

4 August 06 analysis of the following definitions;

The definitions from HB 103 are as follows:

Child -- means a person under 18 years of age.

Minor -- means

(i) a child; or

(ii) a person who is:

(A) at least 18 years of age and younger than 21 years
of age; and

(B) under the jurisdiction of the juvenile court.

Rule 6. Admission to detention without court order.

Admission to detention without court order is governed by Utah Administrative Rules Title R547, Chapter 13, Guidelines for Admission to Secure Youth Detention Facilities.

Comment;

No use of "child" or minor", hence no change, however no one over 18 is admitted into a detention facility and therefore the use of the term "minor" is most likely inappropriate throughout.

Rule 7. Warrants for immediate custody of *minor's*; grounds; execution of warrants; search warrants.

(a) The issuance and execution of a warrant in delinquency cases is governed by Title 77, Chapter 7, Arrest, and by Section 78-3a-112 and Section 78-3a-113.

(b) After a petition is filed, a warrant for immediate custody of a *minor* may be issued if the court finds from the facts set forth in an affidavit filed with the court or in the petition that there is probable cause to believe that:

(b)(1) the *minor* has committed an act which would be a felony if committed by an adult;

(b)(2) the *minor* has failed to appear after the *minor* or the parent, guardian or custodian has been legally served with a summons;

(b)(3) there is a substantial likelihood the *minor* will not respond to a summons;

(b)(4) the summons cannot be served and the *minor's* present whereabouts are unknown;

(b)(5) the *minor* seriously endangers others and immediate removal appears to be necessary for the protection of others or the public; or

(b)(6) there are reasonable grounds to b parent, guardian or custodian.

(c) A warrant for immediate custody of a *minor* may be issued if the court finds from the affidavit that the *minor* is under the continuing jurisdiction of the court and probable cause to believe that the *minor*:

(c)(1) has left the custody of the person or agency vested by the court with legal

custody and guardianship without permission; or

(c)(2) has violated a court order.

(d) A warrant for immediate custody shall be signed by a court and shall contain or be supported by the following:

(d)(1) an order that the **minor** be taken to the detention or shelter facility designated by the court at the address specified pending a hearing or further order of the court;

(d)(2) the name, date of birth and last known address of the **minor**;

(d)(3) the reasons why the **minor** is being taken into custody;

(d)(4) a time limitation on the execution of the warrant;

(d)(5) the name and title of the person requesting the warrant unless ordered by the court on its own initiative pursuant to these rules; and

(d)(6) the date, county and court location where the warrant is being issued.

(d)(7) On verbal request from a probation officer or other authorized individual a warrant for custody may be issued telephonically during non-business hours or under exigent circumstances when it appears necessary for the protection of the community or the **juvenile** and shall be supported by an affidavit from the requesting authority the next court business day.

(e) Search warrants, with an order of immediate custody, may be issued in the manner provided by law.

(f) A peace officer who brings a **minor** to a detention facility pursuant to a court order for immediate custody shall so inform the person in charge of the facility and the existence of such order shall require the **minor's** immediate admission. A **minor** so admitted may not be released without court order.

(g) This rule shall not limit the statutory authority of a probation officer to take a **minor** who has violated a condition of probation into custody.

(h) The issuance and execution of a warrant in dependency, neglect and abuse cases is governed by Section 78-3a-106 and Section 78-3a-113.

(i) A warrant for immediate custody shall be signed by a court and shall contain or be supported by the following:

(i)(1) an order that the **minor** be taken to the detention or shelter facility or other location designated by the court at the address specified pending a hearing or further order of the court;

(i)(2) the name, date of birth and last known address of the **minor**;

(i)(3) the reasons why the **minor** is being taken into custody;

(i)(4) a time limitation on the execution of the warrant;

(i)(5) the name and title of the person requesting the warrant unless ordered by the

court on its own initiative pursuant to these rules; and

(i)(6) the date, county and court location where the warrant is being issued.

(i)(7) On verbal request from a state officer, peace officer, or child welfare worker or other authorized individual a warrant for custody may be issued telephonically when it appears necessary for the protection of the *juvenile*. Telephonic warrants shall be supported by an affidavit from the requesting authority the next court business day.

(j) Search warrants, with an order of immediate custody, may be issued in the manner provided by law.

(k) A peace officer who brings a *minor* to a detention or shelter facility pursuant to a court order for immediate custody shall so inform the person in charge of the facility and the existence of such order shall require the *minor's* immediate admission. A *minor* so admitted may not be released without court order.

(l) Return of service on a warrant shall be executed within 72 hours unless otherwise ordered by the Court.

Comment;

Use of term "minor", "minor's" and "juvenile" should be replaced with "child" or "child's". Provision for issuance of a warrant and incarceration for a person under the jurisdiction of the Juvenile court between the ages of 18-21 should be handled under a separate rule, perhaps 7.5. 8.5, etc. , in that the individual is an adult, will most likely end up in a city or county jail, and has a right to a 72 charge or release. Individual is defacto emancipated therefore parental involvement is unnecessary

Rule 8. Rights of *minor* while in detention.

(a) A *minor* shall be advised of the right to telephone the *minor's* parent, guardian or custodian and an attorney immediately after being admitted to a detention facility.

(b) A *minor* has a right to confer in private at any time with an attorney, cleric, parent, guardian or custodian. After the initial visit, the *minor* may visit such persons at reasonably established visiting hours, or at other times when special circumstances so warrant.

(c) No person other than a probation officer or a staff member of a detention facility shall be permitted to interview a *minor* under 14 years of age held in the facility regarding an offense chargeable against the *minor* without the *minor's* parent, guardian or custodian present, unless:

(c)(1) the parent, guardian or custodian has given written permission for the

interview to be held outside the presence of the *minor's* parent, guardian, or custodian;

(c)(2) the parent, guardian or custodian had been advised of the *minor's* constitutional rights as provided in Rule 26(a) and has knowingly and voluntarily waived such rights; and

(c)(3) the *minor* had been advised of the *minor's* constitutional rights as provided in Rule 26(a) and has knowingly and voluntarily waived such rights.

(d) No person other than a probation officer or a staff member of a detention facility shall be permitted to interview a *minor's* 14 years of age or older in a detention facility regarding an offense chargeable against the *minor* without the consent of the *minor* and the *minor's* parent, guardian or custodian after first advising said *minor* of constitutional rights as described in Rule 26 and such rights having been knowingly and voluntarily waived by the *minor*.

(e) If the *minor's* parent, guardian or custodian is not available, the consent of the court shall be obtained before interviewing a minor in a detention facility.

Advisory Committee Note

The limitation on interviews is intended to extend to interviews regarding the charges for which the *minor* is being detained and any other charges under investigation.

This rule evolved from former rule 10 at a time when the court was responsible for admission to detention. That responsibility now belongs to the Division of Juvenile Justice Services, which has established admission guidelines. Utah Administrative Rules R547-13-1 et seq. This rule and former rule 10 balance the important rights of the *minor* with those of the public. Because these provisions have historically been found in the juvenile court rules, they have not yet been incorporated into any other rule or statute. Until the Legislature or the Division of Juvenile Justice Services acts to restate these provisions, it is necessary that they be stated here.

Comment;

see comment rule 7. Questioning of a 18+ year old prisoner who is incarcerated should be pursuant to normal interrogation procedures

Rule 9. Detention hearings; scheduling; hearing procedure.

(a) The officer in charge of the detention facility shall provide to the court a copy of the report required by Section 78-3a-113. At a detention hearing, the court shall order the release of the *minor* to the parent, guardian or custodian unless there is

reason to believe:

(1) the **minor** will abscond or be taken from the jurisdiction of the court unless detained;

(2) the offense alleged to have been committed would be a felony if committed by an adult;

(3) the **minor's** parent, guardian or custodian cannot be located;

(4) the **minor's** parent, guardian or custodian refuses to accept custody of the **minor**;

(5) the **minor's** parent, guardian or custodian will not produce the **minor** before the court at an appointed time;

(6) the **minor** will undertake witness intimidation;

(7) the **minor's** past record indicates the **minor** may be a threat to the public safety;

(8) the **minor** has problems of conduct or behavior so serious or the family relationships are so strained that the **minor** is likely to be involved in further delinquency; or

(9) the **minor** has failed to appear for a court hearing within the past twelve months.

(b) The court shall hold a detention hearing within 48 hours of the **minor's** admission to detention, weekends and holidays excluded. The officer in charge of the detention facility shall notify the **minor**, parent, guardian or custodian and attorney of the date, time, place and manner of such hearing.

(c) The court may at any time order the release of a **minor** whether a detention hearing is held or not.

(d) At the beginning of the detention hearing, the court shall advise all persons present as to the reasons or allegations giving rise to the **minor's** admission to detention and the limited scope and purpose of the hearing as set forth in paragraph (g). If the **minor** is to be arraigned at the detention hearing, the provisions of Rules 24 and 26 shall apply.

(e) The court may receive any information, including hearsay and opinion, that is relevant to the decision whether to detain or release the **minor**. Privileged communications may be introduced only in accordance with the Utah Rules of Evidence.

(f) A detention hearing may be held without the presence of the **minor's** parent, guardian or custodian if they fail to appear after receiving notice. The court may delay the hearing for up to 48 hours to permit the parent, guardian or custodian to be present or may proceed subject to the rights of the parent, guardian or

custodian. The court may appoint counsel for the *minor* with or without the *minor's* request.

(g) If the court determines that no reasonable basis exists for the offense or condition alleged as required in Rule 6 as a basis for admission, it shall order the *minor* released immediately without restrictions. If the court determines that reasonable cause exists for continued detention, it may order continued detention, place the *minor* on home detention, or order the *minor's* release upon compliance with certain conditions pending further proceedings. Such conditions may include:

(1) a requirement that the *minor* remain in the physical care and custody of a parent, guardian, custodian or other suitable person;

(2) a restriction on the *minor's* travel, associations or residence during the period of the *minor's* release; and

(3) other requirements deemed reasonably necessary and consistent with the criteria for detaining the *minor*.

(h) If the court determines that a reasonable basis exists as to the offense or condition alleged as a basis for the *minor's* admission to detention but that the *minor* can be safely left in the care and custody of the parent, guardian or custodian present at the hearing, it may order release of the minor upon the promise of the *minor* and the parent, guardian or custodian to return to court for further proceedings when notified.

(i) If the court determines that the offense is one governed by Section 78-3a-601, Section 78-3a-602, or Section 78-3a-603, the court may by issuance of a warrant of arrest order the *minor* committed to the county jail in accordance with Section 62A-7-201.

(j) Any predisposition order of detention or home detention shall be reviewed by the court once every seven days. The court may, on its own motion or on the motion of any party, schedule a detention review hearing at any time.

Comment;

see rule 7. The procedures aforementioned should not apply to an 18+ who is incarcerated. A 72 hour charge or release should be considered.

Rule 10. Bail for non-resident *minors*.

A nonresident *minor* taken into custody for an offense committed within the state whose continued detention is not required by the court under Rule 9 may be

required to post bail as a condition of release pending arraignment or subsequent court proceedings. The judge, commissioner, or other court officer authorized in writing may issue an order admitting the *minor* to bail and setting the amount of bail. All subsequent matters pertaining to the posting of the bail and any forfeiture shall be governed by § 77-20-1 et seq. and § 77-20b-101 et seq.

Comment;

see rule 7. Bail should be pursuant to adult rules.

Rule 11. Time limits on detention orders.

(a) Preliminary inquiries and investigations shall be promptly conducted in cases involving *minors* ordered held in detention. Orders for detention are not of indefinite duration and shall be limited as follows.

(1) *minors* held in detention. Unless the time period for filing a petition or holding an arraignment is extended by court order, a *minor* shall be released from detention if a petition is not filed within 5 working days of the date the *minor* was admitted to detention or an arraignment is not held within 10 days of the date the petition is filed.

(2) *minors* placed on home detention or released with conditions. Unless extended by court order, if a petition is not filed within 30 days of the placement on home detention or the date of release from detention with conditions, the order shall terminate.

(3) *minors* held in detention pending disposition or placement are governed by Section 78-3a-114.

(b) Requests for extensions of the time period for filing a petition shall be made by means of a separate written request and order, on forms supplied by the clerk, and shall be retained in the legal file. The name, title of the person making the request, and the reasons for the requested extension shall be included in the request.

ADVISORY COMMITTEE NOTE

Paragraph (3) of this rule will impose upon all minors in detention the statutory time limits imposed upon post adjudication orders of detention pending non-secure placement.

Comment ;

see rule 7. The procedures aforementioned should not apply to an 18+ who is incarcerated. A 72 hour charge or release should be considered.

Rule 14. Reception of referral; preliminary determination.

(a) Delinquency cases.

(a)(1) A law enforcement officer or any other person having knowledge of or

reason to believe facts that would bring a **minor** within the court's jurisdiction for delinquency may refer the **minor** to the court by submitting a written report and a request for a petition to the clerk, on forms prescribed by the court. An intake officer of the probation department shall make a preliminary determination, with the assistance of the prosecuting attorney if necessary, as to whether the facts reported are legally sufficient to give the court jurisdiction. If the facts appear legally sufficient such officer shall make a preliminary inquiry in accordance with standards prescribed by the court and Rule 15 to determine whether the interests of the public or the **minor** require further judicial action to be taken. If it is so determined, such officer may file a petition on behalf of the referring officer or person or may refer the matter to the prosecuting attorney for preparation of the petition.

(a)(2) If the intake officer refuses after a demand by the complainant to file a petition, the complainant shall be informed of the reasons for the refusal and advised that he may submit the facts of the alleged delinquency in writing to the prosecuting attorney who shall determine whether a petition shall be filed.

(b) Cases involving neglect, dependency or abuse. Pursuant to Utah Code, Title 62A, Chapter 4a, complaints and reports involving the neglect, abuse or dependency of **minors** shall be directed to the nearest office of the Division of Child and Family Services for investigation, which agency may, with the assistance of the attorney general, file a petition with the court to initiate judicial proceedings.

(c) Coordination of cases pending in district court and juvenile court.

(c)(1) Criminal and delinquency cases; Notice to the court.

(c)(1)(A) In a criminal case all parties have a continuing duty to notify the court of a delinquency case pending in juvenile court in which the defendant is a party.

(c)(1)(B) In a delinquency case all parties have a continuing duty to notify the court:

(c)(1)(B)(i) of a criminal or delinquency case in which the respondent or the respondent's parent is a party; and

(c)(1)(B)(ii) of an abuse, neglect or dependency case in which the respondent is the subject of the petition or the respondent's parent is a party.

(c)(1)(C) The notice shall be filed with a party's initial pleading or as soon as practicable after the party becomes aware of the other pending case. The notice shall include the case caption, file number and name of the judge or commissioner in the other case.

Comment ;
see rule 7.

Rule 15. Preliminary inquiry; informal adjustment without petition.

(a) If the *minor* controverts the allegations in the referral or upon request by the minor, the effort at non judicial adjustment shall terminate.

(b) In attempting to determine whether the interests of the *minor* or the public require that a petition be filed, the probation intake officer may conduct one or more interviews with the *minor* and at least one parent, guardian or custodian and may invite the referring party and the victim, if any, to attend or otherwise seek further information from them. Attendance at any such interview shall be voluntary and the probation intake officer may not compel the disclosure of any information or the visiting of any place. A non judicial adjustment of the case shall not be attempted if the offense or condition alleged in the referral report as a basis for court jurisdiction is denied by the *minor*.

(c) In any such interview, the *minor* and the *minor's* parent, guardian or custodian must be advised that the interview is voluntary, that they have a right to have counsel present to represent the *minor*, that the *minor* has the right not to disclose any information, and that 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 to the court.

(d) If the probation intake officer concludes on the basis of the preliminary inquiry that non judicial adjustment is appropriate and is authorized in such cases by the court, such officer may seek agreement with the *minor* and the parent, guardian or custodian to a proposed non judicial adjustment. If such agreement is reached and the terms and conditions agreed upon are satisfactorily complied with by the *minor* and the *minor's* parent, guardian or custodian, the case shall be closed without petition. Such resolution of the case shall not be deemed an adjudication of jurisdiction of the court and shall not constitute an official record of juvenile court action or disposition. A non judicial adjustment may be considered by the probation intake officer in a subsequent preliminary inquiry and by the court for purposes of disposition only following adjudication of a subsequent delinquency involving the same *minor*.

(e) Attempts to affect non judicial adjustment of a case shall not extend beyond 60 days without authorization by the court, and then for no more than an additional 60 days.

Comment ;
see rule 7.

Rule 16. Transfer of delinquency case for preliminary inquiry.

(a) When a *minor* resides in a county within the state other than the county in which the alleged delinquency occurred, the intake probation officer of the county of occurrence shall make a preliminary determination in accordance with Rule 14 and shall, unless otherwise directed by court order, transfer the referral to the county of residence for a preliminary inquiry to be conducted in accordance with Rule 15. If any of the following circumstances are found to exist at the time of preliminary inquiry, the referral shall be transferred back to the county of occurrence for filing of a petition and further proceedings:

(A) the *minor* or the *minor's* parent, guardian or custodian cannot be located or failed to appear after notice for the preliminary inquiry;

(B) the *minor* or the *minor's* parent, guardian or custodian indicate that they plan to deny the offense alleged in the referral or request an evidentiary hearing;

(C) there are circumstances in the case which require adjudication in the county of occurrence in the interest of justice; or

(D) there are multiple *minors* involved who live in different counties.

(b) If the referral is not returned to the county of occurrence, a petition may be filed in the county of residence, and the arraignment and all further proceedings may be conducted in that county if the petition is admitted.

Comment ;
see rule 7.

Rule 57. Change of judge as a matter of right.

(a) Notice of change. In any action commenced in the juvenile court after April 15, 1992, all parties joined in the action may, by unanimous agreement and without cause, change the judge assigned to the action by filing a notice of change of judge. The parties shall send a copy of the notice to the assigned judge and the presiding judge. The notice shall be signed by all parties and shall state: (1) the name of the assigned judge; (2) the date on which the action was commenced; (3) that all parties joined in the action have agreed to the change; (4) that no other persons are expected to be named as parties; and (5) that a good faith effort has been made to serve all parties named in the pleadings. The notice shall not specify any reason for the change of judge. Under no circumstances shall more than one change of judge be allowed under this rule in an action.

(b) Time. In other actions involving neglect, abuse, dependency, termination of parental rights, custody, support or visitation, the notice shall be filed no later than thirty days after the first hearing. In actions involving delinquency, certification

for criminal proceedings in district court, truancy or status matters, the notice shall be filed no later than twenty days after the first hearing. In misdemeanor actions against adults, the notice shall be filed no later than 7 days after arraignment. In no event shall the notice be filed later than adjudication. Failure to file a timely notice precludes any change of judge under this rule.

(c) Assignment of action. Upon the filing of a notice of change, the assigned judge shall take no further action in the case. The presiding judge shall promptly determine whether the notice is proper and, if so, shall reassign the action. If the presiding judge is also the assigned judge, the clerk shall promptly send the notice to the assistant presiding judge or the Chief Justice, who shall determine whether the notice is proper and, if so, shall reassign the action.

(d) Nondisclosure to court. No party shall communicate to the court, or cause another to communicate to the court, the fact of any party's seeking consent to a notice of change.

(e) Bias rules unaffected. This rule does not affect any rights a party may have under Utah R. Civ. P. 63 and Utah R. Cr. P. 29.

Comment;

No use of "child" or minor", hence no change.