

Tab 2

**JUVENILE DETENTION FACILITIES AMENDMENTS**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Eric K. Hutchings**

Senate Sponsor: Todd Weiler

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**LONG TITLE**

**General Description:**

This bill makes changes related to the detainment of a minor in a juvenile detention facility.

**Highlighted Provisions:**

This bill:

- ▶ establishes considerations for a district court when determining placement of a minor;
- ▶ requires a district court to place a serious youth offender in a juvenile detention facility under certain circumstances;
- ▶ provides considerations for a juvenile court when binding a minor over to the jurisdiction of a district court until the time of the trial; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

78A-6-701, as last amended by Laws of Utah 2010, Chapter 38

78A-6-702, as last amended by Laws of Utah 2013, Chapter 186

78A-6-703, as last amended by Laws of Utah 2010, Chapters 38 and 193

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **78A-6-701** is amended to read:

**78A-6-701. Jurisdiction of district court.**

(1) The district court has exclusive original jurisdiction over all persons 16 years of age or older charged with:

(a) an offense which would be murder or aggravated murder if committed by an adult;

or

(b) an offense which would be a felony if committed by an adult if the minor has been previously committed to a secure facility as defined in Section 62A-7-101. This Subsection (1)(b) shall not apply if the offense is committed in a secure facility.

(2) When the district court has exclusive original jurisdiction over a minor under this section, it also has exclusive original jurisdiction over the minor regarding all offenses joined with the qualifying offense, and any other offenses, including misdemeanors, arising from the same criminal episode. The district court is not divested of jurisdiction by virtue of the fact that the minor is allowed to enter a plea to, or is found guilty of, a lesser or joined offense.

(3) (a) Any felony, misdemeanor, or infraction committed after the offense over which the district court takes jurisdiction under Subsection (1) or (2) shall be tried against the defendant as an adult in the district court or justice court having jurisdiction.

(b) If the qualifying charge under Subsection (1) results in an acquittal, a finding of not guilty, or a dismissal of the charge in the district court, the juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain any jurisdiction and authority previously exercised over the minor.

(4) A minor arrested under this section shall be held in a juvenile detention facility until the district court determines where the minor shall be held until the time of trial, except for defendants who are otherwise subject to the authority of the Board of Pardons and Parole.

(5) The district court shall consider the following when determining where the minor will be held until the time of trial:

(a) the age of the minor;

- 58 (b) the nature, seriousness, and circumstances of the alleged offense;  
59 (c) the minor's history of prior criminal acts;  
60 (d) whether detention in a juvenile detention facility will adequately serve the need for  
61 community protection pending the outcome of any criminal proceedings;  
62 (e) whether the minor's placement in a juvenile detention facility will negatively impact  
63 the functioning of the facility by compromising the goals of the facility to maintain a safe,  
64 positive, and secure environment for all minors within the facility;  
65 (f) the relative ability of the facility to meet the needs of the minor and protect the  
66 public;  
67 (g) whether the minor presents an imminent risk of harm to the minor or others within  
68 the facility;  
69 (h) the physical maturity of the minor;  
70 (i) the current mental state of the minor as evidenced by relevant mental health or  
71 psychological assessments or screenings that are made available to the court; and  
72 (j) any other factors the court considers relevant.  
73 (6) A minor ordered to a juvenile detention facility under Subsection (5) shall remain  
74 in the facility until released by a district court judge, or if convicted, until sentencing.  
75 (7) A minor held in a juvenile detention facility under this section shall have the same  
76 right to bail as any other criminal defendant.  
77 (8) If the minor ordered to a juvenile detention facility under Subsection (5) attains the  
78 age of 18 years, the minor shall be transferred within 30 days to an adult jail until released by  
79 the district court judge, or if convicted, until sentencing.  
80 (9) A minor 16 years of age or older whose conduct or condition endangers the safety  
81 or welfare of others in the juvenile detention facility may, by court order that specifies the  
82 reasons, be detained in another place of confinement considered appropriate by the court,  
83 including jail or other place of pretrial confinement for adults.

84 Section 2. Section 78A-6-702 is amended to read:

85 **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

114 court in the same manner as an adult unless the juvenile court judge finds that it would be  
115 contrary to the best interest of the minor and to the public to bind over the defendant to the  
116 jurisdiction of the district court.

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

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

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

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

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

126 (v) whether public safety is better served by adjudicating the minor in the juvenile  
127 court or in the district court.

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

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

138 (4) If the juvenile court judge finds that an offense has been committed, but that the  
139 state has not met its burden of proving the other criteria needed to bind the defendant over  
140 under Subsection (1), the juvenile court judge shall order the defendant held for trial as a minor  
141 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) At the time the minor is bound over to the district court, the juvenile court shall make the initial determination on where the minor shall be held.

(7) The juvenile court shall consider the following when determining where the minor shall be held until the time of trial:

(a) the age of the minor;

(b) the nature, seriousness, and circumstances of the alleged offense;

(c) the minor's history of prior criminal acts;

(d) whether detention in a juvenile detention facility will adequately serve the need for community protection pending the outcome of any criminal proceedings;

(e) whether the minor's placement in a juvenile detention facility will negatively impact the functioning of the facility by compromising the goals of the facility to maintain a safe, positive, and secure environment for all minors within the facility;

(f) the relative ability of the facility to meet the needs of the minor and protect the public;

(g) whether the minor presents an imminent risk of harm to the minor or others within the facility;

(h) the physical maturity of the minor;

(i) the current mental state of the minor as evidenced by relevant mental health or psychological assessments or screenings that are made available to the court; and

(j) any other factors the court considers relevant.

(8) If a minor is ordered to a juvenile detention facility under Subsection (7), the minor shall remain in the facility until released by a district court judge, or if convicted, until sentencing.

(9) A minor held in a juvenile detention facility under this section shall have the same

170 right to bail as any other criminal defendant.

171 (10) If the minor ordered to a juvenile detention facility under Subsection (7) attains  
172 the age of 18 years, the minor shall be transferred within 30 days to an adult jail until released  
173 by the district court judge, or if convicted, until sentencing.

174 (11) A minor 16 years of age or older whose conduct or condition endangers the safety  
175 or welfare of others in the juvenile detention facility may, by court order that specifies the  
176 reasons, be detained in another place of pretrial confinement considered appropriate by the  
177 court, including jail or other place of confinement for adults.

178 (12) The district court may reconsider the decision on where the minor will be held  
179 pursuant to Subsection (6).

180 ~~[(6)]~~ (13) If an indictment is returned by a grand jury charging a violation under this  
181 section, the preliminary examination held by the juvenile court judge need not include a finding  
182 of probable cause that the crime alleged in the indictment was committed and that the  
183 defendant committed it, but the juvenile court shall proceed in accordance with this section  
184 regarding the additional considerations listed in Subsection (3)(b).

185 ~~[(7)]~~ (14) When a defendant is charged with multiple criminal offenses in the same  
186 information or indictment and is bound over to answer in the district court for one or more  
187 charges under this section, other offenses arising from the same criminal episode and any  
188 subsequent misdemeanors or felonies charged against him shall be considered together with  
189 those charges, and where the court finds probable cause to believe that those crimes have been  
190 committed and that the defendant committed them, the defendant shall also be bound over to  
191 the district court to answer for those charges.

192 ~~[(8)]~~ (15) When a minor has been bound over to the district court under this section,  
193 the jurisdiction of the Division of Juvenile Justice Services and the juvenile court over the  
194 minor is terminated regarding that offense, any other offenses arising from the same criminal  
195 episode, and any subsequent misdemeanors or felonies charged against the minor, except as  
196 provided in Subsection ~~[(12)]~~ (19).

197 ~~[(9)]~~ (16) A minor who is bound over to answer as an adult in the district court under



198 this section or on whom an indictment has been returned by a grand jury is not entitled to a  
199 preliminary examination in the district court.

200 ~~[(10)]~~ (17) Allegations contained in the indictment or information that the defendant  
201 has previously been adjudicated or convicted of an offense involving the use of a dangerous  
202 weapon, or is 16 years of age or older, are not elements of the criminal offense and do not need  
203 to be proven at trial in the district court.

204 ~~[(11)]~~ (18) If a minor enters a plea to, or is found guilty of, any of the charges filed or  
205 any other offense arising from the same criminal episode, the district court retains jurisdiction  
206 over the minor for all purposes, including sentencing.

207 ~~[(12)]~~ (19) The juvenile court under Section 78A-6-103 and the Division of Juvenile  
208 Justice Services regain jurisdiction and any authority previously exercised over the minor when  
209 there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

210 Section 3. Section **78A-6-703** is amended to read:

211 **78A-6-703. Certification hearings -- Juvenile court to hold preliminary hearing --**  
212 **Factors considered by juvenile court for waiver of jurisdiction to district court.**

213 (1) If a criminal information filed in accordance with Subsection 78A-6-602(3) alleges  
214 the commission of an act which would constitute a felony if committed by an adult, the  
215 juvenile court shall conduct a preliminary hearing.

216 (2) At the preliminary hearing the state shall have the burden of going forward with its  
217 case and the burden of establishing:

218 (a) probable cause to believe that a crime was committed and that the defendant  
219 committed it; and

220 (b) by a preponderance of the evidence, that it would be contrary to the best interests of  
221 the minor or of the public for the juvenile court to retain jurisdiction.

222 (3) In considering whether or not it would be contrary to the best interests of the minor  
223 or of the public for the juvenile court to retain jurisdiction, the juvenile court shall consider,  
224 and may base its decision on, the finding of one or more of the following factors:

225 (a) the seriousness of the offense and whether the protection of the community requires

226 isolation of the minor beyond that afforded by juvenile facilities;

227 (b) whether the alleged offense was committed by the minor under circumstances  
228 which would subject the minor to enhanced penalties under Section 76-3-203.1 if the minor  
229 were adult and the offense was committed:

230 (i) in concert with two or more persons;

231 (ii) for the benefit of, at the direction of, or in association with any criminal street gang  
232 as defined in Section 76-9-802; or

233 (iii) to gain recognition, acceptance, membership, or increased status with a criminal  
234 street gang as defined in Section 76-9-802;

235 (c) whether the alleged offense was committed in an aggressive, violent, premeditated,  
236 or willful manner;

237 (d) whether the alleged offense was against persons or property, greater weight being  
238 given to offenses against persons, except as provided in Section 76-8-418;

239 (e) the maturity of the minor as determined by considerations of the minor's home,  
240 environment, emotional attitude, and pattern of living;

241 (f) the record and previous history of the minor;

242 (g) the likelihood of rehabilitation of the minor by use of facilities available to the  
243 juvenile court;

244 (h) the desirability of trial and disposition of the entire offense in one court when the  
245 minor's associates in the alleged offense are adults who will be charged with a crime in the  
246 district court;

247 (i) whether the minor used a firearm in the commission of an offense; and

248 (j) whether the minor possessed a dangerous weapon on or about school premises as  
249 provided in Section 76-10-505.5.

250 (4) The amount of weight to be given to each of the factors listed in Subsection (3) is  
251 discretionary with the court.

252 (5) (a) Written reports and other materials relating to the minor's mental, physical,  
253 educational, and social history may be considered by the court.

(b) If requested by the minor, the minor's parent, guardian, or other interested party, the court shall require the person or agency preparing the report and other material to appear and be subject to both direct and cross-examination.

(6) At the conclusion of the state's case, the minor may testify under oath, call witnesses, cross-examine adverse witnesses, and present evidence on the factors required by Subsection (3).

(7) At the time the minor is bound over to the district court, the juvenile court shall make the initial determination on where the minor shall be held.

(8) The juvenile court shall consider the following when determining where the minor will be held until the time of trial:

(a) the age of the minor;

(b) the nature, seriousness, and circumstances of the alleged offense;

(c) the minor's history of prior criminal acts;

(d) whether detention in a juvenile detention facility will adequately serve the need for community protection pending the outcome of any criminal proceedings;

(e) whether the minor's placement in a juvenile detention facility will negatively impact the functioning of the facility by compromising the goals of the facility to maintain a safe, positive, and secure environment for all minors within the facility;

(f) the relative ability of the facility to meet the needs of the minor and protect the public;

(g) whether the minor presents an imminent risk of harm to the minor or others within the facility;

(h) the physical maturity of the minor;

(i) the current mental state of the minor as evidenced by relevant mental health or psychological assessments or screenings that are made available to the court; and

(j) any other factors the court considers relevant.

(9) If a minor is ordered to a juvenile detention facility under Subsection (8), the minor shall remain in the facility until released by a district court judge, or if convicted, until

282 sentencing.

283 (10) A minor held in a juvenile detention facility under this section shall have the same  
284 right to bail as any other criminal defendant.

285 (11) If the minor ordered to a juvenile detention facility under Subsection (8) attains  
286 the age of 18 years, the minor shall be transferred within 30 days to an adult jail until released  
287 by the district court judge, or if convicted, until sentencing.

288 (12) A minor 16 years of age or older whose conduct or condition endangers the safety  
289 or welfare of others in the juvenile detention facility may, by court order that specifies the  
290 reasons, be detained in another place of confinement considered appropriate by the court,  
291 including jail or other place of confinement for adults.

292 (13) The district court may reconsider the decision on where the minor shall be held  
293 pursuant to Subsection (7).

294 ~~[(7)]~~ (14) If the court finds the state has met its burden under Subsection (2), the court  
295 may enter an order:

296 (a) certifying that finding; and

297 (b) directing that the minor be held for criminal proceedings in the district court.

298 ~~[(8)]~~ (15) If an indictment is returned by a grand jury, the preliminary examination held  
299 by the juvenile court need not include a finding of probable cause, but the juvenile court shall  
300 proceed in accordance with this section regarding the additional consideration referred to in  
301 Subsection (2)(b).

302 ~~[(9)]~~ (16) The provisions of Section 78A-6-115, Section 78A-6-1111, and other  
303 provisions relating to proceedings in juvenile cases are applicable to the hearing held under this  
304 section to the extent they are pertinent.

305 ~~[(10)]~~ (17) A minor who has been directed to be held for criminal proceedings in the  
306 district court is not entitled to a preliminary examination in the district court.

307 ~~[(11)]~~ (18) A minor who has been certified for trial in the district court shall have the  
308 same right to bail as any other criminal defendant and shall be advised of that right by the  
309 juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77,

Chapter 20, Bail.

~~[(12)]~~ (19) When a minor has been certified to the district court under this section, the jurisdiction of the Division of Juvenile Justice Services and the jurisdiction of 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 ~~[(14)]~~ (21).

~~[(13)]~~ (20) If a minor enters a plea to, or is found guilty of any of the charges filed or on any other offense arising out of the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

~~[(14)]~~ (21) 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.

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 consider the conditions in paragraph (c).~~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 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 conditions required by Section 78A-6-702 are present, 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.



Tab 4

transmission from a different location if the party not calling the witness waives confrontation of the witness in person.

**(ii) Rule of Juvenile Procedure 29B. Hearings with contemporaneous transmission from a different location.**

(a) In any delinquency proceeding or proceeding under Section 78A-6-702 or Section 78A-6-703 the court may conduct the following hearings with the minor or the minor's parent, guardian or custodian attending by contemporaneous transmission from a different location:

- (a)(1) arraignment;
- (a)(2) contempt
- (a)(3) detention;
- (a)(4) law and motion;
- (a)(5) pretrial conference;
- (a)(6) review; and
- (a)(7) warrant.

(b) The court may conduct the following hearings with the minor or the minor's parent, guardian or custodian attending by contemporaneous transmission from a different location if the minor or the minor's parent, guardian or custodian waives attendance in person:

- (b)(1) adjudication
- (b)(2) certification to district court;
- (b)(3) disposition;
- (b)(4) expungement;
- (b)(5) permanency;
- (b)(6) preliminary hearing;
- (b)(7) restitution;
- (b)(8) shelter; and
- (b)(9) trial.

(c) For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location if the party not calling the witness waives confrontation of the witness in person.

**(iii) Rule of Juvenile Procedure 37B. Hearings with contemporaneous transmission from a different location.**

(a) In any abuse, neglect, dependency, or substantiation proceeding and in any proceeding for the termination of parental rights, the court may conduct hearings with the minor or the minor's parent, guardian or custodian attending by contemporaneous transmission from a different location if the minor or the minor's parent, guardian or custodian waives attendance in person.

(b) For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location if the party not calling the witness waives confrontation of the witness in person.

**(iv) Rule of Civil Procedure 43. Evidence.**

(a) Form. In all trials, the testimony of witnesses shall be taken in open court, unless otherwise provided by these rules, the Utah Rules of Evidence, or a statute of this state. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

**(v) Code of Judicial Administration Rule 4-106. Electronic conferencing.**

Intent:

~~To authorize the use of electronic conferencing~~ hearings with contemporaneous transmission from a different location in lieu of personal appearances in appropriate cases.

To establish the minimum requirements for contemporaneous transmission from a different location.

Applicability:

This rule shall apply to all courts of record and not of record.

Statement of the Rule:

~~(1) In the judge's discretion, any hearing may be conducted using telephone or video conferencing.~~

~~(2) Any proceeding in which a person appears by telephone or video conferencing shall proceed as required in any other hearing including keeping a verbatim record.~~

(1) If the courtroom satisfies paragraph (3), the judge may participate in a hearing by contemporaneous transmission from a different location.



Katie Gregory &lt;katieg@utcourts.gov&gt;

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**Re: URJP issue**

1 message

**Carol Verdoia** <cverdoia@utah.gov>

Thu, Jun 12, 2014 at 3:35 PM

To: Katie Gregory &lt;katieg@utcourts.gov&gt;

I think at last week's meeting he thought we could just provide a one-sentence clarification like " The Tiered system in rule \_\_\_\_ is not applicable to discovery under this rule" Or, he may have said "Tier 2 under rule \_\_\_\_ is applicable to discovery under this rule." I can't remember which one he said.

On Thu, Jun 12, 2014 at 3:31 PM, Katie Gregory <katieg@utcourts.gov> wrote:

Yikes. I haven't read through it all yet, but that looks like more than a simple fix. I'll save his email and maybe we can use it to frame discussion at the August meeting.

Katie Gregory  
Assistant Juvenile Court Administrator  
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Email: katieg@utcourts.gov

On Thu, Jun 12, 2014 at 3:17 PM, Carol Verdoia <cverdoia@utah.gov> wrote:

This may be more than you wanted, but here's how Brent responded to me. At the meeting, he thought there was a simple fix, by adding one sentence in rule 20A(a), after the first sentence, that clarifies the Committee's intent.

----- Forwarded message -----

From: **Brent Hall** <bhall@l2law.com>  
Date: Fri, May 2, 2014 at 11:32 AM  
Subject: RE: URJP issue  
To: Carol Verdoia <cverdoia@utah.gov>

Carol,

Here's my take:

Rule 2 of the Juvenile Rules: (a) When the proceeding involves neglect, abuse, dependency, permanent deprivation of parental rights, adoption, status offenses or truancy, the Utah Rules of Civil Procedure shall apply unless inconsistent with these rules.

Rule 20 of the Juvenile Rules (which we changed not long ago to add): (c) Rule 26.1 of the Rules of Civil Procedure does not apply in any juvenile proceedings unless there is a showing of good cause and it is ordered by the court. (d) In all other cases, discovery shall be conducted pursuant to these rules unless modified by a showing of good cause and by order of the court

Rule 20A of the Juvenile Rules: a) Scope of discovery. The scope of discovery is governed by Utah R. Civ. P. 26(b)(1).

Rule 20A of the Juvenile Rules: j) Supplementation of responses. Parties have a duty to supplement responses and disclosures pursuant to Utah R. Civ. P. 26(d).

Rule 20A of the Juvenile Rules: (l) No discovery can be taken that will interfere with the statutorily imposed time frames.

Based on the above, Rule 26 of the Civil Rules applies unless inconsistent with the above juvenile rules. I don't see any inconsistencies with Rule 26 and the Juvenile Rules save 2 big ones:

1) the timelines. Rule 26 (in the tier table) lays out the amount of time for fact discovery. Those timeframes are far longer than the time we have in juvenile court for trials. That bit is specifically addressed by Rule 20A of the juvenile rules, part (l) above, that states no discovery can be taken that will interfere with the time frames.

2) Rule 26.1 of the Civil Rules: We discussed this one in Committee. I saw a problem, since it requires automatic financial disclosures in the following cases: "(a) **Scope**. This rule applies to the following domestic relations actions: divorce; temporary separation; separate maintenance; parentage; custody; child support; and modification. This rule does not apply to adoptions, enforcement of prior orders, cohabitant abuse protective orders, child protective orders, civil stalking injunctions, or grandparent visitation."

Because the juvenile court is authorized by: 78A-6-104 "(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;" and "(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." We were worried that Rule 26.1 would be applied to those cases (also any "custody" matter) unless specifically contradicted by the Juvenile Rules. So we specifically contradicted them above in Rule 20 of the Juvenile rules (not 20A).

I don't see any major inconsistencies other than these. I did notice that a Tier 1 case label would not allow for Interrogatories, even though our Rule 20A specifically says we can do them. I think this apparent inconsistency is firmly resolved because our cases are not Tier 1. Tier 1 cases are only for monetary actions. Lawsuits seeking money damages under 50k. That's a small window, since if the damages are under 10k then jurisdiction is in small claims court. The only Tier for a case that's asking for something other than money damages, such as divorce decree, custody order, permanent injunction, declaratory judgment, adoption order, guardianship order, etc, is Tier 2. Tier 2 allows for interrogatories. The only conflict with Tier 2 is the timeline of 180 days, which Rule 20A clarifies.

The advisory committee notes for Rule 26 (c) 5:

"Rule 26(c) provides for three separate "tiers" of limited, "standard" discovery that are presumed to be proportional to the amount and issues in controversy in the action, and that the parties may conduct as a matter of right. An aggregation of all damages sought by all parties in an action dictates the applicable tier of standard discovery, whether such damages are sought by way of a complaint, counterclaim, or otherwise. The tiers of standard discovery are set forth in a chart that is embedded in the body of the rule itself. "Tier 1"

describes a minimal amount of standard discovery that is presumed proportional for cases involving damages of \$50,000 or less. "Tier 2" sets forth larger limits on standard discovery that are applicable in cases involving damages above \$50,000 but less than \$300,000. Finally, "Tier 3" prescribes still greater standard discovery for actions involving damages in excess of \$300,000. Deposition hours are charged to a side for the time spent asking questions of the witness. In a particular deposition, one side may use two hours while the other side uses only 30 minutes. The tiers also provide presumptive limitations on the time within which standard discovery should be completed, which limitations similarly increase with the amount of damages at issue. Discovery motions will not toll the period. Parties are expected to be reasonable and accomplish as much as they can during standard discovery. The motions may result in additional discovery and sanctions at the expense of a party who unreasonably fails to respond or otherwise frustrates discovery. After the expiration of the applicable time limitation, a case is presumed to be ready for trial. Actions for non-monetary relief, such as injunctive relief, are subject to the standard discovery limitations of Tier 2, absent an accompanying monetary claim of \$300,000 or more, in which case Tier 3 applies. The committee determined these standard discovery limitations based on the expectation that for the majority of cases filed in the Utah State Courts, the magnitude of available discovery and applicable time parameters available under the three-tiered system should be sufficient for cases involving the respective amounts of damages."

I read the notes to suggest a rising allowance. In any case, if non-monetary issues arise, the case gets bumped up to Tier 2, allowing for more discovery. If at any time the case involves damages of 300k or more, the case gets bumped to Tier 3.

There's my take. If I'm missed and inconsistency I'd be happy to discuss it further and see what we can do on committee.

Thanks,

Brent Hall

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Thank you.

**From:** Carol Verdoia [mailto:cverdoia@utah.gov]  
**Sent:** Thursday, May 01, 2014 4:30 PM  
**To:** Brent Hall  
**Subject:** URJP issue

Brent --

Here are the questions and discussion -- it does point out some inconsistencies, I think. But let me know your thoughts.

Thanks

I remember being told that our child welfare cases fall under tier 1 for URCP rule 26 discovery. Our GAL argues that it is tier 2 because it is for non-monetary relief. How are the attys in our division applying this rule?

\*\*\*\*\*

This is the first time I have heard of this issue. I'm not sure that any of the Tier 1, 2 or 3 rules apply within the context of our Juvenile Rule 20A. The Supreme Court has arguably provided a specific rule for discovery in our cases and adopted those parts of the civil discovery rules that it wants applied in the juvenile court. It did not adopt the tiered system within the context of Rule 20A. So I would argue that none of the limitations of the tiered system in Rule 26 of the Rules of Civil Procedure apply. I realize that an argument could be made that since Rule 20A doesn't set any tiers, the tiered system of Rule 26 is not therefor inconsistent with Rule 20A, so it should be applied. If it does apply, I think it would be clear that our cases would be Tier 2 since they are in equity and seek non-monetary relief. I think we should take the position that the tiered system does not apply and thus any limitations on discovery not expressly provided in Rule 20A are within the discretion of the juvenile court.

\*\*\*\*\*

Thanks. I still think we have the issue for interrogatories in that URJP 20A(d) allows interrogatories pursuant to URCP 33, and 33 refers to the limits in 26(5)(c). 20A also refers to Rule 34 and 36 for document production and admissions, but 34 and 36 do not specifically limit pursuant to 26(5)(c)

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You may be right. It seems incongruous, however, that the limitations in Rule 26(c)(5) would apply with respect to interrogatories only. Carol, this may be an issue that the Juvenile Rules Committee should look at, i.e. to what extent, if any, does the tiered system of Rule 26(c)(5) with its limitations apply within the context of Juvenile Rule 20A?

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