



Chief Justice Christine Durham
Chair, Utah Judicial Council

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MEMORANDUM

To: Supreme Court's Advisory Committee to the Rules of Juvenile Procedure
From: Alicia Davis
Date: May 28, 2004
Re: UJRP 9, "Detention hearings; scheduling; hearing procedure."

Concern has been raised by Youth Corrections and the Board of Juvenile Judges that districts that are failing to conduct 7-day review hearings for kids in detention as required by URJP 9. Utah Code Ann. 78-3a-114(4)(e) states that "if a minor remains in a detention facility, *periodic reviews* shall be held pursuant to the Utah State Juvenile Court Rules of Practice and Procedure to ensure that continued detention is necessary" (italics added).

The Board reported that some districts are doing file reviews, some are doing face-to-face reviews, some stipulate to waive the 7-day review hearing, and in others they are not conducting them at all. Districts not conducting them report the reason is because of the 5-day arraignment rule.

The Board then discussed possible solutions to this problem, which included: doing away with the rule, adding a new rule for 7-day reviews on inter-district transfers only, and striking the need for 7-day reviews on in-home detention. A full review of all rules was also proposed because many are outdated.

The Board asked the Committee to draft a change to address the 7-day review rule problem. Utah Code Ann. 78-3a-114 is included below.

The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.

78-3a-114 (Effective 05/01/05). Placement of minor in detention or shelter facility -- Grounds -- Detention hearings -- Period of detention -- Notice -- Confinement of minors for criminal proceedings -- Bail laws inapplicable, exception.

(1) (a) A minor may not be placed or kept in a secure detention facility pending court proceedings unless it is unsafe for the public to leave the minor with his parents, guardian, or custodian and the minor is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.

(b) A minor who must be taken from his home but who does not require physical restriction shall be given temporary care in a shelter facility and may not be placed in a detention facility.

(c) A minor may not be placed or kept in a shelter facility pending court proceedings unless it is unsafe for the minor to leave him with his parents, guardian, or custodian.

(2) After admission to a detention facility pursuant to the guidelines established by the Division of Juvenile Justice Services and immediate investigation by an authorized officer of the court, the judge or the officer shall order the release of the minor to his parents, guardian, or custodian if it is found he can be safely returned to their care, either upon written promise to bring the minor to the court at a time set or without restriction.

(a) If the minor's parent, guardian, or custodian fails to retrieve the minor from a facility within 24 hours after notification of release, the parent, guardian, or custodian is responsible for the cost of care for the time the minor remains in the facility.

(b) The facility shall determine the cost of care.

(c) Any money collected under this Subsection (2) shall be retained by the Division of Juvenile Justice Services to recover the cost of care for the time the minor remains in the facility.

(3) (a) When a minor is detained in a detention or shelter facility, the parents or guardian shall be informed by the person in charge of the facility that they have the right to a prompt hearing in court to determine whether the minor is to be further detained or released.

(b) Detention hearings shall be held by the judge or by a commissioner.

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

(d) If the minor is released, and the minor remains in the facility, because the parents, guardian, or custodian fails to retrieve the minor, the parents, guardian, or custodian shall be responsible for the cost of care as provided in Subsections (2)(a), (b), and (c).

(4) (a) A minor may not be held in a detention facility longer than 48 hours prior to a detention hearing, excluding weekends and holidays, unless the court has entered an order for continued detention.

(b) A minor may not be held in a shelter facility longer than 48 hours prior to a shelter hearing, excluding weekends and holidays, unless a court order for extended shelter has been entered by the court after notice to all parties described in Section **78-3a-306**.

(c) **A hearing for detention or shelter may not be waived.** Detention staff shall provide the court with all information received from the person who brought the minor to

the detention facility.

(d) If the court finds at a detention hearing that it is not safe to release the minor, the judge or commissioner may order the minor to be held in the facility or be placed in another appropriate facility, subject to further order of the court.

(e) (i) After a detention hearing has been held, only the court may release a minor from

detention. If a minor remains in a detention facility, periodic reviews shall be held pursuant to the Utah State Juvenile Court Rules of Practice and Procedure to ensure that continued detention is necessary.

(ii) After a detention hearing for a violent felony, as defined in Section **76-3-203.5**, or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, the court shall direct that notice of its decision, including any disposition, order, or no contact orders, be provided to designated persons in the appropriate local law enforcement agency and district superintendent or the school or transferee school, if applicable, which the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iii) Any employee of the local law enforcement agency, school district, and the school which the minor attends who discloses the court's order of probation is not:

(A) civilly liable except when the disclosure constitutes fraud or willful misconduct as provided in Section **63-30d-202**; and

(B) civilly or criminally liable except when disclosure constitutes a knowing violation of Section **63-2-801**.

(5) A minor may not be held in a detention facility, following a dispositional order of the court for nonsecure substitute care as defined in Section **62A-4a-101**, or for community-based placement under Section **62A-7-101** for longer than 72 hours, excluding weekends and holidays. The period of detention may be extended by the court for one period of seven calendar days if:

(a) the Division of Juvenile Justice Services or another agency responsible for placement files a written petition with the court requesting the extension and setting forth good cause; and

(b) the court enters a written finding that it is in the best interests of both the minor and the community to extend the period of detention.

(6) The agency requesting an extension shall promptly notify the detention facility that a written petition has been filed.

(7) The court shall promptly notify the detention facility regarding its initial disposition and any ruling on a petition for an extension, whether granted or denied.

(8) (a) A minor under 16 years of age may not be held in a jail, lockup, or other place for adult detention except as provided by Section **62A-7-201** or unless certified as an adult pursuant to Section **78-3a-603**. The provisions of Section **62A-7-201** regarding confinement facilities apply to this Subsection (8).

(b) A minor 16 years of age or older whose conduct or condition endangers the safety or welfare of others in the detention facility for minors may, by court order that specifies the reasons, be detained in another place of confinement considered appropriate by the court, including a jail or other place of confinement for adults. However, a secure youth corrections facility is not an appropriate place of confinement for detention purposes under this section.

(9) A sheriff, warden, or other official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall immediately notify the juvenile court when a minor who is or appears to be under 18 years of age is received at the facility and shall make arrangements for the transfer of the minor to a detention facility, unless otherwise ordered by the juvenile court.

(10) This section does not apply to a minor who is brought to the adult facility under charges pursuant to Section **78-3a-602** or by order of the juvenile court to be held for criminal proceedings in the district court under Section **78-3a-603**.

(11) A minor held for criminal proceedings under Section **78-3a-602** or **78-3a-603** may

be detained in a jail or other place of detention used for adults charged with crime.

(12) Provisions of law regarding bail are not applicable to minors detained or taken into custody under this chapter, except that bail may be allowed:

(a) if a minor who need not be detained lives outside this state; or

(b) when a minor who need not be detained comes within one of the classes in

Subsection **78-3a-503**(11).

(13) Section **76-8-418** is applicable to a minor who willfully and intentionally commits an act against a jail or other place of confinement, including a Division of Juvenile Justice Services detention, shelter, or secure confinement facility which would be a third degree felony if committed by an adult.

Amended by Chapter 102, 2004 General Session

Amended by Chapter 267, 2004 General Session

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