

Katie Gregory - Questions regarding certain Utah Rules of Juvenile Procedure

From: Jantz Afuvai
To: Katie Gregory
Date: 2/19/2009 4:32 PM
Subject: Questions regarding certain Utah Rules of Juvenile Procedure

Hello,

I received your name from Susan Burke regarding questions that I have. I am from the Division of Juvenile Justice Services and am on the Division's Policy & Procedure Committee.

We are in the process of revising our most confusing DJJS Policy - 05-15 (regarding) Requests by Law Enforcement. The policy attempts to balance the rights of juveniles in our care and those of the public when Law Enforcement requests to question (interview or interrogate) juveniles, during an investigation, who happen to be in our care. The revised policy is focusing on preserving Constitution Rights of juveniles under the age of 14. The problem is confusion regarding consent and waiving these rights for juveniles 14 or older.

The reason for this email is that our policy makes reference to Utah Rules of Juvenile Procedure, and the Rules cited appear to contradict one another.

For example:

Rule 8 - Rights of minors while in detention, reads:

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

Conversely, Rule 26 - Right of minors in delinquency proceedings & Rule 27A - Admissibility of statements given by minors, respectively read:

Rule 26 -

(e) A minor 14 years of age and older is presumed capable of intelligently comprehending and waiving the minor's right to counsel as above and may do so where the court finds such waiver to be knowing and voluntary, whether the minor's parent, guardian or custodian is present. A child under 14 years of age may not waive such rights outside of the presence of the child's parent, guardian or custodian.

Rule 27A -

(a)(2) If the minor is 14 years of age or older, the minor is presumed capable of knowingly and voluntarily waiving the minor's rights without the benefit of having a parent, guardian, or legal custodian present during questioning.

Hence the confusion. Rule 8 implies that consent is needed by a parent, guardian, or custodian prior to the juvenile (14 years of age or older only) waiving their Constitutional Rights if interrogated by Law Enforcement. Rules 26 and 27A indicate otherwise and exclusively imply that the juvenile (14 years of age or older only) is presumed capable of waiving these rights.

Do you know who I can talk to about this? We are wondering if the Rules, particularly Rule 8, can be amended to reflect the same implications.

Additional contact information is as follows:

801 514-2353 Cell

801 626-3397 Office

Thank you,

Jantz Afuvai
Division of Juvenile Justice Services (DJJS)

From: Paul Wake
To: Gregory, Katie; Verdoia, Carol
Date: 4/24/2009 11:04 AM
Subject: Juvenile Rule 27A

Here's a rule we have:

Rule 27A. Admissibility of statements given by minors.

(a) If a minor is in custody for the alleged commission of an offense that would be a crime if committed by an adult, any statement given by a minor in response to questions asked by a police officer is inadmissible unless the police officer informed the minor of the minor's rights before questioning begins.

(a)(1) If the child is under 14 years of age, the child is presumed not adequately mature and experienced to knowingly and voluntarily waive or understand a child's rights unless a parent, guardian, or legal custodian is present during waiver.

(a)(2) If the minor is 14 years of age or older, the minor is presumed capable of knowingly and voluntarily waiving the minor's rights without the benefit of having a parent, guardian, or legal custodian present during questioning.

(b) The presumptions outlined in paragraphs (a)(1) and (a)(2) may be overcome by a preponderance of the evidence showing the ability or inability of a minor to comprehend and waive the minor's rights.

I was reading it this week while trying to answer a detective's question about whether he could interview a kid outside the presence of a parent, even if the parent wanted to be present. I noticed that 27A(a)(1) says that for kids under 14, such kids are presumed incapable of waiving their rights and so any confession obtained from such a kid probably won't be admissible unless the parents were present "at waiver." That implies that when the kid waives the right to remain silent, the parent has to be there to advise the kid, but it doesn't state that the parent has to be there during the questioning itself. However, I then noticed that in 27A(a)(2), dealing with kids 14 and older being presumed capable of waiving their rights, it speaks of them being able to do so without having the parent being present "during questioning." Those two clauses don't seem congruent. They also raise the possibility that someone could argue that 27A(a)(1) has to be read in conjunction with 27A(a)(2), so that a parent should be present during waiver and questioning. I'd guess that isn't the intent of the rule, but that "at waiver" means "at waiver." What I'm wondering is whether the committee should discuss that to see if 27A(a)(2) should say "at waiver" also instead of "during questioning"? If we have time at the next meeting, it might be good to bring up.

Were any delinquency-related rules changed at the last meeting?

--

Paul Wake
Deputy Utah County Attorney

Katie Gregory - Rule 8 & 27A

From: Judge Larry Steele
To: Susan Eisenman
Date: 8/17/2009 5:13 PM
Subject: Rule 8 & 27A
CC: Carol Verdoia; Paul Wake
Attachments: 02_12_ReqInterview.pdf; 09_05ReqInterviewPolicy_Form.pdf; 02_08ReqInterview.pdf; 09_00ReqInterview.pdf; 09_05ReqInterview.pdf

At our meeting Friday, I mentioned I would send you the "Police Interrogation Request" form that has been submitted to me throughout the years for signature. I was unable to find it. It appears the form I remember has been replaced recently by other forms. I was provided a total of 5 sample forms being used here and there - see attached. (I know - much more than you bargained for.) The one with the policy included was provided to me as the current form. It would be nice if the form was designed in such a simple way to guide everyone through the legal requirements. I think that has been attempted.

27A(a) bugs me. It says "if a minor is in custody" for a crime, you must advise him of his rights. So, if he is not in custody, we do not have to advise him of his rights??? What do you think? Thanks for you time with the Rules Com.

**DIVISION OF YOUTH CORRECTIONS DETENTION CENTER
INTERROGATION REQUEST FORM**

RULE 8: OF THE UTAH JUVENILE COURT PROCEDURES REQUIRES THAT NO PERSON OTHER THAN A PROBATION OFFICER OR A STAFF MEMBER OF A DETENTION FACILITY BE PERMITTED TO INTERVIEW A MINOR UNDER 14 YEARS OF AGE WITHOUT THE MINOR'S PARENT, GUARDIAN OR CUSTODIAN PRESENT UNLESS, THE PARENT OR GUARDIAN HAS GIVEN WRITTEN PERMISSION FOR THE INTERVIEW,..... THE PARENT HAS BEEN ADVISED OF THE MINORS CONSTITUTIONAL RIGHTS,.....AND HAS WAIVED SUCH RIGHTS AND THE MINOR HAS BEEN ADVISED OF HIS CONSTITUTIONAL RIGHTS,.....AND HAS INTELLIGENTLY WAIVED SUCH RIGHTS.....

NO PERSON OTHER THAN A PROBATION OFFICER OR A STAFF MEMBER OF A DETENTION FACILITY BE PERMITTED TO INTERVIEW A MINOR 14 YEARS OF AGE OR OLDER ,.....WITHOUT THE CONSENT OF THE MINOR AND THE MINORS PARENT, GUARDIAN OR CUSTODIAN AFTER FIRST ADVISING SAID MINOR OF HIS CONSTITUTIONAL RIGHTS,..... AND SUCH RIGHTS HAVING BEEN INTELLIGENTLY WAIVED BY THE MINOR.....IF THE MINORS PARENT, GUARDIAN OR CUSTODIAN IS NOT AVAILABLE, AUTHORIZATION SHALL BE OBTAINED FROM THE COURT BEFORE INTERVIEWING A MINOR IN A DETENTION FACILITY.

RULE 26: OF THE UTAH JUVENILE COURT PROCEDURES REQUIRES THAT A MINOR AGE 14 YEARS OF AGE AND OLDER IS PRESUMED CAPABLE OF INTELLIGENTLY COMPREHENDING AND WAIVING THE MINORS RIGHT TO COUNSEL,.....AND MAY DO SO WHERE THE COURT FINDS SUCH WAIVER TO BE KNOWING AND VOLUNTARY, WHETHER THE MINOR'S PARENT, GUARDIAN OR CUSTODIAN IS PRESENT. A MINOR UNDER 14 YEARS OF AGE MAY NOT WAIVE SUCH RIGHTS OUTSIDE OF THE PRESENCE OF THE MINOR'S PARENT, GUARDIAN OR CUSTODIAN.

RULE 26 PROVIDES FULL DUE PROCESS RIGHTS FOR JUVENILES.... TO REMAIN SILENT AND TO BE ADVISED THAT ANYTHING THE MINOR SAYS CAN AND WILL BE USED AGAINST THE MINOR.....

IN COMPLIANCE WITH RULES OF THE JUVENILE COURT, COMPLETION OF THIS FORM IS REQUIRED OF ANY LAW ENFORCEMENT OFFICER PRESENTING HIMSELF/HERSELF TO THE DETENTION FACILITY STAFF FOR THE PURPOSE OF CONDUCTING INTERVIEWS WITH ANY YOUTH DETAINED.

**COMPLETE THE FOLLOWING
(PLEASE PRINT)**

Name and Badge Number of Officer: _____

Law Enforcement Agency: _____

Name of Child: _____

Has the Youth been advised of their Constitutional Rights: Yes _____ NO _____

The following Authorization has been obtained: _____ Check one.

Age of Youth 13 or Under:

_____ Written Permission of: Parent _____ Legal Guardian _____ Attorney _____

_____ Present for the Interview: Parent _____ Legal Guardian _____ Attorney _____

_____ Written Permission of the Court

Age of Youth 14 or Older:

_____ Written/Verbal Consent to the Interrogation of: Parent _____ Legal Guardian _____

_____ Written/Verbal Consent to the Interrogation of: Attorney _____

Officers Signature: _____ Date: _____

Authorized by Split Mountain Youth Center staff: _____ Date: _____

THIS FORM IS TO BE PLACE IN THE YOUTHS DETENTION FILE.

DEPARTMENT OF HUMAN SERVICES
DIVISION OF JUVENILE JUSTICE SERVICES
POLICY AND PROCEDURES

Policy No.: 05-14

Effective Date: 07/05

Revision Date: 05/07/09

Subject: Requests by Law Enforcement

I. Policy Statement

Law enforcement shall be permitted to interrogate juveniles suspected of committing crime(s) and interview juvenile(s) associated with an investigation. The Division shall ensure that juveniles under its care are afforded their constitutional rights in accordance with the Utah Rules of Juvenile Procedure and state statute. Requests for juvenile photographs and fingerprints, or HIV testing shall be obtained in accordance with state statute.

II. Rationale

Division staff have a responsibility, as custodians, to protect the rights of juveniles in their care and to assist law enforcement.

III. Definitions

- A. An "Interrogation" is a Law Enforcement action whereby an Officer questions a juvenile suspected of committing a crime.
- B. An "Interview" is a Law Enforcement action whereby an Officer questions any juvenile having information that a crime has been committed, this includes a juvenile as a witness.

IV. Procedures

- A. Requests by law enforcement for photographs, fingerprinting, or HIV testing shall be allowed only after approval is documented, or statutorily authorized, in accordance with UCA 78A-6-1104 regarding juveniles 14 years of age or older; and Rule 27 of the Utah Rules of Juvenile Procedures regarding juveniles under 14 years of age.
- B. Division staff shall accommodate all Law Enforcement requests to conduct interrogations of juveniles 14 years of age or older.
- C. Division staff shall accommodate all Law Enforcement requests to conduct interviews of any juvenile.
- D. Division staff shall not intentionally or otherwise interview a juvenile, in Division care, concerning allegations that the juvenile has committed a crime. This shall be reserved for Law Enforcement. Any information obtained unintentionally shall be documented in an Incident Report and processed.

DEPARTMENT OF HUMAN SERVICES
DIVISION OF JUVENILE JUSTICE SERVICES
POLICY AND PROCEDURES

Policy No.: 05-14

Effective Date: 07/05

Revision Date: 05/07/09

Subject: Requests by Law Enforcement

- E. Division staff shall accommodate Law Enforcement's requests to interrogate juveniles, under the age of 14, in accordance with the Utah Rules of Juvenile Procedure as follows:
 - 1. The juvenile's parent, guardian, or legal custodian is present during the interrogation so that the parent, guardian, or custodian can knowingly and voluntarily waive the juvenile's constitutional rights; or
 - 2. If the juvenile's parent, guardian, or custodian is not present during the interrogation then, prior to the interrogation, Law Enforcement shall provide Division staff with written permission from the juvenile's parent, guardian or custodian that the interrogation can be held outside their presence. Division staff shall make a copy of the written permission to serve as a record that consent was obtained in accordance with Rule 8. The Division shall then presume that Law Enforcement has met all other criteria established by the Utah Rules of Juvenile Procedure regarding the juveniles under the age of 14; or
 - 3. Consent to interrogate has been obtained by way of the court. This may be due to the juvenile's parent, guardian, or custodian not being available or for any other reason. A Court Order shall then be submitted to Division staff prior to the interrogation and serve as a record that consent was obtained in accordance with the Utah Rule of Juvenile Procedure. In the event that a verbal order from the court was obtained, Division staff shall document the name of Judge granting consent on the Interrogation Request Form.
- F. Division staff shall complete the Interrogation Request Form prior to allowing the interrogation of a juvenile under the age of 14. The Interrogation Request Form is only to be filled out when the juvenile is under the age of 14 and the officer intends on interrogating the juvenile.
- G. Division staff shall cooperate with law enforcement in their investigation of any alleged law violations.
- H. All interrogations and interviews shall be conducted in private areas, and shall not be monitored by any Division auditory devices.

V. Continuous Renewal

This policy shall be reviewed every three (3) years to determine its effectiveness and appropriateness. This policy may be reviewed before that time to reflect substantive change.

DEPARTMENT OF HUMAN SERVICES
DIVISION OF JUVENILE JUSTICE SERVICES
POLICY AND PROCEDURES

Policy No.: 05-14	Effective Date: 07/05	Revision Date: 05/07/09
Subject: Requests by Law Enforcement		

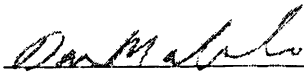
This policy has been reviewed by the Board of Juvenile Justice Services and is approved upon the signature of the Director.



Kirk J. Allen, Chair
Board of Juvenile Justice Services

05/07/09

Signature Date



Dan Maldonado, Director
Division of Juvenile Justice Services

05/07/09

Signature Date



Interrogation Request Form
For Juvenile's Under the Age of 14

Date: _____

Officer's Name: _____

Badge Number: _____

Officer's Agency: _____

Name of Juvenile: _____ DOB: _____

Will the juvenile be advised of their Constitutional Rights per Miranda?

Yes _____ No _____

If yes, how was the juvenile's consent ~~to waive their Constitutional Rights and be interrogated~~ authorized?

- ☐ Parent, Guardian, or Custodian present during interrogation
- ☐ Written permission obtained from Parent, Guardian, or Custodian
- ☐ Court Order obtained granting consent
- ☐ Verbal Order from the Court obtained granting consent

Name of Judge: _____

Officer's Signature: _____

Date: _____

Division Staff Name: _____

(Please Print)

Title: _____

Division Staff Signature: _____

Date: _____

YOUTH CORRECTIONS DETENTION CENTER
INTERROGATION REQUEST FORM

RULE 8: OF THE UTAH JUVENILE COURT PROCEDURES REQUIRES THAT NO PERSON OTHER THAN A PROBATION OFFICER OR A STAFF MEMBER OF A DETENTION FACILITY BE PERMITTED TO INTERVIEW A MINOR UNDER 14 YEARS OF AGE WITHOUT THE MINOR'S PARENT, GUARDIAN OR CUSTODIAN PRESENT UNLESS, THE PARENT OR GUARDIAN HAS GIVEN WRITTEN PERMISSION FOR THE INTERVIEW, ... THE PARENT HAS BEEN ADVISED OF THE MINOR'S CONSTITUTIONAL RIGHTS, ... AND HAS WAIVED SUCH RIGHTS, ...

NO PERSON OTHER THAN A PROBATION OFFICER OR A STAFF MEMBER OF A DETENTION FACILITY BE PERMITTED TO INTERVIEW A MINOR 14 YEARS OF AGE OR OLDER, ... WITHOUT THE CONSENT OF THE MINOR AND THE MINOR'S PARENT, GUARDIAN OR CUSTODIAN AFTER FIRST ADVISING SAID MINOR OF HIS CONSTITUTIONAL RIGHTS, ... AND SUCH RIGHTS HAVING BEEN INTELLIGENTLY WAIVED BY THE MINOR, ... IF THE MINOR'S PARENT, GUARDIAN OR CUSTODIAN IS NOT AVAILABLE, AUTHORIZATION SHALL BE OBTAINED FROM THE COURT BEFORE INTERVIEWING A MINOR IN A DETENTION FACILITY.

RULE 26: OF THE UTAH JUVENILE COURT PROCEDURES REQUIRES THAT A MINOR AGE 14 YEARS OF AGE AND OLDER IS PRESUMED CAPABLE OF INTELLIGENTLY COMPREHENDING AND WAIVING THE MINOR'S RIGHT TO COUNSEL, ... AND MAY DO SO WHERE THE COURT FINDS SUCH WAIVER TO KNOWING AND VOLUNTARY, WHETHER THE MINOR'S PARENT, GUARDIAN OR CUSTODIAN IS PRESENT. A MINOR UNDER 14 YEARS OF AGE MAY NOT WAIVE SUCH RIGHTS OUTSIDE OF THE PRESENCE OF THE MINOR'S PARENT, GUARDIAN OR CUSTODIAN.

RULE 26 PROVIDES FULL DUE PROCESS RIGHTS FOR JUVENILES, ... TO REMAIN SILENT AND TO BE ADVISED THAT ANYTHING THE MINOR SAYS CAN AND WILL BE USED AGAINST THE MINOR.

IN COMPLIANCE WITH RULES OF THE JUVENILE COURT, COMPLETION OF THIS FORM IS REQUIRED OF ANY LAW ENFORCEMENT OFFICER PRESENTING HIMSELF/HERSELF TO THE DETENTION FACILITY STAFF FOR THE PURPOSE OF CONDUCTING INTERVIEWS WITH ANY YOUTH DETAINED.

COMPLETE THE FOLLOWING (PLEASE PRINT)

Name, Badge Number and Law Enforcement Agency of Officer: _____

Name of Child: _____
Has the Youth been advised of their Constitutional Rights: (Miranda) Yes _____ No _____

The following Authorization has been obtained: Check One.

If Age of Youth 13 or Under:

____ Written Permission of: Parent _____ Legal Guardian _____ Attorney _____
____ Present for the Interview: Parent _____ Legal Guardian _____ Attorney _____
____ Written Permission of the Court

Age of Youth 14 or Older:

____ Written/Verbal Consent of: Parent _____ Legal Guardian _____ Attorney _____
____ Present for the Interview: Parent _____ Legal Guardian _____ Attorney _____
____ Written/Verbal Permission of the Court

Officer's Signature: _____
Authorized By Detention Staff Member: _____

Date: _____
Date: _____

YOUTH CORRECTIONS DETENTION CENTER
INTERROGATION REQUEST FORM

RULE 8: OF THE UTAH JUVENILE COURT PROCEDURES REQUIRES THAT NO PERSON OTHER THAN A PROBATION OFFICER OR A STAFF MEMBER OF A DETENTION FACILITY BE PERMITTED TO INTERVIEW A MINOR UNDER 14 YEARS OF AGE WITHOUT THE MINOR'S PARENT, GUARDIAN OR CUSTODIAN PRESENT UNLESS, THE PARENT OR GUARDIAN HAS GIVEN WRITTEN PERMISSION FOR THE INTERVIEW,....THE PARENT HS BEEN ADVISED OF THE MINOR'S CONSTITUTIONAL RIGHTS,....AND HAS WAIVED SUCH RIGHTS,...

NO PERSON OTHER THAN A PROBATION OFFICER OR A STAFF MEMBER OF A DETENTION FACILITY BE PERMITTED TO INTERVIEW A MINOR 14 YEARS OF AGE OR OLDER,....WITHOUT THE CONSENT OF THE MINOR AND THE MINOR'S PARENT, GUARDIAN OR CUSTODIAN AFTER FIRST ADVISING SAID MINOR OF HIS CONSTITUTIONAL RIGHTS,....AND SUCH RIGHTS HAVING BEEN INTELLIGENTLY WAIVED BY THE MINOR,....IF THE MINOR'S PARENT, GUARDIAN OR CUSTODIAN IS NOT AVAILABLE, AUTHORIZATION SHALL BE OBTAINED FROM THE COURT BEFORE INTERVIEWING A MINOR IN A DETENTION FACILITY.

RULE 26: OF THE UTAH JUVENILE COURT PROCEDURES REQUIRES THAT A MINOR AGE 14 YEARS OF AGE AND OLDER IS PRESUMED CAPABLE OF INTELLIGENTLY COMPREHENDING AND WAIVING THE MINOR'S RIGHT TO COUNSEL,....AND MAY DO SO WHERE THE COURT FINDS SUCH WAIVER TO KNOWING AND VOLUNTARY, WHETHER THE MINOR'S PARENT, GUARDIAN OR CUSTODIAN IS PRESENT. A MINOR UNDER 14 YERS OF AGE MAY NOT WAIVE SUCH RIGHTS OUTSIDE OF THE PRESENCE OF THE MINOR'S PARENT, GUARDIAN OR CUSTODIAN.

RULE 26 PROVIDES FULL DUE PROCESS RIGHTS FOR JUVENILES,....TO REMAIN SILENT AND TO BE ADVISED THAT ANYTHING THE MINOR SAYS CAN AND WILL BE USE AGAINST THE MINOR.

IN COMPLIANCE WITH RULES OF THE JUVENILE COURT, COMPLETION OF THIS FORM IS REQUIRED OF ANY LAW ENFORCEMENT OFFICER PRESENTING HIMSELF/HERSELF TO THE DETENTION FACILITY STAFF FOR THE PURPOSE OF CONDUCTING INTERVIEWS WITH ANY YOUTH DETAINED.

COMPLETE THE FOLLOWING (PLEASE PRINT)

Name, Badge Number and Law Enforcement Agency of Officer: _____

Name of Child: _____
Has the Youth been advised of their Constitutional Rights: (Miranda) Yes _____ No _____

The following Authorization has been obtained: Check One.

If Age of Youth 13 or Under:

____ Written Permission of: Parent _____ Legal Guardian _____ Attorney _____
____ Present for the Interview: Parent _____ Legal Guardian _____ Attorney _____
____ Written Permission of the Court

Age of Youth 14 or Older:

____ Written/Verbal Consent of: Parent _____ Legal Guardian _____ Attorney _____
____ Present for the Interview: Parent _____ Legal Guardian _____ Attorney _____
____ Written/Verbal Permission of the Court

Officer's Signature: _____
Authorized By Detention Staff Member: _____

Date: _____
Date: _____

8th DISTRICT JUVENILE COURT
LAW ENFORCEMENT INTERROGATION REQUEST
MINOR CHARGED WITH A CRIME

Date: _____

OFFICER'S NAME: _____

LAW ENFORCEMENT AGENCY: _____

YOUTH TO BE VISITED: _____

Check below the proper authorization to question the above-named youth, as required by Rule 8, Juvenile Rules of Procedure:

_____ The youth is 13 years old or under.

_____ I have met one of the following requirements:

_____ I have obtained the written permission of parent, legal guardian or custodian (permission attached); or

_____ the interview shall be in the presence of the parent, legal guardian or custodian; and

_____ I have or will advise the parent, guardian or custodian of the minor's constitution rights under Rule 26(a) and have or will obtain a knowing and voluntary waiver from the parent, guardian or custodian; and

_____ I have or will advise the minor of the minor's constitution rights under Rule 26(a) and have or will obtain a knowing and voluntary waiver from the minor.

_____ The youth is 14 years old or older:

_____ I have or will advise the minor of the minor's constitution rights under Rule 26(a) and have or will obtain a knowing and voluntary waiver from the minor; and

_____ After having advised the minor of his rights as stated above, I have or will obtain the knowing and voluntary consent of the minor; and

_____ I have met one of the following requirements:

_____ After having advised the minor of his rights as stated above, I have or will obtain the knowing and voluntary consent of the parent, legal guardian or custodian of the minor;

_____ I have made reasonable efforts to contact the parent, legal guardian or custodian and the same is not available to provide consent. I request the Juvenile Court provide consent to interview the minor while in the detention center.

Consent to interview the minor in detention is given:

Signature of Questioning Officer

Signature of Parent, Legal Guardian,
Attorney or Juvenile Court Judge

MEMORANDUM

To: Juvenile Rules Committee Members
FROM: Paul Wake
SUBJECT: Rule 8 Revision
DATE: October 26, 2009

At our last meeting we discussed a JJS employee's concerns regarding Rule 8 (rights in detention regarding getting a phone call, being interviewed, etc.), Rule 26 (rights in general of anyone referred to juvenile court), and Rule 27A (admissibility of statements given by minors) possibly being in conflict. I didn't think these rules were in conflict to the degree the JJS person thought, and having since looked over a number of detention waiver forms related to police interviews—each of which was legally inaccurate and some of which were confusing as well—I think someone at JJS might need to talk to Susan before doing independent legal analysis and drafting. But that's neither here nor there.

We discussed a trap created by the difference between Rule 8 and Rule 27A. Setting aside the question of whether our court procedural rules should be setting JJS detention policy or creating exclusionary rules of evidence governing police interviews on the street, that trap involves the fact that on the street under Rule 27A, for kids under 14, their parents are supposed to be present at waiver if the kids waive their right to remain silent and get an attorney, and if instead they agree to talk to the police (the parent doesn't have to be present during the interview itself). However, in detention under Rule 8, for kids under 14 being interviewed about their own offenses, the parent is supposed to be present during the waiver and the interview, but the parent can opt to give written permission instead of being physically present. What this adds up to is that if an officer reads Rule 8 and dutifully gets a parent's written consent to interview a child in detention, what the kid says might not be admissible under Rule 27A. Since it makes no sense to have confusing rules, I was told to draft language to add to Rule 8 that would essentially cross reference, or point out, Rule 27A.

As I have thought about that, it bothers me. It seems to me that we should just fix the rules themselves by making them more coherent rather than including cross references so that people can try to figure out for themselves how to keep things somewhat congruent. One way to do that would be by adding a written permission clause to the under age 14 part of Rule 27A so that the street rule is not more restrictive than the detention rule. One thing we should not be doing as a procedural committee is inventing rights that do not exist elsewhere, much less instituting them in ways that do not make sense (as by asserting that a kid on the street somehow has a "right" to have his parent give waiver consent in person rather than in writing).

However, since I was commanded by duly constituted lawful authority to draft a provision, here is a stab at it: "8(f) Admissibility of statements given by minors is also governed by Rule 27A." (Our rules don't have a consistent method of referring to other juvenile rules; usually they say "Rule #," but occasionally they say "Utah R. Juv. P. #.")

Tab 3

Top E

From: Paul Wake
To: Gregory, Katie; Verdoia, Carol
Date: 3/23/2010 8:31 AM
Subject: URJP Committee

I would appreciate the opportunity to discuss with the committee whether there should be a juvenile rule similar to, or referencing, the new criminal rule 15A. Following United States v. Melendez-Diaz, the legislature this year ran HB 251, but before they passed it the Utah Supreme Court quickly produced this brand new criminal rule, Rule 15A (see <http://www.utcourts.gov/resources/rules/approved/2010-02/URCrP015A.pdf>). With that rule in place, the legislature figured the problem was fixed, and it dropped HB 251. Criminal Rule 15A basically says that the prosecution doesn't have to bring into court each and every person who ever handled a bit of evidence sent to the crime lab, but can instead rely on the toxicology report, unless the defense gives timely notice in advance of trial that it wants all those people at trial to establish chain of custody or the accuracy of the report or whatever. It's nice that the adult system has a fix for the problem, but it occurred to me that in the delinquency realm, we don't have the same fix. I'm wondering if we should. Thanks.

--
Paul Wake

Rule 15A. Scientific, Lab, and Analytical Reports - When prosecution required to produce foundation and chain of custody witnesses.

(a) In all prosecutions in which an analysis of a controlled substance or other evidentiary sample is conducted, a sworn copy of the analytical report signed by the director of the laboratory or the analyst, technician, or forensic scientist conducting the analysis, shall be admitted as prima facie evidence of the report's contents and conclusions and of the chain of custody pertaining to any sample tested.

(b) The defendant may, however, require that the prosecution produce the preparer of the report or chain-of-custody witnesses for cross-examination at trial by filing a written demand with the court and the prosecutor no less than 30 days before trial or 15 days after receiving the report, whichever is later. The court shall extend the demand time for good cause shown.

(c) If a written demand is filed, the prosecution shall be entitled to a continuance upon a showing that the prosecution, despite reasonable efforts, is unable to procure the attendance at trial of the preparer of the report or chain-of-custody witnesses. The time within which a trial is required to begin shall be extended by the length of the continuance.

(d) Failure to timely file a written demand waives the defendant's right to challenge the admissibility of the report or the sample's chain of custody on the ground that the prosecution did not call the preparer of the report or chain-of-custody witnesses.

13 / need 7 votes

yes votes URJP 56

did not vote

1. Alan S
2. Renee J.
3. Paul W
4. Judge Landis
5. Brent B
6. Narda
7. Judge Steele
8. Brent Hall
9. Pam Vickery
10. Joan Carroll
11. David Johnson

Angela

Carol - as chair

