

A Proposal Regarding Rule 29A, and *Crawford*

Paul Wake

October 2, 2008

The following is the same as the redline from last meeting, except that two code citations are corrected, the word "child" is restored in (a), and the word "person" is used in (b)(1) per the discussion at that last meeting. I did not make any changes with regard to making it possible to take testimony in the courtroom with the defendant being in another room. I did not change (d) to match what the criminal rules committee did (see my 9/5/08 memo), because I think they got it wrong.

Rule 29A. ~~Visual recording~~ Out of court statement or and testimony of child victims or child witnesses of sexual or physical abuse - Conditions of admissibility.

(a) In any delinquency proceeding or proceeding under Section ~~78-3a-602~~ 78A-6-702 or Section ~~78-3a-603~~ 78A-6-703 concerning a charge of child abuse or of a sexual offense against a child, the oral statement of a victim or other witness younger than 14 years of age ~~may be which was~~ recorded prior to the filing of a petition, and is, upon motion and for good cause shown, is admissible as evidence in any court proceeding regarding the offense if all of the following conditions are met:

(a)(1) the child is available to testify and to be cross-examined at trial, either in person or as provided by law, or the child is unavailable to testify at trial, but the minor had a previous opportunity to cross-examine the child concerning the recorded statement, such that the minor's rights of confrontation are not violated;

(a)(2) no attorney for either party is in the child's presence when the statement is recorded;

(a)(3) the recording is visual and aural and is recorded on film, ~~or~~ videotape or ~~by~~ other electronic means;

(a)(4) ~~the recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and~~ the recording is accurate and has not been altered;

(a)(5) each voice in the recording is identified;

(a)(6) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify and be cross-examined by either party;

(a)(7) the minor and the minor's attorney are provided an opportunity to view the recording before it is shown to the court; and

(a)(8) the court views the recording and determines that it is sufficiently reliable and trustworthy and that the interest of justice will best be served by admission of the statement into evidence; and

(a)(9) ~~the child is available to testify and to be cross-examined at trial, either in person or as provided by Subsection (b) or (c), or the court determines that the child is unavailable as a witness to testify at trial under the Utah Rules of Evidence. For purposes of this subsection "unavailable" includes a determination, based on medical or psychological evidence or expert testimony, that the child would suffer serious emotional or mental strain if required to testify at trial.~~

(b) In any proceeding concerning a charge of child abuse or of a sexual offense against a child, the court ~~may order~~, upon motion of the prosecution a party and for good cause shown, may order that the testimony of any ~~witness or~~ victim or other witness younger than 14 years of age be taken in a room other than the courtroom. All of the following conditions shall be observed:

(b)(1) Only the judge, attorneys for each party and the testifying child (if any), persons necessary to operate equipment, and a ~~counselor or therapist~~ person whose presence contributes to the welfare and emotional well-being of the child may be with in the room during the child during the child's

testimony. ~~The minor may also be present during the child's testimony unless~~ A minor who consents to be hidden from the child's view may also be present unless or the court determines that the child will suffer serious emotional or mental strain if required to testify in the minor's presence, or that the child's testimony will be inherently unreliable if required to testify in the minor's presence. If the court makes that determination, or if the minor consents:

(b)(1)(A) the minor may not be present during the child's testimony;

(b)(1)(B) the court shall ensure that the child cannot hear or see the minor ;

(b)(1)(C) the court shall advise the child prior to testifying that the minor is present at the trial and may listen to the child's testimony;

(b)(1)(D) the minor shall be permitted to observe and hear the child's testimony, and the court shall ensure that the minor has a means of two-way telephonic communication with defense counsel during the child's testimony; and

(b)(1)(E) the conditions of a normal court proceeding shall be approximated as nearly as possible.

(b)(2) Only the judge and ~~attorneys~~ an attorney for each party may question the child.

(b)(3) As much as possible, persons operating equipment shall be confined to an adjacent room or behind a screen or mirror so the child cannot see or hear them.

(c) In any case concerning a charge of child abuse or of a sexual offense against a child, the court may order, upon motion of ~~the prosecution~~ a party and for good cause shown, that the testimony of any ~~witness or victim~~ or other witness younger than 14 years of age be taken outside the courtroom and be recorded. That testimony is admissible as evidence, for viewing in any court proceeding regarding the charges if the provisions of Subsection (b) are observed, in addition to the following provisions:

(c)(1) the recording is ~~both~~ visual and aural and recorded on film, ~~or~~ videotape or by other electronic means;

(c)(2) ~~the recording equipment is capable of making an accurate recording, the operator is competent, and the recording is accurate and is not altered;~~

(c)(3) each voice on the recording is identified; and

(c)(4) each party is given an opportunity to view the recording before it is shown in the courtroom.

(d) If the court orders that the testimony of a child be taken under Subsection (b) or (c), the child may not be required to testify in court at any proceeding where the recorded testimony is used.

~~11/11/11~~

Katie Gregory - S. Ct. action on Rule 25

From: Katie Gregory
To: Judge Dane Nolan; Judge Mary Noonan; Judge Thomas Higbee
Date: 10/1/2008 10:25 AM
Subject: S. Ct. action on Rule 25
CC: Ray Wahl
Attachments: URJP25revised3.doc

Judges,

I spoke with Matty Branch this morning regarding your Rule 25 meeting with the Supreme Court Justices on Sept.17th. Attached is the version of Rule 25 that they have requested I forward to Tim Shea. It will go out for the standard 45 day comment period.

The end result is that they deleted all the new language in (c)(6) which read:

A factual basis is sufficient if it establishes that the charged offense was actually committed by the minor or, if the minor refuses or is otherwise unable to admit culpability, that the prosecution has, and the minor understands that the prosecution has, sufficient evidence to establish a substantial risk that the offense would be found true;

Matty did not give me much information--mainly that the justices noted that the board did not seem to reach a consensus on whether to include the now deleted language. By deleting it completely they feel judges will still have discretion and it will build the case law on the issue. Wish I had more information to give you, but that was it.

Katie

Rule 25. Pleas.

(a) A minor may tender a denial of the alleged offense, may tender an admission of the alleged offense, or may, with the consent of the court, tender a plea of no contest which shall have the effect set forth in Utah Code § 77-13-2. If the minor declines to plead, the court shall enter a denial. Counsel for the minor may enter a denial in the absence of the minor, parent, guardian or custodian.

(b) When denial is entered, the court shall set the matter for a trial hearing or for a pre-trial conference.

(c) The court may refuse to accept an admission or a plea of no contest and may not accept such plea until the court has found:

(c)(1) that the right to counsel has been knowingly waived if the minor is not represented by counsel;

(c)(2) that the plea is voluntarily made;

(c)(3) that the minor and, if present, the minor's parent, guardian, or custodian, have been advised of, and the minor understands and has knowingly waived, the right against compulsory self-incrimination, the right to be presumed innocent, the right to a speedy trial, the right to confront and cross-examine opposing witnesses, the right to testify and to have process for the attendance of witnesses;

(c)(4) that the minor and, if present, the minor's parent, guardian, or custodian have been advised of the consequences which may be imposed after acceptance of the admission of the alleged offense or plea of guilty or no contest;

(c)(5) that the minor understands the nature and elements of the offense to which the plea is entered, that upon trial the prosecution would have the burden of proving each of those elements beyond a reasonable doubt, and that the plea is an admission of all those elements; and

(c) ~~(5)~~ (6) that there is a factual basis for the plea; and

(c) ~~(6)~~ (7) where applicable, the provisions of paragraph (e) have been met.

(d) The minor may be allowed to tender an admission to a lesser included offense, or an offense of a lesser degree or a different offense which the court may enter, after amending the petition.

(e) Plea discussions and agreements are authorized in conformity with the provisions of Utah Rule of Criminal Procedure 11. The prosecuting attorney may enter into discussions and reach a proposed plea agreement with the minor through the minor's counsel, or if the minor is not represented by counsel, directly with the minor.

However, the prosecuting attorney may not enter into settlement discussions with a minor not represented by counsel unless the parent, guardian or custodian is advised of the discussion and given the opportunity to be present.

(f) A minor may tender an admission which is not entered by the court for a stated period of time. Conditions may be imposed upon the minor in that period of time and successful completion of the conditions set shall result in dismissal upon motion. If the minor fails to complete the conditions set, the admission shall be entered and the court shall proceed to order appropriate dispositions.

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(c)(4) that the minor and, if present, the minor's parent, guardian, or custodian have been advised of the consequences which may be imposed after acceptance of the admission of the alleged offense or plea of guilty or no contest;

(c)(5) that the minor understands the nature and elements of the offense to which the plea is entered, that upon trial the prosecution would have the burden of proving each of those elements beyond a reasonable doubt, and that the plea is an admission of all those elements; and

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Katie Gregory - Rules 43-47 Homework

From: Judge Larry Steele
To: Carol Verdoia; Katie Gregory
Date: 10/5/2008 2:44 PM
Subject: Rules 43-47 Homework
Attachments: Recodification of Rules 43_47.wpd; Recodification of Rules 43_47.doc; Recodification of Rules 43_47.pdf

Attached please find a copy of my homework, in the format of your choice. The file includes Rules 43-47 with my recommendations for amendments citing the new code numbers. You may share this early with members if you desire to avoid the rush the night before. I would like to briefly discuss 47(4)(b) with the others if we have time. Thank you.

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Rule 43. Evidence.

Rules text

- (a) Except as set forth herein or as otherwise provided by law, the juvenile court shall adhere to the Utah Rules of Evidence.
- (b) All oral testimony before the court shall be given under oath unless waived by the parties, and may be narrative in form or by stipulated proffer of testimony or as otherwise provided by these Rules.
- (c) Written notice of the intent to offer a statement under Utah Code Section ~~78-3a-116(5)~~ 78A-6-115(5) must be given to all parties at least five days prior to the adjudication hearing in which the statement is going to be offered. The court may, upon good cause shown, waive the requirement for five days notice.

Rule 44. Findings and conclusions.

Rules Text

- (a) If, upon the conclusion of an adjudicatory hearing, the court determines that the material allegations of the petition are established, it shall announce its ruling. The findings of fact upon which it bases its determination may also be announced or reserved for entry by the court in an order as provided in these Rules. In cases concerning any minor who has violated any federal, state, or local law or municipal ordinance, or any person under 21 years of age who has violated any such law or ordinance before becoming 18 years of age, findings of fact shall not be necessary. If, after such a determination, the dispositional hearing is not held immediately and the minor is in detention or shelter care, the court shall determine whether the minor shall be released or continued in detention, shelter care or the least restrictive alternative available.
- (b) In certification proceedings and permanent deprivation cases, the court shall enter findings of fact and conclusions of law with specific reference to each statutory requirement considered, setting forth the complete basis for its determination. Such findings and conclusions may be prepared by counsel at the direction of the court, but shall be reviewed and modified as deemed appropriate by the court prior to the court's acceptance and signing of the documents submitted by counsel.
- (c) The court may at any time during or at the conclusion of any hearing, dismiss a petition and terminate the proceedings relating to the minor if such action is in the interest of justice and the welfare of the minor. The court shall dismiss any petition which has not been proven.
- (d) After the dispositional hearing, the court shall enter an appropriate order or decree of disposition.
- (e) Adjudication of a petition alleging abuse, neglect, or dependency of a child shall be conducted also in accordance with Utah Code Section ~~78-3a-308~~ 78A-6-309 and Section ~~78-3a-309~~ 78A-6-310.
- (f) Adjudication of a petition to review the removal of a child from foster care shall be conducted also in accordance with Utah Code Section ~~78-3a-315~~ 78A-6-318.

Rule 45. Pre-disposition reports and social studies.

Rules Text

- (a) Unless waived by the court, a pre-disposition report shall be prepared in all proceedings which result in the filing of a petition. The pre-disposition report shall be deemed waived, unless otherwise ordered, in all traffic, fish and game and boating cases, and other bailable offenses.

The report shall conform to the requirements in the Code of Judicial Administration.

(b) In delinquency cases, investigation of the minor and family for the purpose of preparing the pre-disposition report shall not be commenced before the allegations have been proven without the consent of the parties.

(c) The pre-disposition report shall not be submitted to or considered by the judge before the adjudication of the charges or allegations to which it pertains. If no pre-disposition report has been prepared or completed before the dispositional hearing, or if the judge wishes additional information not contained in the report, the dispositional hearing may be continued for a reasonable time to a date certain.

(d) For the purpose of determining proper disposition of the minor and for the purpose of establishing the fact of neglect or dependency, written reports and other material relating to the minor's mental, physical, and social history and condition may be received in evidence and may be considered by the court along with other evidence. The court may require that the person who wrote the report or prepared the material appear as a witness if the person is reasonably available.

(e) The pre-dispositional report and social studies shall be provided by the author to the minor's counsel, the prosecuting attorney, the guardian ad litem, and counsel for the parent, guardian or custodian of the minor at least two days prior to the dispositional hearing. When the minor or the minor's parent, guardian or custodian are not represented by counsel, the court may limit inspection of reports by the minor or the minor's parent, guardian or custodian if the court determines it is in the best interest of the minor to do so.

Rule 46. Disposition hearing.

Rules Text

(a) Disposition hearings may be separate from the hearing at which the petition is proved or may follow immediately after that portion of the hearing at which the allegations of the petition are proved. Disposition hearings shall be conducted in an informal manner to facilitate the opportunity for all participants to be heard.

(b) The court may receive any information that is relevant to the disposition of the case including reliable hearsay and opinions. Counsel for the parties are entitled to examine under oath the person who prepared the pre-disposition report if such person is reasonably available. The parties are entitled to compulsory process for the appearance of any person, including character witnesses, to testify at the hearing. A minor's parent or guardian may address the court regarding the disposition of the case, and may address other issues with the permission of the court.

(c) After the disposition hearing, the court shall enter an appropriate order. After announcing its order, the court shall advise any party who is present and not represented by counsel of the right to appeal the court's decision.

(d) The disposition order made and entered by the court shall be reduced to writing and a copy mailed or furnished to the minor, and to the parent, guardian or custodian of a child, or counsel for the minor and parent, guardian or custodian, if any, the prosecuting attorney, the guardian ad litem, and any agency or person affected by the court's order. The disposition order may be prepared by counsel at the direction of the court, but shall be reviewed and modified as deemed appropriate by the court prior to the court's acceptance and signing of submission.

(e) Disposition of a petition alleging abuse, neglect, or dependency of a child shall be conducted also in accordance with Utah Code Section ~~78-3a-118~~78A-6-117, Section ~~78-3a-310~~78A-6-311,

and Section ~~78-3a-311~~78A-6-312.

Rule 47. Reviews and modification of orders.

Rules Text

(a) Reviews.

(a)(1) At the time of disposition in any case wherein a minor is placed on probation, under protective supervision or in the legal custody of an individual or agency, the court shall also order that the individual supervising the minor or the placement, submit a written report to the court at a future date and appear personally, if directed by the court, for the purpose of a court review of the case. If a date certain is not scheduled at the time of disposition, notice by mail of such review shall be given by the party requesting the review not less than 5 days prior to the review. Such notice shall also be given to the guardian ad litem, if one was appointed.

(a)(2) No modification of a prior dispositional order shall be made at a report review that would have the effect of further restricting the rights of the parent, guardian, custodian or minor, unless the affected parent, guardian custodian or minor waives the right to a hearing and stipulates in open court or in writing to the modification. If a guardian ad litem is representing the minor, the court shall give a copy of the report to the guardian prior to the report review.

(b) Review hearings.

(b)(1) Any party in a case subject to review may request a review hearing. The request must be in writing and the request shall set forth the facts believed by the requesting party to warrant a review by the court. If the court determines that the alleged facts, if true, would justify a modification of the dispositional order, a review hearing shall be scheduled with notice, including a copy of the request, to all other parties. The court may schedule a review hearing on its own motion.

(b)(2) The court may modify a prior dispositional order in a review hearing upon the stipulation of all parties and upon a finding by the court that such modification would not be contrary to the best interest of the minor and the public.

(b)(3) The court shall not modify a prior order in a review hearing that would further restrict the rights of the parent, guardian, custodian or minor if the modification is objected to by any party prior to or in the review hearing. The court shall schedule the case for an evidentiary hearing and require that a motion for modification be filed with notice to all parties in accordance with Section ~~78-3a-903~~78A-6-1103.

(b)(4) Any individual, agency or institution vested with temporary legal custody or guardianship must make a motion for a review hearing at the expiration of 18 months from the date of the placement order as provided in Utah Code Ann. § ~~78-3a-516~~78A-6-117. ?????

(b)(5) All cases which require periodic review hearings under Title 78, Chapter 3a shall be scheduled for court review not less than once every six months from the date of disposition.

(c) Disposition reviews. Upon the petition of any agency, individual or institution vested with legal custody or guardianship by prior court order, the court shall conduct a review hearing to determine if the prior order should remain in effect. Notice of the hearing, along with a copy of the petition, must be provided to all parties not less than 5 days prior to the hearing.

(d) Review of a case involving abuse, neglect, or dependency of a minor shall be conducted also in accordance with Section ~~78-3a-118~~78A-6-117, Section ~~78-3a-312~~78A-6-314, and Section ~~78-3a-313~~78A-6-315.

(e) Intervention plans.

(e)(1) In all cases where the disposition order places temporary legal custody or guardianship of the minor with an individual, agency, or institution, a proposed intervention plan shall be submitted by the probation department when probation has been ordered; by the agency having custody or guardianship; or by the agency providing protective supervision, within 30 days following the date of disposition. This intervention plan shall be updated whenever a substantial change in conditions or circumstances arises.

(e)(2) In cases where both parents have been permanently deprived of parental rights, the intervention plan shall identify efforts made by the child placing agency to secure the adoption of the minor and subsequent review hearings shall be held until the minor has been adopted or permanently placed.

(f) Progress reports.

(f)(1) A written progress report relating to the intervention plan shall be submitted to the court and all parties by the agency, which prepared the intervention plan at least two working days prior to the review hearing date.

(f)(2) The progress report shall contain the following:

(f)(2)(i) A review of the original conditions, which invoke the court's jurisdiction.

(f)(2)(ii) Any significant changes in these conditions.


(f)(2)(iii) The number and types of contacts made with each family member or other person related to the case.

(f)(2)(iv) A statement of progress toward resolving the problems identified in the intervention plan.

(f)(2)(v) A report on the family's cooperation in resolving the problems.

(f)(2)(vi) A recommendation for further order by the court.

(g) In substantiation proceedings, a party may file a motion to set aside a default judgment or dismissal of a substantiation petition for failure to appear within thirty days after the entry of the default judgment or dismissal. On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party from a default judgment or dismissal if the court finds good cause for the party's failure to appear. The filing of a motion under this subdivision does not affect the finality of a judgment or suspend its operation.



From: Renee Jimenez
To: Gregory, Katie
Date: 10/13/2008 2:41 PM
Subject: Juvenile rules

Katie, from the last Juvenile Court Rules committee meeting, I was assigned the task to review rules 20-23 to make sure the renumbering is correct. I have completed that task and I did not find any errors.

Renee



Katie Gregory - S. Ct. action on Rule 25

From: Katie Gregory
To: Judge Dane Nolan; Judge Mary Noonan; Judge Thomas Higbee
Date: 10/1/2008 10:25 AM
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Judges,

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The end result is that they deleted all the new language in (c)(6) which read:

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Matty did not give me much information--mainly that the justices noted that the board did not seem to reach a consensus on whether to include the now deleted language. By deleting it completely they feel judges will still have discretion and it will build the case law on the issue. Wish I had more information to give you, but that was it. ,

Katie

Katie Gregory - Re: URJP Meeting Friday November 7th

From: Judge Elizabeth Lindsley
To: Katie Gregory
Date: 11/3/2008 1:39 PM
Subject: Re: URJP Meeting Friday November 7th

Katie, I reviewed all of Rules in the 30s and your changes. The only suggestions are the advisory committee note on Rule 30 the statute needs to be changed from 78-3a-503 to 78A-6-603.

The other one is in Rule 39 - Title 78 Chapter 32 should be changed to Title 78B, Chapter 6 not just title 78. Thanks.

I will be there on Friday but may have to leave early because of afternoon hearings. Judge Lindsley

>>> Katie Gregory 10/31/2008 3:08 PM >>>
URJP Members:

Just a reminder that our next meeting is **Friday, November 7th from noon until 2:00 p.m.** in the Education Room on the Third Floor of the AOC. I hope to have the agenda and minutes ready to emailed out to you on Monday. Please let me know if you cannot attend.

Happy Halloween

Katie

Katie Gregory
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Email: katieg@email.utcourts.gov

Rule 5. Definitions.

Terms in these rules have the same definitions as provided in Section 62A-7-101 and Sections ~~78-3a-103~~ 78A-6-105 and 78A-6-301 unless a different definition is given here. As used in these rules:

(a) "Abuse, neglect, and dependency" refers to proceedings under Section ~~78-3a-301~~ 78A-6-302 et. seq. and ~~78-3a-401~~ 78A-6-501 et seq.

(b) "Adjudication" means a finding by the court, incorporated in a judgment or decree, that the facts alleged in the petition have been proved.

(c) "Adult" means a person 18 years of age or over, except that persons 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section ~~78-3a-124~~ 78A-6-120 shall be referred to as "minors"

(d) "Arraignment" means the hearing at which a minor is informed of the allegations and the minor's rights, and is given an opportunity to admit or deny the allegations.

(e) "Court records" means all juvenile court legal records, all juvenile court social and probation records, and all other juvenile court records prepared, owned, received, or maintained by the court.

(f) "Disposition" means any order of the court, after adjudication, pursuant to Section ~~78-3a-118~~. 78A-6-117

(g) "Petition" means the document containing the material facts and allegations upon which the court's jurisdiction is based.

(h) "Preliminary inquiry" means an investigation and study conducted by the probation department upon the receipt of a referral to determine whether the interests of the public or of the minor require that further action be taken.

(i) "Substantiation proceedings" means juvenile court proceedings in which an individual or the Division of Child and Family Services seeks a judicial finding of a claim of substantiated, unsubstantiated or without merit with regards to a DCFS finding of severe child abuse or neglect for purposes of the Division's Licensing Information System.

(j) "Ungovernability" means the condition of a minor who is beyond the control of the parent/guardian, custodian or school authorities, to the extent that the minor's behavior or condition endangers the minor's own welfare or the welfare of others.

Rule 7. Warrants.

(a) The issuance and execution of a warrant is governed by Title 77, Chapter 7, Arrest, Section ~~78-3a-106~~ 78A-6-106, Section ~~78-3a-112~~ 78A-6-111, Section ~~78-3a-113~~ 78A-6-112, and Utah Rule of Criminal Procedure 40.

(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 believe that the minor has run away or escaped from the minor's 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 a juvenile detention or shelter facility or an adult detention facility, if appropriate, 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.

(e) 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.

(f) 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.

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

(h) The juvenile court to retain and file copies - Documents sealed for twenty days -Forwarding of record to court with jurisdiction.

(h)(1) At the time of issuance, the juvenile court shall retain and seal a copy of the search warrant, the application and all affidavits or other recorded testimony on which the warrant is based and shall, within a reasonable time, file those sealed documents in court files which are secured against access by the public. Those documents shall remain sealed until twenty days following the issuance of the warrant unless that time is extended or reduced. Unsealed search warrant documents shall be filed in the court record.

(h)(2) Sealing and retention of the file may be accomplished by:

(h)(2)(A) placing paper documents or storage media in a sealed envelope and filing the sealed envelope in a court file not available to the public;

(h)(2)(B) storing the documents by electronic or other means under the control of the court in a manner reasonably designed to preserve the integrity of the documents and protect them against disclosure to the public during the period in which they are sealed; or

(h)(2)(C) filing through the use of an electronic filing system operated by the State of Utah which system is designed to transmit accurate copies of the documents to the court file without allowing alteration to the documents after issuance of the warrant by the juvenile court.

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~~ 78A-6-112. 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:

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

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

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

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

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

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

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

(a)(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

(a)(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:

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

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

(g)(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~~ 78A-6-701, Section ~~78-3a-602~~ 78A-6-702, or Section ~~78-3a-603~~ 78A-6-703, 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.

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~~ 78A-6-113.

(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 Notes

Rule 12. Admission to shelter care.

Admission to shelter care is governed by Utah Code Annotated Title 62A, Chapter 4a, Part 2, Child Welfare Services and by ~~Title 78, Chapter 3a, Part 3,~~ Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

Rule 13. Shelter hearings.

(a) Shelter hearings shall be conducted in accordance with Section ~~78-3a-306~~ 78A-6-306 and Section ~~78-3a-307~~ 78A-6-307.

(b) The Division of Child and Family Services shall file with the court at or before the shelter hearing a copy of the notice form required by Section 78-3a-304 and the notice required by Section 78-3a-306.

(c) At the beginning of the shelter hearing, the court shall advise all persons present of the information submitted to the court as a basis for the admission of the minor into shelter care and of the scope and purpose of the hearing.

(d) The court may receive any information, including hearsay and opinions, that is relevant to the issue of whether it is safe to release the minor to the parent, guardian or custodian. Privileged communications may be admitted only in accordance with the rules of evidence.

(e) If the parent, guardian, or custodian of the minor cannot be notified as provided in Section ~~78-3a-306~~ 78A-6-306, a shelter hearing may be held without the minor's parent, guardian or custodian. Upon a finding that a continuance is necessary for the protection of the minor, for the accumulation or presentation of necessary evidence, to protect the rights of a party, or for other good cause, the court may continue the hearing in accordance with Section ~~78-3a-306~~ 78A-6-306.

(f) If the minor is not released, the order for continued shelter shall be furnished to the agency responsible for shelter care of minors in the county. Orders for continued shelter care shall be of definite duration and may be extended upon review at a hearing in conformity with Section ~~78-3a-306~~ 78A-6-306 and this rule.

(g) The release of the minor from shelter care may be requested by the court, a party, or any person interested in the minor at any time on the grounds that the conditions giving rise to the placement no longer exist or no longer justify continuing shelter. Such request shall be considered by the court at a hearing in conformity with Section ~~78-3a-306~~ 78A-6-306 and this rule.

Rule 17. The petition.

(a) Delinquency cases.

(a)(1) The petition shall allege the offense as it is designated by statute or ordinance, and shall state: in concise terms, the definition of the offense together with a designation of the section or provision of law allegedly violated; the name, age and date of birth of the minor; the name and residence address of the minor's parents, guardian or custodian; the date and place of the offense; and the name or identity of the victim, if known.

(a)(2) The petition shall be verified and may be filed by a designated intake officer or the prosecuting attorney upon information and belief on behalf of the officer or person who referred the minor.

(b) Neglect, abuse, dependency, permanent termination and ungovernability cases.

(b)(1) The petition shall set forth in plain and concise language the jurisdictional basis as designated by statute, the facts supporting the court's jurisdiction, and the relief sought. The petition shall state: the name, age and residence of the minor; the name and residence of the minor's parent, guardian or custodian; and if the parent, guardian or custodian is unknown, the name and residence of the nearest known relative or the person or agency exercising physical or legal custody of the minor.

(b)(2) The petition must be verified and statements made therein may be made on information and belief.

(b)(3) A petition filed by a state human services agency shall either be prepared or approved by the office of the attorney general. When the petitioner is an employee or agent of a state agency acting in his or her official capacity, the name of the agency shall be set forth and the petitioner shall designate his or her title.

(c) Other cases.

(c)(1) Protective orders. Petitions may be filed on forms available from the court clerk and must conform to the format and arrangement of such forms.

(c)(2) Expungements. The petition shall state: the name, age and residence of the minor. The petition shall state the date and nature of each adjudication which the petitioner wishes to expunge. Petitions for expungement must be accompanied by an original criminal history report obtained from the Bureau of Criminal Identification and proof of service upon the County Attorney, or within a prosecution district, the District Attorney for each jurisdiction in which an

adjudication occurred prior to being filed with the Clerk of Court. Petitions for expungement must meet all of the criteria of Utah Code Ann. § ~~78-3a-905~~ 78A-6-905.

(c)(3) Petitions in other proceedings shall conform to Utah Rule of Civil Procedure 10, except that in adoption proceedings, the petition must be accompanied by a certified copy of the Decree of Permanent Termination.

Rule 18. Summons; service of process; notice.

(a) Summons. Upon the filing of a petition, the clerk, unless otherwise directed by the court, shall schedule an initial hearing in the case.

(1) Summons may be issued by the petitioning attorney. If the petitioning attorney does not issue a summons, summons shall be issued by the clerk in accordance with ~~Section 78-3a-110~~ 78A-6-109. The summons shall conform to the format prescribed by these rules.

(2) Content of the summons.

(A) Abuse, neglect, and dependency cases. The summons shall contain the name and address of the court, the title of the proceeding, the type of hearing scheduled, and the date, place and time of the hearing. It shall state the time within which the respondent is required to answer the petition, and shall notify the respondent that in the case of the failure to do so, judgment by default may be rendered against the respondent. It shall also contain an abbreviated reference to the substance of the petition.

(B) Other cases. The summons shall contain the name and address of the court, the title of the proceeding, the type of hearing scheduled, and the date, place and time of the hearing. It shall also contain an abbreviated reference to the substance of the petition. In proceedings against an adult pursuant to Section 78-3a-801, the summons shall conform to the Utah Rules of Criminal Procedure and be issued by the prosecuting attorney.

(3) The summons shall be directed to the person or persons who have physical care, control or custody of the minor and require them to appear and bring the minor before the court. If the person so summoned is not the parent, guardian or custodian of the minor, a summons shall also be issued to the parent, guardian or custodian. If the minor or person who is the subject of the petition has been emancipated by marriage or is 18 years of age or older at the time the petition is filed, the summons may require the appearance of the minor only, unless otherwise ordered by the court. In neglect, abuse and dependency cases, unless otherwise directed by the court, the summons shall not require the appearance of the subject minor.

(4) No summons shall be necessary as to any party who appears voluntarily or who files a written waiver of service with the clerk prior to or upon appearance at the hearing.

(b) Service.

(1) Except as otherwise provided by these rules or by statute, service of process and proof of service shall be made by the methods provided in Utah Rule of Civil

Procedure 4. Service of process shall be made by the sheriff of the county where the service is to be made, by a deputy, by a process server, or by any other suitable person appointed by the court. However, when the court so directs, an agent of the Department of Human Services may serve process in a case in which the Department is a party. A party or party's attorney may serve another party at a court hearing. The record of the proceeding shall reflect the service of the document and shall constitute the proof of service.

(2) Personal service may be made upon a parent, guardian or custodian and upon a minor in that person's legal custody by delivering to a parent, guardian or custodian a copy of the summons with a copy of the petition attached. If a minor is in the legal custody or guardianship of an agency or person other than a parent, service shall also be made by delivering to the legal custodian a copy of the summons with a copy of the petition attached and notice shall be given to the parent as provided in paragraph (d). Service upon a minor who has attained majority by marriage as provided in Utah Code Ann. Section 15-2-1 or upon court order shall be made in the manner provided in the Utah Rules of Civil Procedure.

(3) (A) Service may be made by any form of mail requiring a signed receipt by the addressee. Service is complete upon return to court of the signed receipt.

(B) Service of process may be made by depositing a copy thereof in the United States mail addressed to the last known address of the person to be served. Any person who appears in court in response to mailed service shall be considered to have been legally served.

(4) In any proceeding wherein the parent, guardian or custodian cannot after the exercise of reasonable diligence be located for personal service, the court may proceed to adjudicate the matter subject to the right of the parent, guardian or custodian to a rehearing, except that in certification proceedings brought pursuant to Section 78-3a-603 and in proceedings seeking permanent termination of parental rights, the court shall order service upon the parent, guardian or custodian by publication. Any rehearing shall be requested by written motion.

(5) Service shall be completed at least 48 hours prior to the adjudicatory hearing. If the summons is for the permanent termination of parental rights, service shall be completed at least ten days before the adjudicatory hearing. If the summons is for a substantiation proceeding, service shall be completed at least forty-five days before the adjudicatory hearing.

(c) Service by publication. Service by publication shall be authorized by the procedure and in the form provided by Utah Rule of Civil Procedure 4.

(d) Notice.

(1) Notice of the time, date and place of any further proceedings, after an initial appearance or service of summons, may be given in open court or by mail to any party. Notice shall be sufficient if the clerk deposits the notice in the United States mail, postage pre-paid, to the address provided by the party in court or the address at which the party was initially served.

(2) Notice for any party represented by counsel shall be given to counsel for the party.

(e) Additional parties. Whenever it appears to the court that a person who is not the parent, guardian or custodian should be made subject to the jurisdiction and authority of the court in a minor's case, upon the motion of any party or the court's own motion, the court may issue a summons ordering such person to appear. Upon the appearance of such person, the court may enter an order making such person a party to the proceeding and may order such person to comply with reasonable conditions as a part of the disposition in the minor's case. Upon the request of such person, the court shall conduct a hearing upon the issue of whether such person should be made a party.

Advisory Committee Notes

Rule 20. Discovery generally.

(a) Discovery involving adjudications of delinquency, offenses by adults against minors, and proceedings brought pursuant to Section ~~78-3a-602~~ 78A-6-702 and Section ~~78-3a-603~~ 78A-6-703 shall be conducted in accordance with Utah R. Cr. P. 16, except where limited by these rules, the Code of Judicial Administration and the Juvenile Court Act.

(b) In substantiation cases, no later than thirty days prior to trial, parties shall provide to each other information necessary to support its claims or defenses unless otherwise ordered by the court.

(c) 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 21. Warrant of arrest or summons in cases under Section ~~78-3a-602~~ 78A-6-702 and Section ~~78-3a-603~~ 78A-6-703.

(a) Upon the return of an indictment alleging the commission of a felony governed by Section ~~78-3a-602~~ 78A-6-702 or Section ~~78-3a-603~~ 78A-6-703, the court shall cause to issue either a warrant for the arrest or a summons for the appearance of the minor.

(b) Upon the filing of an information alleging the commission of a felony governed by Section ~~78-3a-602~~ 78A-6-702 or Section ~~78-3a-603~~ 78A-6-703, if it appears from the information, or from any affidavit filed with the information, that there is probable cause to believe that an offense governed by these sections has been committed and that the minor has committed it, the court shall cause to issue either a warrant for the arrest or a summons for the appearance of the minor.

(c) If it appears to the court that the minor will appear on a summons and there is no substantial danger of a breach of the peace, or injury to persons or property, or danger to the community, a summons may issue in lieu of a warrant of arrest to require the appearance of the minor. A warrant of arrest may issue in cases where the minor has failed to appear in response to a summons or citation or thereafter when required by the court. If a warrant of arrest is issued, the court shall state on the warrant:

(c)(1) the name of the law enforcement agency in the county or municipality with jurisdiction over the offense charged; and

(c)(2) whether the minor is to be taken to court, jail, or a detention center.

(d)(1) The warrant shall be executed by a peace officer. The summons may be served by a peace officer or any person authorized to serve a summons in a civil action.

(d)(2) The warrant may be executed or the summons may be served at any place within the state.

(d)(3) The warrant shall be executed by the arrest of the minor. The officer need not possess the warrant at the time of the arrest, but upon request shall show the warrant to the minor as soon as practicable. If the officer does not possess the warrant at the time of the arrest, the officer shall inform the minor of the offense charged and of the fact that the warrant has been issued. The summons shall be served as in civil actions, or by mailing it to the minor's last known address.

(d)(4) The person executing a warrant or serving a summons shall make return thereof to the juvenile court as soon as practicable. At the request of the prosecuting attorney, any unexecuted warrant shall be returned to the court for cancellation.

Rule 22. Initial appearance and preliminary examination in cases under Section ~~78-3a-602~~ 78A-6-702 and Section ~~78-3a-603~~ 78A-6-703.

(a) When a summons is issued in lieu of a warrant of arrest, the minor shall appear before the court as directed in the summons.

(b) When any peace officer or other person makes an arrest of a minor without a warrant, the minor shall be taken to a detention center pending a detention hearing, which shall be held as provided by these rules. When any peace officer makes an arrest of a minor with a warrant, the minor shall be taken to the place designated on the warrant. If an information has not been filed, one shall be filed without delay in the court with jurisdiction over the offense.

(c) If a minor is arrested in a county other than where the offense was committed the minor shall without unnecessary delay be returned to the county where the crime was committed and shall be taken before a judge of the juvenile court.

(d) The court shall, upon the minor's first appearance, inform the minor:

(d)(1) of the charge in the information or indictment and furnish the minor with a copy;

(d)(2) of any affidavit or recorded testimony given in support of the information and how to obtain them;

(d)(3) of the right to retain counsel or have counsel appointed by the court without expense if the minor is unable to obtain counsel;

(d)(4) of rights concerning detention, pretrial release, and bail in the event the minor is bound over to stand trial in district court; and

(d)(5) that the minor is not required to make any statement, and that any statements made may be used against the minor in a court of law.

(e) The court shall, after providing the information under paragraph (d) and before proceeding further, allow the minor reasonable time and opportunity to consult counsel and shall allow the minor to contact any attorney by any reasonable means, without delay and without fee.

(f)(1) The minor may not be called on to enter a plea. During the initial appearance, the minor shall be advised of the right to a preliminary examination and, as applicable, to a certification hearing pursuant to Section ~~78-3a-603~~ 78A-6-703 or to the right to present evidence regarding the conditions established by Section ~~78-3a-602~~ 78A-6-702. If the minor waives the right to a preliminary examination and, if applicable, a certification hearing, and if the prosecuting attorney consents, the court shall order the minor bound over to answer in the district court.

(f)(2) If the minor does not waive a preliminary examination, the court shall schedule the preliminary examination. The time periods of this rule may be extended by the court for good cause shown. The preliminary examination shall be held within a reasonable time, but not later than ten days after the initial appearance if the minor is in custody for the offense charged and the information is filed under Section ~~78-3a-602~~ 78A-6-702. The preliminary examination shall be held within a reasonable time, but not later than 30 days after the initial appearance if:

(f)(2)(A) the minor is in custody for the offense charged and the information is filed under Section ~~78-3a-603~~ 78A-6-703; or

(f)(2)(B) the minor is not in custody.

(f)(3) A preliminary examination may not be held if the minor is indicted. If the indictment is filed under ~~78-3a-603~~ 78A-6-703, the court shall proceed in accordance with Rule 23 to hear evidence presented by the prosecutor regarding the factors of Section ~~78-3a-603~~ 78A-6-703 for waiver of jurisdiction and certification, unless the hearing is waived. If the indictment is filed under Section ~~78-3a-602~~ 78A-6-702, the court shall proceed in accordance with Rule 23A to hear evidence presented by the minor regarding the conditions of Section ~~78-3a-602~~ 78A-6-702, if requested.

(g) A preliminary examination shall be held under the rules and laws applicable to criminal cases tried before a court. The state has the burden of proof and shall proceed first with its case. At the conclusion of the state's case, the minor may testify under oath, call witnesses, and present evidence. The minor may cross-examine adverse witnesses.

(h) If from the evidence the court finds probable cause to believe that the crime charged has been committed and that the minor has committed it, and if the information is filed under Section ~~78-3a-603~~ 78A-6-703, the court shall proceed in accordance with Rule 23 to hear evidence presented by the prosecutor regarding the factors of Section ~~78-3a-603~~ 78A-6-703 for waiver of jurisdiction and certification.

(i) If from the evidence the court finds probable cause to believe that the crime charged has been committed and that the minor has committed it, and if the information is filed under Section ~~78-3a-602~~ 78A-6-702, the court shall proceed in accordance with Rule 23A to hear evidence presented by the minor regarding the conditions of Section ~~78-3a-602~~ 78A-6-702.

(j) The finding of probable cause may be based on hearsay in whole or in part. Objections to evidence on the ground that it was acquired by unlawful means are not properly raised at the preliminary examination.

(k) If the court does not find probable cause to believe that the crime charged has been committed or that the minor committed it, the court shall dismiss the information and discharge the minor. The court may enter findings of fact, conclusions of law, and an

order of dismissal. The dismissal and discharge do not preclude the state from instituting a subsequent prosecution for the same offense.

(l) At a preliminary examination, upon request of either party, and subject to Title 77, Chapter 38, Victim Rights, the court may:

(l)(1) exclude witnesses from the courtroom;

(l)(2) require witnesses not to converse with each other until the preliminary examination is concluded; and

(l)(3) exclude spectators from the courtroom.

Rule 23. Hearing to waive jurisdiction and certify under Section ~~78-3a-603~~ 78A-6-703; bind over to district court.

(a)(1) Upon the filing of a criminal indictment or information and motion to waive jurisdiction under Section ~~78-3a-603~~ 78A-6-703, the court shall order that a full investigation of the minor's social history and background be made by the court's probation department.

(a)(2) The investigation may include, but shall not be limited to: the minor's delinquency history, the minor's response to rehabilitative and correctional efforts; the minor's educational history, social history and status; a psychological evaluation and assessment, and any other matter ordered by the court.

(a)(3) A report of the investigation shall be prepared and made available to the parties or to counsel, if represented, and to the minor's parent, guardian or custodian, as early as feasible but in any case at least 48 hours prior to the hearing. Written reports and other materials relating to the minor's mental, physical, educational and social history and other relevant information are governed by the Rules of Evidence. The court may require, and shall require if requested by a party, that any person preparing the report or materials be present for direct and cross examination.

(b)(1) After a finding of probable cause in accordance with Rule 22, the court shall hear evidence and determine whether it would be contrary to the best interests of the minor or of the public for the court to retain jurisdiction. The state has the burden to prove by a preponderance of the evidence the factors required in Section ~~78-3a-603~~ 78A-6-703 to be considered by the court.

(b)(2) At the conclusion of the state's case, the minor may testify under oath, call witnesses, and present evidence on the factors required by Section ~~78-3a-603~~ 78A-6-703 to be considered by the court. The minor may cross-examine adverse witnesses.

(c) The court shall make findings on each factor for which evidence is presented. If the motion to waive jurisdiction and certify is granted, the court shall indicate which factor or factors were relied upon as a basis for the decision. If the court finds by a preponderance of the evidence that it would be contrary to the best interests of the minor or of the public for the court to retain jurisdiction, the court shall enter an order directing the minor to answer the charges in district court.

(d)(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 may order the minor held in a detention center or released in accordance with Rule 9. The court shall enter the appropriate written order.

(d)(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.

(d)(3) The jurisdiction of the court shall terminate as provided by statute.

(e) If the court finds probable cause to believe that a felony has been committed and that the minor committed it but does not find that it would be contrary to the best interests of the minor or of the public for the court to retain jurisdiction, the court shall proceed upon the information as if it were a petition.

Rule 23A. Hearing on conditions of Section ~~78-3a-602~~ 78A-6-702; bind over to district court.

(a) If a criminal indictment under Section ~~78-3a-602~~ 78A-6-702 alleges the commission of a felony, the court shall, upon the request of the minor, hear evidence and determine whether the conditions of paragraph (c) exist.

(b) If a criminal information under Section ~~78-3a-602~~ 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 as to the existence of the following conditions as provided by Section ~~78-3a-602~~ 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.

(d) At the conclusion of the minor's case, the state may call witnesses and present evidence on the conditions required by Section ~~78-3a-602~~ 78A-6-702. The minor may cross-examine adverse witnesses.

(e) If the court does not find by clear and convincing evidence that the conditions required by Section ~~78-3a-602~~ 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 may order the minor held in a detention center or released in accordance with Rule 9. 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 ~~78-3a-602~~ 78A-6-702 are present, the court shall proceed upon the information as if it were a petition.

Rule 26. Rights of minors in delinquency proceedings.

(a) A minor who is the subject of a delinquency petition filed pursuant to Section ~~78-3a-104~~ 78A-6-103 shall be advised of the following rights:

(a)(1) to appear in person and to defend in person or by counsel;

(a)(2) to receive a copy of the petition which contains the allegations against the minor;

(a)(3) to testify in the minor's own behalf;

(a)(4) to be confronted by the witnesses against the minor;

(a)(5) to have compulsory process to ensure the attendance of witnesses in the minor's behalf;

(a)(6) to be represented by counsel at all stages of the proceedings and if indigent, to have appointed counsel;

(a)(7) to remain silent and to be advised that anything the minor says can and will be used against the minor in any court proceedings; and

(a)(8) to appeal any adjudication against the minor in the manner provided by law.

(b) If the minor or the minor's parent, guardian or custodian is found to be indigent and request counsel, the court shall appoint counsel at public expense in the manner provided by law. Where necessary to protect the interest of the minor, the court may appoint counsel without the request of the minor or parent, guardian or custodian.

(c) If the parent, guardian or custodian of a minor is found not to be indigent, but does not or will not retain counsel for the minor and the minor has no means to retain counsel, the court may appoint counsel at public expense. However, the court may order, after giving the parent, guardian or custodian reasonable opportunity to be heard, that the parent, guardian or custodian reimburse the county for the cost of appointed counsel, in whole or in part, depending on ability to pay.

(d) Parties other than the minor have the right to be represented by counsel retained by them and to participate as provided in these rules.

(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 27. Fingerprinting, photographing, and regulating discovery; HIV testing.

(a) Minors in custody. A motion to photograph or fingerprint a child under the age of 14 who is taken into custody for the alleged commission of an offense that would be a felony if committed by an adult, may be granted upon such terms as the court shall order. The court may make any further order it deems necessary as to the disposition of any fingerprints and limitations regarding their disclosure or distribution pursuant to Section ~~78-3a-904~~ 78A-6-1104 and Section ~~78-3a-905~~ 78A-6-1105.

(b) Discovery procedures with minors. Upon motion and notice to the minor's counsel, or to the minor's parent, guardian or custodian in the absence of counsel, and upon a showing that the discovery sought will be of material aid in determining whether the minor committed the alleged offense, the court may order a minor to submit to one or more of the investigative procedures listed in Utah Rule of Criminal Procedure 16. Whenever the personal appearance of the minor is required for any ordered discovery procedure, the prosecuting attorney shall inform the minor's parent, guardian or custodian and counsel of the time and place of the procedure.

(c) Medical supervision. Blood tests shall be conducted under medical supervision. The court may require medical supervision for any other test ordered pursuant to this rule when the court deems such supervision necessary. Upon motion, the court may order the minor's appearance delayed for a reasonable time or may order that tests take place at the minor's residence or some other convenient place.

(d) Notice of results of disclosure. The prosecuting attorney shall make the results of the discovery procedures provided by this rule available within 5 days from the date the results become known to the minor, unless otherwise ordered by the court.

(e) HIV testing. HIV testing shall be conducted as provided in Section ~~78-3a-904~~ 78A-6-1104.

Rule 29A. Visual recording of statement or testimony of child victim or witness of sexual or physical abuse - Conditions of admissibility.

(a) In any delinquency proceeding or proceeding under Section ~~78-3a-602~~ 78A-6-702 or Section ~~78-3a-603~~ 78A-6-703 concerning a charge of child abuse or of a sexual offense against a child, the oral statement of a victim or witness younger than 14 years of age may be recorded prior to the filing of a petition, and upon motion and for good cause shown is admissible as evidence in any court proceeding regarding the offense if all of the following conditions are met:

(a)(1) no attorney for either party is in the child's presence when the statement is recorded;

(a)(2) the recording is visual and aural and is recorded on film or videotape or by other electronic means;

(a)(3) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and the recording is accurate and has not been altered;

(a)(4) each voice in the recording is identified;

(a)(5) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify and be cross-examined by either party;

(a)(6) the minor and the minor's attorney are provided an opportunity to view the recording before it is shown to the court;

(a)(7) the court views the recording and determines that it is sufficiently reliable and trustworthy and that the interest of justice will best be served by admission of the statement into evidence; and

(a)(8) the child is available to testify and to be cross-examined at trial, either in person or as provided by Subsection (b) or (c), or the court determines that the child is unavailable as a witness to testify at trial under the Utah Rules of Evidence. For purposes of this subsection "unavailable" includes a determination, based on medical or psychological evidence or expert testimony, that the child would suffer serious emotional or mental strain if required to testify at trial.

(b) In any proceeding concerning a charge of child abuse or of a sexual offense against a child, the court may order, upon motion of the prosecution and for good cause shown, that the testimony of any witness or victim younger than 14 years of age be taken in a room other than the courtroom. All of the following conditions shall be observed:

(b)(1) Only the judge, attorneys for each party, persons necessary to operate equipment, and a counselor or therapist whose presence contributes to the welfare and emotional well-being of the child may be with the child during the testimony. The minor may also be present during the child's testimony unless the minor consents to be hidden from the child's view, or the court determines that the child will suffer serious emotional or mental strain if required to testify in the minor's presence, or that the child's testimony will be inherently unreliable if required to testify in the minor's presence. If the court makes that determination, or if the minor consents:

(b)(1)(A) the minor may not be present during the child's testimony;

(b)(1)(B) the court shall ensure that the child cannot hear or see the minor ;

(b)(1)(C) the court shall advise the child prior to testifying that the minor is present at the trial and may listen to the child's testimony;

(b)(1)(D) the minor shall be permitted to observe and hear the child's testimony, and the court shall ensure that the minor has a means of two-way telephonic communication with defense counsel during the child's testimony; and

(b)(1)(E) the conditions of a normal court proceeding shall be approximated as nearly as possible.

(b)(2) Only the judge and attorneys may question the child.

(b)(3) As much as possible, persons operating equipment shall be confined to an adjacent room or behind a screen or mirror so the child cannot see or hear them.

(c) In any case concerning a charge of child abuse or of a sexual offense against a child, the court may order, upon motion of the prosecution and for good cause shown, that the testimony of any witness or victim younger than 14 years of age be taken outside the courtroom and be recorded. That testimony is admissible as evidence, for viewing in any court proceeding regarding the charges if the provisions of Subsection (b) are observed, in addition to the following provisions:

(c)(1) the recording is both visual and aural and recorded on film or videotape or by other electronic means;

(c)(2) the recording equipment is capable of making an accurate recording, the operator is competent, and the recording is accurate and is not altered;

(c)(3) each voice on the recording is identified; and

(c)(4) each party is given an opportunity to view the recording before it is shown in the courtroom.

(d) If the court orders that the testimony of a child be taken under Subsection (b) or (c), the child may not be required to testify in court at any proceeding where the recorded testimony is used.

URJP 30

Advisory Committee Notes

Section 78-3a-503 permits a minor who has been issued a citation to forfeit bail and to thereby waive the filing of a petition and plead guilty.

Rule 30. Citations; applicable offenses and procedures; bail.

(a) A citation issued pursuant to Section ~~78-3a-503~~ 78A-6-603 shall be sufficient to invoke the jurisdiction of the court in any offense listed in that section.

(b) Procedure. Whenever a citation is issued pursuant to Section ~~78-3a-503~~ 78A-6-603, a copy of the citation filed with the court may be used in lieu of a petition upon which the minor may appear and admit the offense, upon which the court may make a disposition, or upon which the court may accept bail in lieu of appearance. If the minor fails to appear on a citation or fails to tender the fine as bail in cases where bail is permitted in lieu of appearance, a petition or order to show cause may be filed and further proceedings held as provided in these rules.

(c) Where a citation has been filed with the court for an offense, the minor cited shall be allowed to post bail without further court appearance except as provided in this rule.

(d) The bail amount for each such offense shall be included in a written notice of bailable offenses in accordance with the bail/fine schedule approved by the Judicial Council. The bail amount may immediately be forfeited as a fine and shall be deemed a conviction of the offense charged if the notice has been given to the cited minor and the notice advises the minor and the minor's parent, guardian or custodian that payment of the fine constitutes an admission of guilt.

(e) A juvenile court district may, or where required by statute shall, designate repeat offenses for which an appearance or additional bail is required.

Advisory Committee Notes

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Advisory Committee Notes

Rule 34. Pre-trial hearing in non-delinquency cases.

- (a) Petitions in non-delinquency cases shall be scheduled for an initial pre-trial hearing.
- (b) The pre-trial hearing shall be scheduled on the nearest court calendar date available in all cases where the subject minor is in temporary shelter care custody in accordance with ~~Section 78-3a-308~~ 78A-6-309.
- (c) In the pre-trial hearing, the court shall advise the parent, guardian or custodian of the minor's rights and of the authority of the court in such cases. In the hearing or in any continuance of the hearing, the parent, guardian or custodian shall answer the petition in open court.
- (d) Before answering, the respondent may move to dismiss the petition as insufficient to state a claim upon which relief can be granted. The court shall hear all parties and rule on said motion before requiring a party to answer.
- (e) A respondent may answer by admitting or denying the specific allegations of the petition, or by declining to admit or deny the allegations. Allegations not specifically denied by a respondent shall be deemed true.
- (f) Except in cases where the petitioner is seeking a permanent deprivation of parental rights, the court may enter the default of any respondent who fails to appear in person or by counsel after having been served with a summons or notice pursuant to Rule 18. Allegations relating to any party in default shall be deemed admitted unless the court, on its own motion, or the motion of any party not in default, shall require evidence in support of the petition. Within the time limits set forth in Utah R. Civ. P. 60(b), upon the written motion of any party in default and a showing of good cause, the court may set aside an entry of default.

Rule 35. Pre-trial procedures.

(a) At the commencement of the initial pre-trial hearing, if the parent, guardian or custodian appears pro se, the court shall advise the parent, guardian or custodian of the right to the assistance of counsel at all stages of the proceeding including the right to apply to the court for the appointment of counsel if indigent. If appointment of counsel is requested, the court may proceed to examine the parent, guardian or custodian concerning eligibility for appointed counsel or the court may continue the pre-trial hearing and require the parent, guardian or custodian to file an affidavit or other evidence as deemed appropriate by the court for a determination as to eligibility for appointed counsel.

(b) If the parent, guardian or custodian waives the right to counsel and elects to proceed pro se, the court shall explain the nature of the action sought by the petitioner.

(c) Pursuant to Section ~~78-3a-912~~ 78A-6-902, the court shall appoint a guardian ad litem to represent any child named in a petition alleging child abuse, child sexual abuse, neglect, or dependency which results in a judicial proceeding.

(d) The court in its discretion or upon motion of a party may schedule further pre-trial hearings or conferences as may be necessary to expedite adjudication or disposition, consider discovery issues, formulate or simplify trial issues or facilitate possible settlement negotiations.

Rule 36. Cases certified from district court.

(a) Pleadings and hearings before juvenile court.

(a)(1) When an issue of support, custody or visitation has been certified by the district court to the juvenile court pursuant to ~~Section 78-3a-105~~ 78A-6-104, the juvenile court shall schedule the matter for a pre-trial hearing and notify all parties. At such hearing, the juvenile court shall consider issues relating to discovery, custody evaluations and interim orders and shall schedule a trial hearing on all issues to be tried.

(a)(2) All pleadings and orders prepared subsequent to the certification shall contain the caption for the case in both courts.

(a)(3) The rules concerning discovery, admissibility of evidence and standard of proof applicable to such proceedings in the district court shall be followed in the juvenile court.

(a)(4) The juvenile court may appoint a guardian ad litem for the child in such proceedings and assess the cost to one or both parties.

(b) Modification of prior district court decrees and orders.

(b)(1) Orders and decrees entered by the juvenile court in proceedings certified from the district court for a determination of issues regarding custody, support and visitation shall constitute a modification of any prior district court order or decree concerning such issues involving the same minor. Certified copies of such juvenile court orders and decrees shall contain the captions of both courts and be filed with the clerk of the district court for inclusion in the district court file.

(b)(2) In cases where a support, custody or visitation determination has been made by the district court and jurisdiction of the district court is continuing, and an order has been entered in a subsequent juvenile court proceeding that is inconsistent with the prior district court order, on motion of any party or upon the juvenile court's own motion, a certified copy of the juvenile court's order shall be filed with the clerk of the district court.

Rule 37. Child protective orders.

(a) Child protective order proceedings are governed by Section ~~78-3h-101~~ 78B-7-201 et seq. Protective order proceedings may be commenced as an independent action by filing a petition. Any interested person may file a petition for a protective order on behalf of a child as provided by statute. The petitioner shall first make a referral to the division. If an immediate ex parte protective order is requested pending a hearing, the petition or an accompanying affidavit shall set forth the facts constituting good cause for issuance of the ex parte order.

(b) If the petitioner is the agent of a public or private agency, including a law enforcement agency, the petition shall set forth the agent's title and the name of the agency that the petitioner represents.

(c) Petitions for protective orders by a public agency shall not be accepted by the clerk unless reviewed and approved by the attorney for the public agency, whose office shall represent the petitioner in such cases.

(d) The petitioner, if a private person or agency, and the respondent may be represented by retained counsel. Counsel may be appointed by the court for an indigent respondent who is a parent, guardian or custodian of the child alleged to be abused or threatened with abuse. If the court finds in the hearing that the allegations of the petition have been established, the court may assess petitioner's costs and attorney fees against the respondent. If the court finds that the petition is without merit, the respondent's costs and attorneys fees may be assessed against petitioner.

(e) If an ex parte order has been issued, the hearing must be held within 20 days excluding Saturdays, Sundays and legal holidays.

Rule 39. Contempt of court.

(a) Any parent, guardian, or custodian of a minor who willfully fails or refuses to produce the minor in court in response to a summons or order of the court may be proceeded against for contempt of court pursuant to ~~Title 78, Chapter 32, Title 78, Chapter 6~~ Contempt. Any person made the subject of a court order who willfully fails or refuses to comply with the order may be proceeded against for contempt of court.

(b) Contempt proceedings involving conduct occurring out of the presence of the court shall be initiated by a motion for an order by the court that the person alleged to be in contempt be ordered to appear and show cause why he should not be found in contempt and punished as provided by law. Such motion must be accompanied by an affidavit setting forth the conduct alleged to constitute the contempt. Such motion may be filed by any party to the proceeding or by an officer of the court.

(c) The court may issue a warrant for the arrest of any person who has failed to appear in response to a summons. Upon appearance, the court may find such person in contempt of court unless it appears that there was reasonable cause for the failure to obey the summons.

Rule 43. Evidence.

(a) Except as set forth herein or as otherwise provided by law, the juvenile court shall adhere to the Utah Rules of Evidence.

(b) All oral testimony before the court shall be given under oath unless waived by the parties, and may be narrative in form or by stipulated proffer of testimony or as otherwise provided by these Rules.

(c) Written notice of the intent to offer a statement under Utah Code Section ~~78-3a-116(5)~~ 78A-6-115 (5) must be given to all parties at least five days prior to the adjudication hearing in which the statement is going to be offered. The court may, upon good cause shown, waive the requirement for five days notice.

Rule 44. Findings and conclusions.

(a) If, upon the conclusion of an adjudicatory hearing, the court determines that the material allegations of the petition are established, it shall announce its ruling. The findings of fact upon which it bases its determination may also be announced or reserved for entry by the court in an order as provided in these Rules. In cases concerning any minor who has violated any federal, state, or local law or municipal ordinance, or any person under 21 years of age who has violated any such law or ordinance before becoming 18 years of age, findings of fact shall not be necessary. If, after such a determination, the dispositional hearing is not held immediately and the minor is in detention or shelter care, the court shall determine whether the minor shall be released or continued in detention, shelter care or the least restrictive alternative available.

(b) In certification proceedings and permanent deprivation cases, the court shall enter findings of fact and conclusions of law with specific reference to each statutory requirement considered, setting forth the complete basis for its determination. Such findings and conclusions may be prepared by counsel at the direction of the court, but shall be reviewed and modified as deemed appropriate by the court prior to the court's acceptance and signing of the documents submitted by counsel.

(c) The court may at any time during or at the conclusion of any hearing, dismiss a petition and terminate the proceedings relating to the minor if such action is in the interest of justice and the welfare of the minor. The court shall dismiss any petition which has not been proven.

(d) After the dispositional hearing, the court shall enter an appropriate order or decree of disposition.

(e) Adjudication of a petition alleging abuse, neglect, or dependency of a child shall be conducted also in accordance with Utah Code Section ~~78-3a-308~~ 78A-6-309 and Section ~~78-3a-309~~ 78A-6-310.

(f) Adjudication of a petition to review the removal of a child from foster care shall be conducted also in accordance with Utah Code Section ~~78-3a-315~~ 78A-6-318.

Rule 46. Disposition hearing.

(a) Disposition hearings may be separate from the hearing at which the petition is proved or may follow immediately after that portion of the hearing at which the allegations of the petition are proved. Disposition hearings shall be conducted in an informal manner to facilitate the opportunity for all participants to be heard.

(b) The court may receive any information that is relevant to the disposition of the case including reliable hearsay and opinions. Counsel for the parties are entitled to examine under oath the person who prepared the pre-disposition report if such person is reasonably available. The parties are entitled to compulsory process for the appearance of any person, including character witnesses, to testify at the hearing. A minor's parent or guardian may address the court regarding the disposition of the case, and may address other issues with the permission of the court.

(c) After the disposition hearing, the court shall enter an appropriate order. After announcing its order, the court shall advise any party who is present and not represented by counsel of the right to appeal the court's decision.

(d) The disposition order made and entered by the court shall be reduced to writing and a copy mailed or furnished to the minor, and to the parent, guardian or custodian of a child, or counsel for the minor and parent, guardian or custodian, if any, the prosecuting attorney, the guardian ad litem, and any agency or person affected by the court's order. The disposition order may be prepared by counsel at the direction of the court, but shall be reviewed and modified as deemed appropriate by the court prior to the court's acceptance and signing of submission.

(e) Disposition of a petition alleging abuse, neglect, or dependency of a child shall be conducted also in accordance with Utah Code Section ~~78-3a-118~~ 78A-6-117, ~~Section 78-3a-310~~ 78A-6-109, and Section ~~78-3a-311~~ 78A-6-312.

Rule 47. Reviews and modification of orders.

(a) Reviews.

(a)(1) At the time of disposition in any case wherein a minor is placed on probation, under protective supervision or in the legal custody of an individual or agency, the court shall also order that the individual supervising the minor or the placement, submit a written report to the court at a future date and appear personally, if directed by the court, for the purpose of a court review of the case. If a date certain is not scheduled at the time of disposition, notice by mail of such review shall be given by the petitioner, if the review is a mandatory review, or by the party requesting the review to the supervising agency not less than 5 days prior to the review. Such notice shall also be given to the guardian ad litem, if one was appointed.

(a)(2) No modification of a prior dispositional order shall be made at a report review that would have the effect of further restricting the rights of the parent, guardian, custodian or minor, unless the affected parent, guardian custodian or minor waives the right to a hearing and stipulates in open court or in writing to the modification. If a guardian ad litem is representing the minor, the court shall give a copy of the report to the guardian prior to the report review.

(b) Review hearings.

(b)(1) Any party in a case subject to review may request a review hearing. The request must be in writing and the request shall set forth the facts believed by the requesting party to warrant a review by the court. If the court determines that the alleged facts, if true, would justify a modification of the dispositional order, a review hearing shall be scheduled with notice, including a copy of the request, to all other parties. The court may schedule a review hearing on its own motion.

(b)(2) The court may modify a prior dispositional order in a review hearing upon the stipulation of all parties and upon a finding by the court that such modification would not be contrary to the best interest of the minor and the public.

(b)(3) The court shall not modify a prior order in a review hearing that would further restrict the rights of the parent, guardian, custodian or minor if the modification is objected to by any party prior to or in the review hearing. The court shall schedule the case for an evidentiary hearing and require that a motion for modification be filed with notice to all parties in accordance with Section 78-3a-903-78A-6-1106.

(b)(4) Any individual, agency or institution vested with temporary legal custody or guardianship must make a motion for a review hearing at the expiration of 18 months from the date of the placement order as provided in Section 78-3a-516.

(b)(5) All cases which require periodic review hearings under ~~Title 78, Chapter 3a~~ Title 78A Chapter 6 shall be scheduled for court review not less than once every six months from the date of disposition.

(c) Disposition reviews. Upon the petition of any agency, individual or institution vested with legal custody or guardianship by prior court order, the court shall conduct a review hearing to determine if the prior order should remain in effect. Notice of the hearing, along with a copy of the petition, must be provided to all parties not less than 5 days prior to the hearing.

(d) Review of a case involving abuse, neglect, or dependency of a minor shall be conducted also in accordance with Section ~~78-3a-118~~ 78A-6-117, Section ~~78-3a-312~~, 78A-6-314 and Section ~~78-3a-313~~ 78A-6-315.

(e) Intervention plans.

(e)(1) In all cases where the disposition order places temporary legal custody or guardianship of the minor with an individual, agency, or institution, a proposed intervention plan shall be submitted by the probation department when probation has been ordered; by the agency having custody or guardianship; or by the agency providing protective supervision, within 30 days following the date of disposition. This intervention plan shall be updated whenever a substantial change in conditions or circumstances arises.

(e)(2) In cases where both parents have been permanently deprived of parental rights, the intervention plan shall identify efforts made by the child placing agency to secure the adoption of the minor and subsequent review hearings shall be held until the minor has been adopted or permanently placed.

(f) Progress reports.

(f)(1) A written progress report relating to the intervention plan shall be submitted to the court and all parties by the agency, which prepared the intervention plan at least two working days prior to the review hearing date.

(f)(2) The progress report shall contain the following:

(f)(2)(i) A review of the original conditions, which invoked the court's jurisdiction.

(f)(2)(ii) Any significant changes in these conditions.

(f)(2)(iii) The number and types of contacts made with each family member or other person related to the case.

(f)(2)(iv) A statement of progress toward resolving the problems identified in the intervention plan.

(f)(2)(v) A report on the family's cooperation in resolving the problems.

(f)(2)(vi) A recommendation for further order by the court.

(g) In substantiation proceedings, a party may file a motion to set aside a default judgment or dismissal of a substantiation petition for failure to appear, within thirty days after the entry of the default judgment or dismissal. On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party from a default judgment or dismissal if the court finds good cause for the party's failure to appear. The filing of a motion under this Subdivision does not affect the finality of a judgment or suspend its operation.

Rule 49. Adoptions.

Adoption procedures in juvenile court shall be conducted in accordance with Utah Code Ann. § 78-30-1 et seq.

Rule 50. Presence at hearings.

(a) In abuse, neglect, and dependency cases the court shall exclude all persons who do not have a direct interest in the proceedings except as provided for by Utah Code Section ~~78-3a-115~~ 78A-6-114 and Section ~~78-3a-115~~ 78A-6-114.1. If a motion is made to deny any person access to any part of a hearing, the parties to the hearing, including the person challenged, may address the issue by proffer, but are not entitled to an evidentiary hearing. A person denied access to a proceeding may petition the Utah Court of Appeals under Utah Rule of Appellate Procedure 19. Proceedings shall not be stayed pending appeal. As provided for by Utah Code Section ~~78-3a-116~~ 78A-6-115, a person may file a petition requesting a copy of a record of the proceedings, setting forth the reasons for the request. Upon a finding of good cause by the Court and payment of a fee, the person shall receive an audio recording of a proceeding. The Court may place under seal information received in an open proceeding.

(b) In delinquency cases the court shall admit all persons who have a direct interest in the case and may admit persons requested by the parent or legal guardian to be present.

(c) In delinquency cases in which the minor charged is 14 years of age or older, the court shall admit any person unless the hearing is closed by the court upon findings on the record for good cause if:

(c)(1) the minor has been charged with an offense which would be a felony if committed by an adult; or

(c)(2) the minor is charged with an offense that would be a class A or B misdemeanor if committed by an adult and the minor has been previously charged with an offense which would be a misdemeanor or felony if committed by an adult.

(d) If any person, after having been warned, engages in conduct which disrupts the court, the person may be excluded from the courtroom. Any exclusion of a person who has the right to attend a hearing shall be noted on the record and the reasons for the exclusion given. Counsel for the excluded person has the right to remain and participate in the hearing.

(e) Videotaping, photographing or recording court proceedings shall be as authorized by the Code of Judicial Administration.

Rule 51. Violation of probation and contempt by a minor.

(a) Any minor may be found in contempt of court for an act committed in the presence of the court.

(b) Contempt proceedings for actions alleged to have been committed by a minor outside of the presence of the court may be commenced by either of the following methods:

(b)(1) Affidavit and order to show cause. An affidavit setting forth the facts of the alleged contempt shall be filed with the court. Based upon the affidavit, the court may execute an order to show cause ordering the minor's parent, guardian or custodian to produce the minor in court at a date, place, and time certain. A copy of the affidavit and the order to show cause shall be personally served upon the minor's parent, guardian or custodian if they fail to appear in response to service by mail.

(b)(2) Petition. A separate petition may be filed and may include an allegation of contempt or an allegation that the minor has violated a term of probation.

(c) Sanctions for contempt shall be as provided by Section ~~78-3a-901~~ 78A-6-1101 and ~~Title 78, Chapter 32, Title 78A Chapter 6~~ Contempt.

Rule 56. Expungement.

(a) Any person adjudicated in a minor's case may petition the court for an order expunging and sealing the records pursuant to Section ~~78-3a-905~~ 78A-6-1105.

(b) Upon filing the petition, the clerk shall calendar the matter for hearing and give at least 30 days notice to the prosecuting attorney, the Juvenile Probation Department, the agency with custody of the records, and any victim or victims representative of record on each adjudication identified by petitioner as being subject to expungement who have requested in writing notice of further proceedings. The petitioner shall obtain and file with the petition verifications from local law enforcement agencies in every community in which the petitioner has resided during the entire time period covered in the minor's record stating whether petitioner has a criminal record.

(c) If the court finds, upon hearing, that the conditions for expungement under Section ~~78-3a-905~~ 78A-6-1105 have been satisfied, the court shall order the records of the case sealed as provided in Section ~~78-3a-905~~ 78A-6-1105.

(d)(1) The clerk shall provide certified copies of the executed order of expungement to the petitioner and the petitioner shall deliver a copy of the order to each agency in the State of Utah identified in the order.

(d)(2) Upon receipt of the order, all law enforcement agencies shall remove from their files and computers any information pertaining to the petitioner that was generated while the petitioner was under the age of 18 years and seal said records.

(d)(3) The clerk shall gather in one file all of the juvenile court's legal, social, and administrative files. The file shall be sealed or securely fastened so that any attempt to open the file will be evident. The petitioner's full name, address and date of expungement shall be recorded on the file.

(d)(4) A person whose juvenile record consists solely of nonjudicial adjustments as provided for in Section ~~78-3a-502~~ 78A-6-602 may petition the court for expungement as provided for in Subsection ~~78-3a-905-(6)~~ 78A-6-1105 (6).

Rule 60. Judicial bypass procedure to authorize minor to consent to an abortion.

(a) Petition. An action for an order authorizing a minor to consent to an abortion without the consent of a parent or guardian is commenced by filing a petition. The petitioner is not required to provide an address or telephone number but must identify the county and state of residence. Blank petition forms will be available at all juvenile court locations. The court shall provide assistance and a private, confidential area for completing the petition.

(b) Filing. The petition may be filed in any county. No filing fee will be charged.

(c) Appointment of Counsel. If the petitioner is not represented by a private attorney, the juvenile court shall consider appointing an attorney under Utah Code Ann. § ~~78-3a-913~~ 78A-6-1111 and/or the Office of Guardian ad Litem under § ~~78-3a-912~~ 78A-6-902. If the court appoints an attorney, it may also appoint the Office of Guardian ad Litem. The clerk shall immediately notify any attorney appointed.

(d) Expedited Hearing. Upon receipt of the petition, the court shall schedule a hearing and resolve the petition within three days. The court may continue the hearing for no more than one day if the court determines that the additional time is necessary to gather and receive more evidence. The clerk shall immediately provide notice of the hearing date and time. The hearing shall be closed to everyone except the petitioner, the petitioner's attorney, the guardian ad litem, and any individual invited by the petitioner. The petitioner shall be present at the hearing. The hearing may be held in chambers if recording equipment or a reporter is available.

(e) Findings and Order. The court shall enter an order immediately after the hearing is concluded. The court shall grant the petition if the court finds by a preponderance of the evidence that one of the statutory grounds for dispensing with parental consent exists. Otherwise, the court shall deny the petition. If the petition is denied, the court shall inform the petitioner of her right to an expedited appeal to the Utah Court of Appeals. The court shall provide a copy of the order to individuals designated by the petitioner.

(f) Confidentiality. The petition and all hearings, proceedings, and records are confidential. Court personnel are prohibited from notifying a minor's parents, guardian, or custodian that a minor is pregnant or wants to have an abortion, or from disclosing this information to any member of the public.

(g) Appeal. A petitioner may appeal an order denying or dismissing a petition to bypass parental consent by filing a notice of appeal with the clerk of the juvenile court within the time allowed under Rule 4 of the Utah Rules of Appellate Procedure. The clerk shall immediately notify the clerk of the court of appeals that the notice of appeal has been filed.

(h) This rule supercedes all other procedural rules that might otherwise apply to actions filed under § 76-7-304.5



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MEMORANDUM

TO: Carol Verdoia
Katie Gregory
FROM: Paul Wake
SUBJECT: URJP Advisory Committee
DATE: April 29, 2008

For what it's worth, here are some notes.

UTAH RULES OF JUVENILE PROCEDURE

Section I. General Provisions

Rule

1. Scope and effective date.
2. Applicability of Rules of Civil Procedure and Criminal Procedure.
3. Style of pleadings and forms.
4. Time.
5. Definitions.

Section II. Detention; Warrants; Bail

6. Admission to detention without court order.
7. Warrants.
- 7A. Pick up orders.
8. Rights of minor while in detention.
9. Detention hearings; scheduling; hearing procedure.
10. Bail for non-resident minors.
11. Time limits on detention orders.

Section III. Shelter

12. Admission to shelter care.
13. Shelter hearings.

Section IV. Pre-petition Procedures

14. Reception of referral; preliminary determination.
15. Preliminary inquiry; informal adjustment without petition.

Section V. Petition; Service; Pre-Trial Pleadings; Discovery

16. Transfer of delinquency case for preliminary inquiry.
17. The petition.
18. Summons; service of process; notice.
19. Responsive pleadings and motions.
20. Discovery generally.
- 20A. Discovery in non-delinquency proceedings.

Section VI. Proceedings Under Sections 78-3a-602 and 78-3a-603

21. Warrant of arrest or summons in cases under Section 78-3a-602 and Section 78-3a-603.
22. Initial appearance and preliminary examination in cases under Section 78-3a-602 and Section 78-3a-603.
23. Hearing to waive jurisdiction and certify under Section 78-3a-603; bind over to district court.
- 23A. Hearing on conditions of Section 78-3a-602; bind over to district court.

Section VII. Proceedings Relating to Delinquency Matters

24. Arraignment.
25. Pleas.
26. Rights of minors in delinquency proceedings.
27. Fingerprinting, photographing, and regulating discovery; HIV testing.
- 27A. Admissibility of statements given by minors.
28. Scheduling of minors' cases.
29. Multiple county offenses.
- 29A. Visual recording of statement or testimony of

Rule

child victim or witness of sexual or physical abuse — Conditions of admissibility.

Section VIII. Citable Offenses, Truancy Offenses and Status Offenses

30. Citations; applicable offenses and procedures; bail.
31. Initiation of truancy proceedings.
32. Initiation of ungovernability and runaway cases.

Section IX. Proceedings Relating to Neglect, Abuse and Dependency and Related Non-Delinquency Matters

33. Preliminary orders and summary proceedings.
34. Pre-trial hearing in non-delinquency cases.
35. Pre-trial procedures.
36. Cases certified from district court.
37. Child protective orders.
- 37A. Visual recording of statement or testimony of child in abuse, neglect and dependency proceedings — Conditions of admissibility.

Section X. Proceedings Relating to Adults

38. Prosecution of adults.
39. Contempt of court.

Section XI. Trials

40. Order of presentation.
41. Burden of proof.
42. Exhibits.
43. Evidence.

Section XII. Adjudication and Judgment

44. Findings and conclusions.
45. Pre-disposition reports and social studies.
46. Disposition hearing.
47. Reviews and modification of orders.
48. New hearings.

Section XIII. Miscellaneous Rules

49. Adoptions.
50. Presence at hearings.
51. Violation of probation and contempt by a minor.
52. Appeals.
53. Appearance and withdrawal of counsel.
54. Continuances.
55. Transfer of minors who present a danger in detention.
56. Expungement.
57. Change of judge as a matter of right.
58. Victim rights.
59. Material witnesses.
60. Judicial bypass procedure to authorize minor to consent to an abortion.

SECTION I. GENERAL PROVISIONS

Rule 1. Scope and effective date.

(a) These rules shall govern procedures in the juvenile court.

(b) These rules are intended to provide a just, speedy, and efficient determination of the cases before the court and shall be construed to further those goals.

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and 78A-6-703

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Ignore for now

(c) These rules shall be known as the Utah Rules of Juvenile Procedure and may be cited as Utah R. Juv. P.

(d) When appropriate, the use of singular nouns and pronouns shall be construed to include the plural, and the use of plural nouns and pronouns shall be construed to include the singular.

(e) These rules shall take effect on January 1, 1995.

Rule 2. Applicability of Rules of Civil Procedure and Criminal Procedure.

(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.

(b) When the proceeding involves an offense which would be a criminal act if committed by an adult, only the Utah Rules of Criminal Procedure which have been specifically adopted by these rules shall apply.

(c) In substantiation proceedings, the procedure set forth in U.C.A. 63-46b-15(2) shall apply.

Rule 3. Style of pleadings and forms.

(a) Pleadings in the juvenile court include, but are not limited to, petitions, motions, and responsive pleadings. Pleadings and other papers filed with the juvenile court shall comply with Utah R. Civ. P. 10. Pleadings and other papers in cases certified from the district court shall show the juvenile court case number and the district court case number.

(b) Matters filed in the court shall be captioned as follows:

(b)(1) In minors' cases or private petition cases: "State of Utah, in the interest of _____, a minor under _____ years of age."

(b)(2) In cases of adults charged with any crime: "State of Utah, Plaintiff, vs. _____, Defendant."

(b)(3) In cases requesting protective orders: "_____, Plaintiff, vs. _____, Defendant."

(b)(4) In adoptions: "In the matter of the adoption of _____"

(b)(5) In cases certified from district court involving issues of custody, support and visitation: "State of Utah, in the interest of _____. In the matter of _____, Plaintiff, vs. _____, Defendant."

(c) Forms used in the juvenile court shall be those standardized and adopted by the Board of Juvenile Court Judges or the Judicial Council, and may be single spaced when so authorized.

Rule 4. Time.

(a) In computing time under these rules, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. When a period of time allowed is less than 11 days, without reference to any additional time under subsection (d), intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation.

(b) The court may, with or without motion or notice, for cause shown, order the time period enlarged if request is made before the period has expired. The court may consider a motion to grant an enlargement of a time period made after the period has expired, and may grant the motion, if there is a reasonable excuse for failure to act within the period.

(c) A written motion, other than one which may be heard ex parte, and notice of the hearing shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by these rules or by court order. An order fixing the period of time may for cause shown be made on an ex parte application. When the motion is supported by an affidavit, the affidavit shall be served with the motion, and opposing affidavits may be served not later than one day before the hearing unless otherwise ordered by the court.

(d) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed time period after the service of a notice or other paper upon the party and the notice or paper is served by mail, three days shall be added to the prescribed period as calculated under subsection (a). Saturdays, Sundays, and legal holidays shall be included in the computation of any three-day period under this subsection, except that if the last day of the three-day period is a Saturday, Sunday, or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, or a legal holiday.

Rule 5. Definitions.

Terms in these rules have the same definitions as provided in Section 62A-7-101 and Section 78-3a-103 unless a different definition is given here. As used in these rules:

(a) "Abuse, neglect, and dependency" refers to proceedings under Section 78-3a-301 et seq. and 78-3a-401 et seq.

(b) "Adjudication" means a finding by the court, incorporated in a judgment or decree, that the facts alleged in the petition have been proved.

(c) "Adult" means a person 18 years of age or over, except that persons 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121 shall be referred to as "persons."

(d) "Arraignment" means the hearing at which a minor is informed of the allegations and the minor's rights, and is given an opportunity to admit or deny the allegations.

(e) "Court records" means all juvenile court legal records, all juvenile court social and probation records, and all other juvenile court records prepared, owned, received, or maintained by the court.

(f) "Disposition" means any order of the court, after adjudication, pursuant to Section 78-3a-118.

(g) "Petition" means the document containing the material facts and allegations upon which the court's jurisdiction is based.

(h) "Preliminary inquiry" means an investigation and study conducted by the probation department upon the receipt of a referral to determine whether the interests of the public or of the minor require that further action be taken.

(i) "Substantiation proceedings" means juvenile court proceedings in which an individual or the Division of Child and Family Services seeks a judicial finding of a claim of substantiated, unsubstantiated or

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and
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without merit with regards to a DCFS finding of severe child abuse or neglect for purposes of the Division's Licensing Information System.

(j) "Ungovernability" means the condition of a minor who is beyond the control of the parent/guardian, custodian or school authorities, to the extent that the minor's behavior or condition endangers the minor's own welfare or the welfare of others.

SECTION II. DETENTION; WARRANTS; BAIL

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.

Rule 7. Warrants.

(a) The issuance and execution of a warrant is governed by Title 77, Chapter 7, Arrest, Section 78-3a-106, Section 78-3a-112, Section 78-3a-113, and Utah Rule of Criminal Procedure 40.

(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 believe that the minor has run away or escaped from the minor's 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 a juvenile detention or shelter facility or an adult detention facility, if appropriate, 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.

(e) 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.

(f) 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.

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

(h) *The juvenile court to retain and file copies — Documents sealed for twenty days — Forwarding of record to court with jurisdiction.*

(h)(1) At the time of issuance, the juvenile court shall retain and seal a copy of the search warrant, the application and all affidavits or other recorded testimony on which the warrant is based and shall, within a reasonable time, file those sealed documents in court files which are secured against access by the public. Those documents shall remain sealed until twenty days following the issuance of the warrant unless that time is extended or reduced. Unsealed search warrant documents shall be filed in the court record.

(h)(2) Sealing and retention of the file may be accomplished by:

(h)(2)(A) placing paper documents or storage media in a sealed envelope and filing the sealed envelope in a court file not available to the public;

(h)(2)(B) storing the documents by electronic or other means under the control of the court in a manner reasonably designed to preserve the integrity of the documents and protect them against disclosure to the public during the period in which they are sealed; or

(h)(2)(C) filing through the use of an electronic filing system operated by the State of Utah which system is designed to transmit accurate copies of the documents to the court file without allowing alteration to the documents after issuance of the warrant by the juvenile court.

Rule 7A. Pick up orders.

On verbal request from a probation officer or other authorized individual, a pick up order may be issued telephonically during nonbusiness hours or under exigent circumstances when it appears necessary for the protection of the community or the minor and shall be supported by an affidavit from the requesting authority the next court business day.

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

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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 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.

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:

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

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

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

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

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

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

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

(a)(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

(a)(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:

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

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

(g)(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.

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.

Rule 11. Time limits on detention orders.

(a) Preliminary inquiries and investigations shall be promptly conducted in cases involving minors or

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dered held in detention. Orders for detention are not of indefinite duration and shall be limited as follows.

(a)(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.

(a)(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.

(a)(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.

SECTION III. SHELTER

Rule 12. Admission to shelter care.

Admission to shelter care is governed by Utah Code Annotated Title 62A, Chapter 4a, Part 2, Child Welfare Services and by Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

Rule 13. Shelter hearings.

(a) Shelter hearings shall be conducted in accordance with Section 78-3a-306 and Section 78-3a-307.

(b) The Division of Child and Family Services shall file with the court at or before the shelter hearing a copy of the notice form required by Section 78-3a-306 and the notice required by Section 78-3a-306.

(c) At the beginning of the shelter hearing, the court shall advise all persons present of the information submitted to the court as a basis for the admission of the minor into shelter care and of the scope and purpose of the hearing.

(d) The court may receive any information, including hearsay and opinions, that is relevant to the issue of whether it is safe to release the minor to the parent, guardian or custodian. Privileged communications may be admitted only in accordance with the rules of evidence.

(e) If the parent, guardian, or custodian of the minor cannot be notified as provided in Section 78-3a-306, a shelter hearing may be held without the minor's parent, guardian or custodian. Upon a finding that a continuance is necessary for the protection of the minor, for the accumulation or presentation of necessary evidence, to protect the rights of a party, or for other good cause, the court may continue the hearing in accordance with Section 78-3a-306.

(f) If the minor is not released, the order for continued shelter shall be furnished to the agency responsible for shelter care of minors in the county. Orders for continued shelter care shall be of definite duration and may be extended upon review at a hearing in conformity with Section 78-3a-306 and this rule.

(g) The release of the minor from shelter care may be requested by the court, a party, or any person interested in the minor at any time on the grounds that

the conditions giving rise to the placement no longer exist or no longer justify continuing shelter. Such request shall be considered by the court at a hearing in conformity with Section 78-3a-306 and this rule.

SECTION IV. PRE-PETITION PROCEDURES

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.

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.

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(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 90 days without authorization by the court, and then for no more than an additional 90 days.

SECTION V. PETITION; SERVICE; PRE-TRIAL PLEADINGS; DISCOVERY

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

(a)(2) 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;

(a)(3) there are circumstances in the case which require adjudication in the county of occurrence in the interest of justice; or

(a)(4) 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.

Rule 17. The petition.

(a) *Delinquency cases.*

(a)(1) The petition shall allege the offense as it is designated by statute or ordinance, and shall state: in concise terms, the definition of the offense together with a designation of the section or provision of law allegedly violated; the name, age and date of birth of the minor; the name and residence address of the minor's parents, guardian or custodian; the date and place of the offense; and the name or identity of the victim, if known.

(a)(2) The petition shall be verified and may be filed by a designated intake officer or the prosecuting attorney upon information and belief on behalf of the officer or person who referred the minor.

(b) *Neglect, abuse, dependency, permanent termination and ungovernability cases.*

(b)(1) The petition shall set forth in plain and concise language the jurisdictional basis as designated by statute, the facts supporting the court's jurisdiction, and the relief sought. The petition shall state: the name, age and residence of the minor; the name and residence of the minor's parent, guardian or custodian; and if the parent, guardian or custodian is unknown, the name and residence of the nearest known relative or the person or agency exercising physical or legal custody of the minor.

(b)(2) The petition must be verified and statements made therein may be made on information and belief.

(b)(3) A petition filed by a state human services agency shall either be prepared or approved by the office of the attorney general. When the petitioner is an employee or agent of a state agency acting in his or her official capacity, the name of the agency shall be set forth and the petitioner shall designate his or her title.

(c) *Other cases.*

(c)(1) Protective orders. Petitions may be filed on forms available from the court clerk and must conform to the format and arrangement of such forms.

(c)(2) Expungements. The petition shall state: the name, age and residence of the minor. The petition shall state the date and nature of each adjudication which the petitioner wishes to expunge. Petitions for expungement must be accompanied by an original criminal history report obtained from the Bureau of Criminal Identification and proof of service upon the County Attorney, or within a prosecution district, the District Attorney for each jurisdiction in which an adjudication occurred prior to being filed with the Clerk of Court. Petitions for expungement must meet all of the criteria of Utah Code Ann. § 78-3a-905.

(c)(3) Petitions in other proceedings shall conform to Utah Rule of Civil Procedure 10, except that in adoption proceedings, the petition must be accompanied by

78A-6-1105

a certified copy of the Decree of Permanent Termination.

Rule 18. Summons; service of process; notice.

(a) *Summons.* Upon the filing of a petition, the clerk, unless otherwise directed by the court, shall schedule an initial hearing in the case.

(a)(1) Summons may be issued by the petitioning attorney. If the petitioning attorney does not issue a summons, summons shall be issued by the clerk in accordance with Section 78-3a-110. The summons shall conform to the format prescribed by these rules.

(a)(2) *Content of the summons.*

(a)(2)(A) *Abuse, neglect, and dependency cases.* The summons shall contain the name and address of the court, the title of the proceeding, the type of hearing scheduled, and the date, place and time of the hearing. It shall state the time within which the respondent is required to answer the petition, and shall notify the respondent that in the case of the failure to do so, judgment by default may be rendered against the respondent. It shall also contain an abbreviated reference to the substance of the petition.

(a)(2)(B) *Other cases.* The summons shall contain the name and address of the court, the title of the proceeding, the type of hearing scheduled, and the date, place and time of the hearing. It shall also contain an abbreviated reference to the substance of the petition. In proceedings against an adult pursuant to Section 78-3a-801, the summons shall conform to the Utah Rules of Criminal Procedure and be issued by the prosecuting attorney.

(a)(3) The summons shall be directed to the person or persons who have physical care, control or custody of the minor and require them to appear and bring the minor before the court. If the person so summoned is not the parent, guardian or custodian of the minor, a summons shall also be issued to the parent, guardian or custodian. If the minor or person who is the subject of the petition has been emancipated by marriage or is 18 years of age or older at the time the petition is filed, the summons may require the appearance of the minor only, unless otherwise ordered by the court. In neglect, abuse and dependency cases, unless otherwise directed by the court, the summons shall not require the appearance of the subject minor.

(a)(4) No summons shall be necessary as to any party who appears voluntarily or who files a written waiver of service with the clerk prior to or upon appearance at the hearing.

(b) *Service.*

(b)(1) Except as otherwise provided by these rules or by statute, service of process and proof of service shall be made by the methods provided in Utah Rule of Civil Procedure 4. Service of process shall be made by the sheriff of the county where the service is to be made, by a deputy, by a process server, or by any other suitable person appointed by the court. However, when the court so directs, an agent of the Department of Human Services may serve process in a case in which the Department is a party. A party or party's attorney may serve another party at a court hearing. The record of the proceeding shall reflect the service of the document and shall constitute the proof of service.

(b)(2) Personal service may be made upon a parent, guardian or custodian and upon a minor in that person's legal custody by delivering to a parent, guardian or custodian a copy of the summons with a copy of

the petition attached. If a minor is in the legal custody or guardianship of an agency or person other than a parent, service shall also be made by delivering to the legal custodian a copy of the summons with a copy of the petition attached and notice shall be given to the parent as provided in paragraph (d). Service upon a minor who has attained majority by marriage as provided in Utah Code Ann. § 15-2-1 or upon court order shall be made in the manner provided in the Utah Rules of Civil Procedure.

(b)(3)(A) Service may be made by any form of mail requiring a signed receipt by the addressee. Service is complete upon return to court of the signed receipt.

(b)(3)(B) Service of process may be made by depositing a copy thereof in the United States mail addressed to the last known address of the person to be served. Any person who appears in court in response to mailed service shall be considered to have been legally served.

(b)(4) In any proceeding wherein the parent, guardian or custodian cannot after the exercise of reasonable diligence be located for personal service, the court may proceed to adjudicate the matter subject to the right of the parent, guardian or custodian to a rehearing, except that in certification proceedings brought pursuant to Section 78-3a-603 and in proceedings seeking permanent termination of parental rights, the court shall order service upon the parent, guardian or custodian by publication. Any rehearing shall be requested by written motion.

(b)(5) Service shall be completed at least 48 hours prior to the hearing. If the summons is for the permanent termination of parental rights, service shall be completed at least ten days before the hearing.

(c) *Service by publication.* Service by publication shall be authorized by the procedure and in the form provided by Utah Rule of Civil Procedure 4.

(d) *Notice.*

(d)(1) Notice of the time, date and place of any further proceedings, after an initial appearance or service of summons, may be given in open court or by mail to any party. Notice shall be sufficient if the clerk deposits the notice in the United States mail, postage pre-paid, to the address provided by the party in court or the address at which the party was initially served.

(d)(2) Notice for any party represented by counsel shall be given to counsel for the party.

(e) *Additional parties.* Whenever it appears to the court that a person who is not the parent, guardian or custodian should be made subject to the jurisdiction and authority of the court in a minor's case, upon the motion of any party or the court's own motion, the court may issue a summons ordering such person to appear. Upon the appearance of such person, the court may enter an order making such person a party to the proceeding and may order such person to comply with reasonable conditions as a part of the disposition in the minor's case. Upon the request of such person, the court shall conduct a hearing upon the issue of whether such person should be made a party.

Rule 19. Responsive pleadings and motions.

(a) If the petition is not resolved at pretrial, an answer to abuse, neglect, and dependency petitions, petitions to terminate parental rights, or petitions for a change of custody must be filed ten days after pretrial or twenty-five days after service of the petition whichever comes first. The answer may be made orally at a

pretrial hearing but otherwise must comply with Utah R. Juv. P. 34. Default against a party who fails to appear in person or by counsel at pretrial, or who fails to file an answer may be entered pursuant to Utah R. Juv. P. 34.

(b) Before answering, the respondent may move to dismiss the petition as insufficient to state a claim upon which relief can be granted. The court shall hear all parties and rule on said motion before requiring a party to answer.

(c) A party may file a written pleading or motion concerning the allegations of the petition before or at the hearing. Such pleading or a true and complete copy thereof shall be made available to the other parties of record. At the request of a party or on the court's own motion, the court shall set the matter for hearing to allow either party to respond to the issues raised in the pleading or motion.

(d) The court shall entertain and hear motions on any matter properly petitioned before it, and such motion practice shall be conducted according to the pertinent provisions of Utah Rules of Civil Procedure 7 and 12.

(e) Decisions on motions filed without a request for a hearing or by stipulation of the parties shall be rendered by the court without a hearing unless the court otherwise orders, in which event the clerk shall set a date and time for the hearing and notify the parties of record. Any party requesting a hearing must do so within 5 days of receipt of the motion or a hearing will be deemed waived.

(f) In those cases where a hearing is granted, a courtesy copy of the motion, memorandum of points and authorities and all documents supporting or opposing the motion shall be delivered to the judge hearing the matter at least two working days before the date set for hearing. Copies shall be clearly marked as courtesy copies and indicate the date and time of the hearing.

(g) All dispositive motions shall be heard at least fourteen days before the scheduled trial date unless otherwise ordered by the court. No dispositive motions shall be heard after that date without leave of the court.

(h) If a hearing has been requested and the non-moving party fails to file a memorandum in opposition, the moving party may withdraw the request or the court on its own motion may strike the request and decide the motion without oral argument.

(i) Motion for expedited hearing.

(i)(1) A party may request an expedited hearing on any motion or petition filed with the court by filing a verified motion. The verified motion shall state with particularity the issues to be considered at the expedited hearing, the reasons an expedited hearing is necessary, and what efforts, if any, have been made to notify the other party of the request for expedited hearing.

(i)(2) The court may grant a motion for expedited hearing on an ex parte basis.

(i)(3) A motion for expedited hearing shall be granted if the facts alleged in the motion demonstrate good cause for an expedited hearing and otherwise appears appropriate.

(i)(4) If the court grants the motion for expedited hearing, the hearing shall be set within ten days of the order.

(i)(5) If the motion for an expedited hearing is granted, the moving party shall serve notice of hearing upon all interested parties.

(j) Requests for review hearings or modification of court custody orders by agents of the Department of Human Services or one of its divisions, following the adjudication of a petition in which the department or division is a party, or by any other person or agency who is a party of record, shall be by written motion. Such motions shall state with particularity the legal basis for the motion and relief sought.

(k) In matters certified in the juvenile court from the district court, pleadings and motions shall be governed by the Utah Rules of Civil Procedure.

(l) In delinquency, traffic and adult criminal matters, motion practice shall be governed by the Utah Rules of Criminal Procedure.

Rule 20. Discovery generally.

(a) Discovery involving adjudications of delinquency, offenses by adults against minors, and proceedings brought pursuant to Section 78-3a-602 and Section 78-3a-603 shall be conducted in accordance with Utah R. Cr. P. 16, except where limited by these rules, the Code of Judicial Administration and the Juvenile Court Act.

(b) In substantiation cases, no later than thirty days prior to trial, parties shall provide to each other information necessary to support its claims or defenses unless otherwise ordered by the court.

(c) 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. Discovery in non-delinquency proceedings.

(a) *Scope of discovery.* The scope of discovery is governed by Utah R. Civ. P. 26(b)(1). Unless ordered by the court, no discovery obligation may be imposed upon a minor.

(b) *Disclosures.* Within 14 days of the answer, a party shall, without awaiting a discovery request, make reasonable efforts to provide to other parties information necessary to support its claims or defenses, unless solely for impeachment or unless the identity of a person is protected by statute, identifying the subjects of the information. The party shall inform the other party of the existence of such records.

(c) *Depositions upon oral examination.* After the filing of the answer, a party may take the testimony of any person, including a party, by deposition upon oral examination without leave of the court. The attendance of witnesses may be compelled by subpoena as provided in Utah R. Civ. P. 45. Depositions shall be conducted pursuant to Utah R. Civ. P. 30(b), (c), (d), and (g). The record of the deposition shall be prepared pursuant to Utah R. Civ. P. 30(e) and (f) except the deponent will have seven days to review the transcript or recording under Utah R. Civ. P. 30(e). The use of depositions in court proceedings shall be governed by Utah R. Civ. P. 32.

(d) *Interrogatories.* After the filing of the answer, interrogatories may be used pursuant to Utah R. Civ. P. 33 except all answers shall be served within 14 days after service of the interrogatories.

(e) *Production of documents and things.* After the filing of the answer, requests for production of documents may be used pursuant to Utah R. Civ. P. 34 except all responses shall be served within 14 days after service of the requests.

78A-6-702
78A-6-703

(f) *Physical and mental examination of persons.* Physical and mental examinations may be conducted pursuant to Utah R. Civ. P. 35.

(g) *Requests for admission.* Except as modified in this paragraph, requests for admission may be used pursuant to Utah R. Civ. P. 36. The matter shall be deemed admitted unless, within 14 days after service of the request, the party to whom the request is directed serves upon the requesting party a written answer or objection addressed to the matter, signed by the party or by his attorney. Upon a showing of good cause, any matter deemed admitted may be withdrawn or amended upon the court's own motion or the motion of any party. Requests for admission can be served anytime following the filing of the answer.

(h) *Experts.*

(h)(1) *Adjudication trials.* Any person who has been identified as an expert whose opinions may be presented at the adjudication trial must be disclosed by the party intending to present the witness at least ten days prior to the trial or hearing unless modified by the court. If ordered by the court, a summary of the proposed testimony signed by the party or the party's attorney shall be filed at the same time.

(h)(2) *Termination of parental rights trials.* Any person who has been identified as an expert whose opinions may be presented at the termination of parental rights trial must be disclosed by the party intending to present the witness at least thirty days prior to the trial or hearing unless modified by the court. Unless an expert report has been provided, a summary of the proposed testimony signed by the party or the party's attorney shall be filed at the same time.

(h)(3) A party may not present the testimony of an expert witness without complying with this paragraph (h) unless the court determines that good cause existed for the failure to disclose or to provide the summary of proposed testimony.

(i) *Protective orders.* Any party or person from whom discovery is sought may request a protective order pursuant to Utah R. Civ. P. 26(c).

(j) *Supplementation of responses.* Parties have a duty to supplement responses and disclosures pursuant to Utah R. Civ. P. 26(e).

(k) *Failure to cooperate in discovery.* As applicable, failure to cooperate with discovery shall be governed by Utah R. Civ. P. 37.

(l) No discovery can be taken that will interfere with the statutorily imposed time frames.

SECTION VI. PROCEEDINGS UNDER SECTIONS 78-3a-602 AND 78-3a-603

Rule 21. Warrant of arrest or summons in cases under Section 78-3a-602 and Section 78-3a-603.

(a) Upon the return of an indictment alleging the commission of a felony governed by Section 78-3a-602 or Section 78-3a-603, the court shall cause to issue either a warrant for the arrest or a summons for the appearance of the minor.

(b) Upon the filing of an information alleging the commission of a felony governed by Section 78-3a-602 or Section 78-3a-603, if it appears from the information, or from any affidavit filed with the information, that there is probable cause to believe that an offense governed by these sections has been committed and that the minor has committed it, the court shall cause

to issue either a warrant for the arrest or a summons for the appearance of the minor.

(c) If it appears to the court that the minor will appear on a summons and there is no substantial danger of a breach of the peace, or injury to persons or property, or danger to the community, a summons may issue in lieu of a warrant of arrest to require the appearance of the minor. A warrant of arrest may issue in cases where the minor has failed to appear in response to a summons or citation or thereafter when required by the court. If a warrant of arrest is issued, the court shall state on the warrant:

(c)(1) the name of the law enforcement agency in the county or municipality with jurisdiction over the offense charged; and

(c)(2) whether the minor is to be taken to court, jail, or a detention center.

(d)(1) The warrant shall be executed by a peace officer. The summons may be served by a peace officer or any person authorized to serve a summons in a civil action.

(d)(2) The warrant may be executed or the summons may be served at any place within the state.

(d)(3) The warrant shall be executed by the arrest of the minor. The officer need not possess the warrant at the time of the arrest, but upon request shall show the warrant to the minor as soon as practicable. If the officer does not possess the warrant at the time of the arrest, the officer shall inform the minor of the offense charged and of the fact that the warrant has been issued. The summons shall be served as in civil actions, or by mailing it to the minor's last known address.

(d)(4) The person executing a warrant or serving a summons shall make return thereof to the juvenile court as soon as practicable. At the request of the prosecuting attorney, any unexecuted warrant shall be returned to the court for cancellation.

Rule 22. Initial appearance and preliminary examination in cases under Section 78-3a-602 and Section 78-3a-603.

(a) When a summons is issued in lieu of a warrant of arrest, the minor shall appear before the court as directed in the summons.

(b) When any peace officer or other person makes an arrest of a minor without a warrant, the minor shall be taken to a detention center pending a detention hearing, which shall be held as provided by these rules. When any peace officer makes an arrest of a minor with a warrant, the minor shall be taken to the place designated on the warrant. If an information has not been filed, one shall be filed without delay in the court with jurisdiction over the offense.

(c) If a minor is arrested in a county other than where the offense was committed the minor shall without unnecessary delay be returned to the county where the crime was committed and shall be taken before a judge of the juvenile court.

(d) The court shall, upon the minor's first appearance, inform the minor:

(d)(1) of the charge in the information or indictment and furnish the minor with a copy;

(d)(2) of any affidavit or recorded testimony given in support of the information and how to obtain them;

(d)(3) of the right to retain counsel or have counsel appointed by the court without expense if the minor is unable to obtain counsel;

78A-6-703

78A-6-702

(d)(4) of rights concerning detention, pretrial release, and bail in the event the minor is bound over to stand trial in district court; and

(d)(5) that the minor is not required to make any statement, and that any statements made may be used against the minor in a court of law.

(e) The court shall, after providing the information under paragraph (d) and before proceeding further, allow the minor reasonable time and opportunity to consult counsel and shall allow the minor to contact any attorney by any reasonable means, without delay and without fee.

(f)(1) The minor may not be called on to enter a plea. During the initial appearance, the minor shall be advised of the right to a preliminary examination and, as applicable, to a certification hearing pursuant to Section 78-3a-603 or to the right to present evidence regarding the conditions established by Section 78-3a-602. If the minor waives the right to a preliminary examination and, if applicable, a certification hearing, and if the prosecuting attorney consents, the court shall order the minor bound over to answer in the district court.

(f)(2) If the minor does not waive a preliminary examination, the court shall schedule the preliminary examination. The time periods of this rule may be extended by the court for good cause shown. The preliminary examination shall be held within a reasonable time, but not later than ten days after the initial appearance if the minor is in custody for the offense charged and the information is filed under Section 78-3a-602. The preliminary examination shall be held within a reasonable time, but not later than 30 days after the initial appearance if:

(f)(2)(A) the minor is in custody for the offense charged and the information is filed under Section 78-3a-603; or

(f)(2)(B) the minor is not in custody.

(f)(3) A preliminary examination may not be held if the minor is indicted. If the indictment is filed under Section 78-3a-603, the court shall proceed in accordance with Rule 23 to hear evidence presented by the prosecutor regarding the factors of Section 78-3a-603 for waiver of jurisdiction and certification, unless the hearing is waived. If the indictment is filed under Section 78-3a-602, the court shall proceed in accordance with Rule 23A to hear evidence presented by the minor regarding the conditions of Section 78-3a-602, if requested.

(g) A preliminary examination shall be held under the rules and laws applicable to criminal cases tried before a court. The state has the burden of proof and shall proceed first with its case. At the conclusion of the state's case, the minor may testify under oath, call witnesses, and present evidence. The minor may cross-examine adverse witnesses.

(h) If from the evidence the court finds probable cause to believe that the crime charged has been committed and that the minor has committed it, and if the information is filed under Section 78-3a-603, the court shall proceed in accordance with Rule 23 to hear evidence presented by the prosecutor regarding the factors of Section 78-3a-603 for waiver of jurisdiction and certification.

(i) If from the evidence the court finds probable cause to believe that the crime charged has been committed and that the minor has committed it, and if the information is filed under Section 78-3a-602, the court shall proceed in accordance with Rule 23A to

hear evidence presented by the minor regarding the conditions of Section 78-3a-602.

(j) The finding of probable cause may be based on hearsay in whole or in part. Objections to evidence on the ground that it was acquired by unlawful means are not properly raised at the preliminary examination.

(k) If the court does not find probable cause to believe that the crime charged has been committed or that the minor committed it, the court shall dismiss the information and discharge the minor. The court may enter findings of fact, conclusions of law, and an order of dismissal. The dismissal and discharge do not preclude the state from instituting a subsequent prosecution for the same offense.

(l) At a preliminary examination, upon request of either party, and subject to Title 77, Chapter 38, Victim Rights, the court may:

(1)(1) exclude witnesses from the courtroom;

(1)(2) require witnesses not to converse with each other until the preliminary examination is concluded; and

(1)(3) exclude spectators from the courtroom.

Rule 23. Hearing to waive jurisdiction and certify under Section 78-3a-603; bind over to district court.

(a)(1) Upon the filing of a criminal indictment or information and motion to waive jurisdiction under Section 78-3a-603, the court shall order that a full investigation of the minor's social history and background be made by the court's probation department.

(a)(2) The investigation may include, but shall not be limited to: the minor's delinquency history, the minor's response to rehabilitative and correctional efforts; the minor's educational history, social history and status; a psychological evaluation and assessment, and any other matter ordered by the court.

(a)(3) A report of the investigation shall be prepared and made available to the parties or to counsel, if represented, and to the minor's parent, guardian or custodian, as early as feasible but in any case at least 48 hours prior to the hearing. Written reports and other materials relating to the minor's mental, physical, educational and social history and other relevant information are governed by the Rules of Evidence. The court may require, and shall require if requested by a party, that any person preparing the report or materials be present for direct and cross examination.

(b)(1) After a finding of probable cause in accordance with Rule 22, the court shall hear evidence and determine whether it would be contrary to the best interests of the minor or of the public for the court to retain jurisdiction. The state has the burden to prove by a preponderance of the evidence the factors required in Section 78-3a-603 to be considered by the court.

(b)(2) At the conclusion of the state's case, the minor may testify under oath, call witnesses, and present evidence on the factors required by Section 78-3a-603 to be considered by the court. The minor may cross-examine adverse witnesses.

(c) The court shall make findings on each factor for which evidence is presented. If the motion to waive jurisdiction and certify is granted, the court shall indicate which factor or factors were relied upon as a basis for the decision. If the court finds by a preponderance of the evidence that it would be contrary to the best interests of the minor or of the public for the court to retain jurisdiction, the court shall enter an order

directing the minor to answer the charges in district court.

(d)(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 may order the minor held in a detention center or released in accordance with Rule 9. The court shall enter the appropriate written order.

(d)(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.

(d)(3) The jurisdiction of the court shall terminate as provided by statute.

(e) If the court finds probable cause to believe that a felony has been committed and that the minor committed it but does not find that it would be contrary to the best interests of the minor or of the public for the court to retain jurisdiction, the court shall proceed upon the information as if it were a petition.

Rule 23A. Hearing on conditions of Section 78-3a-602; bind over to district court.

(a) If a criminal indictment under Section 78-3a-602 alleges the commission of a felony, the court shall, upon the request of the minor, hear evidence and determine whether the conditions of paragraph (c) exist.

(b) If a criminal information under Section 78-3a-602 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 as to the existence of the following conditions as provided by Section 78-3a-602:

(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.

(d) At the conclusion of the minor's case, the state may call witnesses and present evidence on the conditions required by Section 78-3a-602. The minor may cross-examine adverse witnesses.

(e) If the court does not find by clear and convincing evidence that the conditions required by Section 78-3a-602 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 may order the minor held in a detention center or released in accordance with Rule 9. 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 78-3a-602 are present, the court shall proceed upon the information as if it were a petition.

SECTION VII. PROCEEDINGS RELATING TO DELINQUENCY MATTERS

Rule 24. Arraignment.

(a) An arraignment shall be held within 30 days from the filing of the petition, or within 10 days if the minor is held in detention, unless otherwise ordered by the court for good cause shown.

(b) At the arraignment the court shall inform the minor and the minor's parent, guardian or custodian:

(b)(1) of their right to further time, unless waived, if service was not accomplished as provided in Rule 18;

(b)(2) of the nature and elements of each allegation contained in the petition;

(b)(3) of their right to retain counsel, or if indigent, to have counsel appointed by the court;

(b)(4) of their right to a reasonable time to consult with counsel before entering a plea;

(b)(5) of the minor's right against self-incrimination; and

(b)(6) that the state has the burden to prove the allegations of the petition beyond a reasonable doubt.

(c) After providing the information set forth in paragraph (b) and ascertaining that all necessary parties are present, the court shall call upon the minor to admit or deny the truth of the allegations by plea.

Rule 25. Pleas.

(a) A minor may tender a denial of the alleged offense, may tender an admission of the alleged offense, or may, with the consent of the court, tender a plea of no contest which shall have the effect set forth in Utah Code § 77-13-2. If the minor declines to plead, the court shall enter a denial. Counsel for the minor may enter a denial in the absence of the minor, parent, guardian or custodian.

(b) When denial is entered, the court shall set the matter for a trial hearing or for a pre-trial conference.

(c) The court may refuse to accept an admission or a plea of no contest and may not accept such plea until the court has found:

(c)(1) that the right to counsel has been knowingly waived if the minor is not represented by counsel;

(c)(2) that the plea is voluntarily made;

(c)(3) that the minor and, if present, the minor's parent, guardian, or custodian, have been advised of, and the minor has knowingly waived, the right against compulsory self-incrimination, the right to trial, the right to confront and cross-examine opposing witnesses, the right to testify and to have process for the attendance of witnesses;

(c)(4) that the minor and, if present, the minor's parent, guardian, or custodian have been advised of the consequences which may be imposed after acceptance of the plea of guilty or no contest;

(c)(5) that there is a factual basis for the plea; and

(c)(6) where applicable, the provisions of paragraph (e) have been met.

(d) The minor may be allowed to tender an admission to a lesser included offense, or an offense of a

lesser degree or a different offense which the court may enter, after amending the petition.

(e) Plea discussions and agreements are authorized in conformity with the provisions of Utah Rule of Criminal Procedure 11. The prosecuting attorney may enter into discussions and reach a proposed plea agreement with the minor through the minor's counsel, or if the minor is not represented by counsel, directly with the minor. However, the prosecuting attorney may not enter into settlement discussions with a minor not represented by counsel unless the parent, guardian or custodian is advised of the discussion and given the opportunity to be present.

(f) A minor may tender an admission which is not entered by the court for a stated period of time. Conditions may be imposed upon the minor in that period of time and successful completion of the conditions set shall result in dismissal upon motion. If the minor fails to complete the conditions set, the admission shall be entered and the court shall proceed to order appropriate dispositions.

Rule 26. Rights of minors in delinquency proceedings.

(a) A minor who is the subject of a delinquency petition filed pursuant to Section 78-3a-104 shall be advised of the following rights:

(a)(1) to appear in person and to defend in person or by counsel;

(a)(2) to receive a copy of the petition which contains the allegations against the minor;

(a)(3) to testify in the minor's own behalf;

(a)(4) to be confronted by the witnesses against the minor;

(a)(5) to have compulsory process to ensure the attendance of witnesses in the minor's behalf;

(a)(6) to be represented by counsel at all stages of the proceedings and if indigent, to have appointed counsel;

(a)(7) to remain silent and to be advised that anything the minor says can and will be used against the minor in any court proceedings; and

(a)(8) to appeal any adjudication against the minor in the manner provided by law.

(b) If the minor or the minor's parent, guardian or custodian is found to be indigent and request counsel, the court shall appoint counsel at public expense in the manner provided by law. Where necessary to protect the interest of the minor, the court may appoint counsel without the request of the minor or parent, guardian or custodian.

(c) If the parent, guardian or custodian of a minor is found not to be indigent, but does not or will not retain counsel for the minor and the minor has no means to retain counsel, the court may appoint counsel at public expense. However, the court may order, after giving the parent, guardian or custodian reasonable opportunity to be heard, that the parent, guardian or custodian reimburse the county for the cost of appointed counsel, in whole or in part, depending on ability to pay.

(d) Parties other than the minor have the right to be represented by counsel retained by them and to participate as provided in these rules.

(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 minor under 14 years of age may not waive such rights outside of the presence of the minor's parent, guardian or custodian.

Rule 27. Fingerprinting, photographing, and regulating discovery; HIV testing.

(a) *Minors in custody.* A motion to photograph or fingerprint a minor under the age of 14 who is taken into custody for the alleged commission of an offense that would be a felony if committed by an adult, may be granted upon such terms as the court shall order. The court may make any further order it deems necessary as to the disposition of any fingerprints and limitations regarding their disclosure or distribution pursuant to Section 78-3a-904 and Section 78-3a-905.

(b) *Discovery procedures with minors.* Upon motion and notice to the minor's counsel, or to the minor's parent, guardian or custodian in the absence of counsel, and upon a showing that the discovery sought will be of material aid in determining whether the minor committed the alleged offense, the court may order a minor to submit to one or more of the investigative procedures listed in Utah Rule of Criminal Procedure 16. Whenever the personal appearance of the minor is required for any ordered discovery procedure, the prosecuting attorney shall inform the minor's parent, guardian or custodian and counsel of the time and place of the procedure.

(c) *Medical supervision.* Blood tests shall be conducted under medical supervision. The court may require medical supervision for any other test ordered pursuant to this rule when the court deems such supervision necessary. Upon motion, the court may order the minor's appearance delayed for a reasonable time or may order that tests take place at the minor's residence or some other convenient place.

(d) *Notice of results of disclosure.* The prosecuting attorney shall make the results of the discovery procedures provided by this rule available within 5 days from the date the results become known to the minor, unless otherwise ordered by the court.

(e) *HIV testing.* HIV testing shall be conducted as provided in Section 78-3a-904.

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 minor is under 14 years of age, the minor is presumed not adequately mature and experienced to knowingly and voluntarily waive or understand a minor'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.

Rule 28. Scheduling of minors' cases.

(a) Proceedings concerning alleged violations of law shall be scheduled and conducted separately for each minor except as provided hereafter.

(b) Where more than one minor is involved in the same law violation or criminal episode, and all such minors are apprehended and charged at or about the same time, proceedings may be consolidated and heard together before the same judge. However, if any party objects to consolidation on the record or in writing, remaining proceedings shall be heard separately as to the objecting minor. The court may, for good cause shown, order that any such separate hearings be held with respect to disposition whether requested or not.

(c) Proceedings with respect to minors in the same family or household, even when they do not involve allegations of the same law violations or criminal episode, may be consolidated unless objected to by any party. In that event, the court shall schedule separate hearings to protect the interest of the objecting party as appears appropriate.

(d) Where a minor is named in a petition which alleges violations of the law and in a separate petition alleging other grounds for jurisdiction, such as dependency or neglect, the petitions may be consolidated.

Rule 29. Multiple county offenses.

(a) When a minor is charged in a petition with the commission of offenses in more than one county, all proceedings except the trial may take place on all charges in the county in which the petition is filed.

(b) If a minor denies some or all of the charges for those offenses committed outside the county in which the arraignment takes place, the court may enter such denial and set the matter for a pre-trial conference, or refer such charges to the prosecuting attorney for the county in which the offenses are alleged to have occurred. If the offenses are alleged to have occurred in a county which is within the same judicial district, the arraigning court may order that the matter be scheduled for trial in that county.

(c) Out of county charges may be included in a proposed pleas agreement as provided in Rule 25. Such charges shall not be dismissed by the court except on motion of the prosecuting attorney for the county where the offenses are alleged to have occurred, or on the court's own motion as part of a plea agreement approved by the court.

(d) Where charges are referred to another county for further proceedings, the clerk of the court where the petition was filed shall transmit all pertinent documents, including the petition, summons, minutes and orders to the receiving court clerk. The receiving court shall proceed with the case as if the petition had been originally filed and arraignment held in that court.

Rule 29A. Visual recording of statement or testimony of child victim or witness of sexual or physical abuse — Conditions of admissibility.

(a) In any delinquency proceeding or proceeding under Section 78-3a-602 or Section 78-3a-603 concerning a charge of child abuse or of a sexual offense against a child, the oral statement of a victim or witness younger than 14 years of age may be recorded prior to the filing of a petition, and upon motion and for good cause shown is admissible as evidence in any

court proceeding regarding the offense if all of the following conditions are met:

(a)(1) no attorney for either party is in the child's presence when the statement is recorded;

(a)(2) the recording is visual and aural and is recorded on film or videotape or by other electronic means;

(a)(3) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and the recording is accurate and has not been altered;

(a)(4) each voice in the recording is identified;

(a)(5) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify and be cross-examined by either party;

(a)(6) the defendant and the defendant's attorney are provided an opportunity to view the recording before it is shown to the court;

(a)(7) the court views the recording and determines that it is sufficiently reliable and trustworthy and that the interest of justice will best be served by admission of the statement into evidence; and

(a)(8) the child is available to testify and to be cross-examined at trial, either in person or as provided by Subsection (b) or (c), or the court determines that the child is unavailable as a witness to testify at trial under the Utah Rules of Evidence. For purposes of this subsection "unavailable" includes a determination, based on medical or psychological evidence or expert testimony, that the child would suffer serious emotional or mental strain if required to testify at trial.

(b) In any proceeding concerning a charge of child abuse or of a sexual offense against a child, the court may order, upon motion of the prosecution and for good cause shown, that the testimony of any witness or victim younger than 14 years of age be taken in a room other than the courtroom. All of the following conditions shall be observed:

(b)(1) Only the judge, attorneys for each party, persons necessary to operate equipment, and a counselor or therapist whose presence contributes to the welfare and emotional well-being of the child may be with the child during the testimony. The defendant may also be present during the child's testimony unless the defendant consents to be hidden from the child's view, or the court determines that the child will suffer serious emotional or mental strain if required to testify in the defendant's presence, or that the child's testimony will be inherently unreliable if required to testify in the defendant's presence. If the court makes that determination, or if the defendant consents:

(b)(1)(A) the defendant may not be present during the child's testimony;

(b)(1)(B) the court shall ensure that the child cannot hear or see the defendant;

(b)(1)(C) the court shall advise the child prior to testifying that the defendant is present at the trial and may listen to the child's testimony;

(b)(1)(D) the defendant shall be permitted to observe and hear the child's testimony, and the court shall ensure that the defendant has a means of two-way telephonic communication with defense counsel during the child's testimony; and

(b)(1)(E) the conditions of a normal court proceeding shall be approximated as nearly as possible.

(b)(2) Only the judge and attorneys may question the child.

(b)(3) As much as possible, persons operating equipment shall be confined to an adjacent room or behind a screen or mirror so the child cannot see or hear them.

(c) In any case concerning a charge of child abuse or of a sexual offense against a child, the court may order, upon motion of the prosecution and for good cause shown, that the testimony of any witness or victim younger than 14 years of age be taken outside the courtroom and be recorded. That testimony is admissible as evidence, for viewing in any court proceeding regarding the charges if the provisions of Subsection (b) are observed, in addition to the following provisions:

(c)(1) the recording is both visual and aural and recorded on film or videotape or by other electronic means;

(c)(2) the recording equipment is capable of making an accurate recording, the operator is competent, and the recording is accurate and is not altered;

(c)(3) each voice on the recording is identified; and

(c)(4) each party is given an opportunity to view the recording before it is shown in the courtroom.

(d) If the court orders that the testimony of a child be taken under Subsection (b) or (c), the child may not be required to testify in court at any proceeding where the recorded testimony is used.

SECTION VIII. CITABLE OFFENSES, TRUANCY OFFENSES AND STATUS OFFENSES

Rule 30. Citations; applicable offenses and procedures; bail.

(a) A citation issued pursuant to Section 78-3a-503 shall be sufficient to invoke the jurisdiction of the court in any offense listed in that section.

(b) *Procedure.* Whenever a citation is issued pursuant to Section 78-3a-503, a copy of the citation filed with the court may be used in lieu of a petition upon which the minor may appear and admit the offense, upon which the court may make a disposition, or upon which the court may accept bail in lieu of appearance. If the minor fails to appear on a citation or fails to tender the fine as bail in cases where bail is permitted in lieu of appearance, a petition or order to show cause may be filed and further proceedings held as provided in these rules.

(c) Where a citation has been filed with the court for an offense, the minor cited shall be allowed to post bail without further court appearance except as provided in this rule.

(d) The bail amount for each such offense shall be included in a written notice of bailable offenses in accordance with the bail/fine schedule approved by the Judicial Council. The bail amount may immediately be forfeited as a fine and shall be deemed a conviction of the offense charged if the notice has been given to the cited minor and the notice advises the minor and the minor's parent, guardian or custodian that payment of the fine constitutes an admission of guilt.

(e) A juvenile court district may, or where required by statute shall, designate repeat offenses for which an appearance or additional bail is required.

Rule 31. Initiation of truancy proceedings.

(a) The referral of a minor alleged to come within the jurisdiction of the court as habitually truant shall be accompanied by a statement setting forth all actions

taken and efforts made, if required, by school personnel and officials in compliance with Utah Code Ann. § 53A-11-103. A preliminary inquiry shall be conducted by an intake officer. At the preliminary inquiry a determination shall be made as to whether the school has made efforts under Utah Code Ann. § 53A-11-103.

(b) Except as otherwise provided by law, when a petition is filed following a preliminary inquiry, the petition shall allege what efforts have been made by the school under Utah Code Ann. § 53A-11-103.

Rule 32. Initiation of ungovernability and runaway cases.

(a) Proceedings involving a minor alleged to be beyond control of the minor's parent, guardian or custodian or school authorities, or alleged to be a runaway, shall be initiated by petition.

(b) A petition shall be accepted by the clerk only if it is filed by the Division of Child and Family Services or a contract agency of the Division.

(c) The petition must allege the earnest and persistent efforts by the agency, the minor's out of control behavior, the behavior or other condition that endangers the minor's welfare or the welfare of others, and the actions taken which have failed to correct the behavior. In the alternative, the allegations may be made by affidavit accompanying the petition.

SECTION IX. PROCEEDINGS RELATING TO NEGLECT, ABUSE AND DEPENDENCY AND RELATED NON-DELINQUENCY MATTERS

Rule 33. Preliminary orders and summary proceedings.

(a) *Pre-adjudication evaluations and examinations.*

(a)(1) On the motion of the petitioner or any other party in open court in a post-petition hearing, or by written motion filed with the court with a proposed order attached, the court may, prior to adjudication, order that the minor be examined or evaluated by a physician, surgeon, psychiatrist, psychologist or other competent specialist, and may order that the minor be placed in a hospital or other facility for such purpose. The motion shall state the reasons for the examination or evaluation and the need for an examination prior to adjudication.

(a)(2) The court may order a similar examination of the minor's parent, guardian or custodian who is a party to the proceedings and whose ability to care for the minor is at issue, or where it is alleged that the physical, mental or emotional condition of the person is a factor in the alleged neglect, abuse or dependency of the minor. Such an order shall be issued only after notice and a hearing unless waived in writing or on the record.

(b) *Non-resident runaway cases.*

(b)(1) When a referral is filed by the Division of Child and Family Services alleging that a minor found within the jurisdiction of the court is a runaway from the minor's parent, guardian or custodian and should be returned to the minor's residence, the court may issue an ex parte order placing temporary custody of the minor with the Division of Child and Family Services for the limited purpose of facilitating and paying for such return transportation. The court shall not enter such order unless it appears to the court that the parent, guardian or custodian is unable within a reasonable time to provide or arrange return transpor-

tation or that the minor should not be held pending return arrangements by an agency with authority to take the minor into custody.

(b)(2) When a referral is filed alleging that a minor who is under the continuing jurisdiction of the court has left the State of Utah without permission or authority of the parent, guardian or custodian, and has been taken into custody in another state, the court may issue an ex parte order of temporary custody to the Division of Child and Family Services or other agency for the limited purpose of facilitating and paying for the return transportation of the minor. Such order shall be entered only if it appears to the court that the parent, guardian or custodian is unable or unwilling to provide transportation. Upon motion of the Division of Child and Family Services, the court shall conduct a hearing, unless waived by the parent, guardian or custodian, and may order that the parent, guardian or custodian reimburse the State of Utah for the cost of the minor's transportation and care.

(c) *Emergency medical care.* Upon the petition of an interested person or agency and the sworn testimony of one or more reputable physicians alleging that emergency medical or surgical treatment of a minor is immediately necessary and that necessary authorization cannot with reasonable diligence be obtained from the minor's parent, guardian or custodian, the court may issue an ex parte order authorizing such treatment pending service of notice upon the parent, guardian or custodian. The testimony of the physician may be presented to the court by recorded telephonic communication, and if not recorded, the substance shall be reduced to writing by the court for the record.

(d) *Restraining orders.* At any time after the filing of a petition, on motion of any party and good cause shown, the court may issue a temporary restraining order directing a party to refrain from harassing, abusing, annoying, visiting or interfering with any other party or the subject minor. The court shall schedule a hearing on the motion within 10 days unless the hearing date is extended by the court for good cause shown for an additional 10 day period, or unless the party against whom the order is directed waives such hearing or consents to an extension for a longer period. In the hearing, the restraining order may be vacated, extended as originally issued or modified.

Rule 34. Pre-trial hearing in non-delinquency cases.

(a) Petitions in non-delinquency cases shall be scheduled for an initial pre-trial hearing.

(b) The pre-trial hearing shall be scheduled on the nearest court calendar date available in all cases where the subject minor is in temporary shelter care custody in accordance with Section 78-3a-308. *78A-6-308*

(c) In the pre-trial hearing, the court shall advise the parent, guardian or custodian of the minor's rights and of the authority of the court in such cases. In the hearing or in any continuance of the hearing, the parent, guardian or custodian shall answer the petition in open court.

(d) Before answering, the respondent may move to dismiss the petition as insufficient to state a claim upon which relief can be granted. The court shall hear all parties and rule on said motion before requiring a party to answer.

(e) A respondent may answer by admitting or denying the specific allegations of the petition, or by declining to admit or deny the allegations. Allegations not specifically denied by a respondent shall be deemed true.

(f) Except in cases where the petitioner is seeking a permanent deprivation of parental rights, the court may enter the default of any respondent who fails to appear in person or by counsel after having been served with a summons or notice pursuant to Rule 18. Allegations relating to any party in default shall be deemed admitted unless the court, on its own motion, or the motion of any party not in default, shall require evidence in support of the petition. Within the time limits set forth in Utah R. Civ. P. 60(b), upon the written motion of any party in default and a showing of good cause, the court may set aside an entry of default.

Rule 35. Pre-trial procedures.

(a) At the commencement of the initial pre-trial hearing, if the parent, guardian or custodian appears pro se, the court shall advise the parent, guardian or custodian of the right to the assistance of counsel at all stages of the proceeding including the right to apply to the court for the appointment of counsel if indigent. If appointment of counsel is requested, the court may proceed to examine the parent, guardian or custodian concerning eligibility for appointed counsel or the court may continue the pre-trial hearing and require the parent, guardian or custodian to file an affidavit or other evidence as deemed appropriate by the court for a determination as to eligibility for appointed counsel.

(b) If the parent, guardian or custodian waives the right to counsel and elects to proceed pro se, the court shall explain the nature of the action sought by the petitioner. *78A-6-902*

(c) Pursuant to Section 78-3a-912, the court shall appoint a guardian ad litem to represent any minor named in a petition alleging child abuse, child sexual abuse, neglect, or dependency which results in a judicial proceeding.

(d) The court in its discretion or upon motion of a party may schedule further pre-trial hearings or conferences as may be necessary to expedite adjudication or disposition, consider discovery issues, formulate or simplify trial issues or facilitate possible settlement negotiations. *78A-6-104*

Rule 36. Cases certified from district court.

(a) *Pleadings and hearings before juvenile court.*

(a)(1) When an issue of support, custody or visitation has been certified by the district court to the juvenile court pursuant to Section 78-3a-105, the juvenile court shall schedule the matter for a pre-trial hearing and notify all parties. At such hearing, the juvenile court shall consider issues relating to discovery, custody evaluations and interim orders and shall schedule a trial hearing on all issues to be tried.

(a)(2) All pleadings and orders prepared subsequent to the certification shall contain the caption for the case in both courts.

(a)(3) The rules concerning discovery, admissibility of evidence and standard of proof applicable to such proceedings in the district court shall be followed in the juvenile court.

(a)(4) The juvenile court may appoint a guardian ad litem for the child in such proceedings and assess the cost to one or both parties.

(b) *Modification of prior district court decrees and orders.*

(b)(1) Orders and decrees entered by the juvenile court in proceedings certified from the district court for a determination of issues regarding custody, support and visitation shall constitute a modification of any prior district court order or decree concerning such issues involving the same minor. Certified copies of such juvenile court orders and decrees shall contain the captions of both courts and be filed with the clerk of the district court for inclusion in the district court file.

(b)(2) In cases where a support, custody or visitation determination has been made by the district court and jurisdiction of the district court is continuing, and an order has been entered in a subsequent juvenile court proceeding that is inconsistent with the prior district court order, on motion of any party or upon the juvenile court's own motion, a certified copy of the juvenile court's order shall be filed with the clerk of the district court.

Rule 37. Child protective orders. 18B-77201

(a) Child protective order proceedings are governed by Section 78-3h-101 et seq. Protective order proceedings may be commenced as an independent action by filing a petition. Any interested person may file a petition for a protective order on behalf of a child as provided by statute. The petitioner shall first make a referral to the division. If an immediate ex parte protective order is requested pending a hearing, the petition or an accompanying affidavit shall set forth the facts constituting good cause for issuance of the ex parte order.

(b) If the petitioner is the agent of a public or private agency, including a law enforcement agency, the petition shall set forth the agent's title and the name of the agency that the petitioner represents.

(c) Petitions for protective orders by a public agency shall not be accepted by the clerk unless reviewed and approved by the attorney for the public agency, whose office shall represent the petitioner in such cases.

(d) The petitioner, if a private person or agency, and the respondent may be represented by retained counsel. Counsel may be appointed by the court for an indigent respondent who is a parent, guardian or custodian of the child alleged to be abused or threatened with abuse. If the court finds in the hearing that the allegations of the petition have been established, the court may assess petitioner's costs and attorney fees against the respondent. If the court finds that the petition is without merit, the respondent's costs and attorneys fees may be assessed against petitioner.

(e) If an ex parte order has been issued, the hearing must be held within 20 days excluding Saturdays, Sundays and legal holidays.

Rule 37A. Visual recording of statement or testimony of child in abuse, neglect and dependency proceedings — Conditions of admissibility.

(a) In any abuse, neglect and dependency proceedings, the oral statement of a child may be recorded, and upon motion and for good cause shown is admissible as evidence in any court proceeding regarding the petition if all of the following conditions are met:

(a)(1) no attorney for any party is in the child's presence when the statement is recorded;

(a)(2) the recording is visual and aural and is recorded on film or videotape or by other electronic means;

(a)(3) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and the recording is accurate and has not been altered;

(a)(4) each voice in the recording is identified;

(a)(5) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify and be cross-examined by either party;

(a)(6) the parties and the parties' attorneys are provided an opportunity to view the recording before it is shown to the court;

(a)(7) the court views the recording and determines that it is sufficiently reliable and trustworthy and that the interest of justice will best be served by admission of the statement into evidence; and

(a)(8) the child is available to testify and to be cross-examined at trial, either in person or as provided by Subsection (b) or (c), or the court determines that the child is unavailable as a witness to testify at trial under the Utah Rules of Evidence. For purposes of this subsection "unavailable" includes a determination, based on medical or psychological evidence or expert testimony, that the child would suffer serious emotional or mental strain if required to testify at trial.

(b) In any abuse, neglect and dependency proceedings, the court may order that the testimony of any child may be taken in a room other than the courtroom. All of the following conditions shall be observed:

(b)(1) Only the judge, attorneys for each party, persons necessary to operate equipment, and a counselor or therapist whose presence contributes to the welfare and emotional well-being of the child may be with the child during the testimony. The parties may also be present during the child's testimony unless a party consents to be hidden from the child's view, or the court determines that the child will suffer serious emotional or mental strain if required to testify in the party's presence, or that the child's testimony will be unreliable if required to testify in the party's presence. If the court makes that determination, or if the party consents:

(b)(1)(A) the party may not be present during the child's testimony;

(b)(1)(B) the court shall ensure that the child cannot hear or see the party;

(b)(1)(C) the court shall advise the child prior to testifying that the party is present at the trial and may listen to the child's testimony;

(b)(1)(D) the party shall be permitted to observe and hear the child's testimony, and the court shall ensure that the party has a means of two-way telephonic communication with counsel during the child's testimony;

(b)(1)(E) normal court procedures shall be approximated as nearly as possible;

(b)(2) Only the judge and attorneys may question the child unless otherwise approved by the judge;

(b)(3) As much as possible, persons operating equipment shall be confined to an adjacent room or behind a screen or mirror so the child cannot see or hear them.

(c) In any abuse, neglect and dependency proceedings, the court may order that the testimony of any child be taken outside the courtroom and be recorded. That testimony is admissible as evidence, for viewing in any court proceeding regarding the allegations if the

provisions of Subsection (b) are observed, in addition to the following provisions:

(c)(1) the recording is both visual and aural and recorded on film or videotape or by other electronic means;

(c)(2) the recording equipment is capable of making an accurate recording, the operator is competent, and the recording is accurate and is not altered;

(c)(3) each voice on the recording is identified; and

(c)(4) each party is given an opportunity to view the recording before it is shown in the courtroom.

(d) If the court orders that the testimony of a child be taken under Subsection (b) or (c), the child may not be required to testify in court at any proceeding where the recorded testimony is used.

SECTION X. PROCEEDINGS RELATING TO ADULTS

Rule 38. Prosecution of adults.

(a) All cases in which the juvenile court has jurisdiction over a criminal offense committed by an adult shall be commenced by an information filed by the prosecuting attorney of the county where the offense is alleged to have occurred. The information and all court proceedings shall be in accordance with the Utah Rules of Criminal Procedure, except that a jury shall consist of four persons. If a jury trial is demanded by the defendant, the court may transfer the case to a district court.

(b) The court may permit diversion of an adult criminal offense pursuant to Utah Code Ann. § 77-2-1 et seq. upon recommendation of the prosecuting attorney.

Rule 39. Contempt of court.

(a) Any parent, guardian, or custodian of a minor who willfully fails or refuses to produce the minor in court in response to a summons or order of the court may be proceeded against for contempt of court pursuant to Title 78, Chapter 32, Contempt. Any person made the subject of a court order who willfully fails or refuses to comply with the order may be proceeded against for contempt of court.

(b) Contempt proceedings involving conduct occurring out of the presence of the court shall be initiated by a motion for an order by the court that the person alleged to be in contempt be ordered to appear and show cause why he should not be found in contempt and punished as provided by law. Such motion must be accompanied by an affidavit setting forth the conduct alleged to constitute the contempt. Such motion may be filed by any party to the proceeding or by an officer of the court.

(c) The court may issue a warrant for the arrest of any person who has failed to appear in response to a summons. Upon appearance, the court may find such person in contempt of court unless it appears that there was reasonable cause for the failure to obey the summons.

SECTION XI. TRIALS

Rule 40. Order of presentation.

(a) In all hearings where the allegations of the petition are in issue, testimony and evidence in support of the allegations shall be elicited by the prosecut-

ing attorney or the attorney for the petitioner. All other parties shall also have the right to present evidence and testimony. If the allegations or any of them are not controverted or denied, but testimony or evidence appears necessary in the interest of justice, such testimony may be elicited by the court or any party.

(b) The order of presentation of the evidence shall proceed as in other courts of record. Following the presentation of evidence, the parties shall be afforded an opportunity to address the court in summary and for the purpose of assisting the court in interpreting and construing the evidence.

(c) Findings of fact may be announced at the conclusion of the trial or may be reserved for entry by the court at a later time consistent with Rule 3-104(3)(L) of the Code of Judicial Administration. Following adjudication, the court may proceed immediately to disposition or may continue the case to another date for disposition hearing.

Rule 41. Burden of proof.

The burden of proof in matters brought before the juvenile court shall be as follows:

(a) criminal and delinquency cases must be proved beyond a reasonable doubt;

(b) neglect, abuse and dependency cases and cases involving the permanent deprivation of parental rights must be proved by clear and convincing evidence unless otherwise provided by law;

(c) matters regarding child custody, support, and visitation certified by the district court to the juvenile court must be proved by a preponderance of the evidence; and

(d) motions and matters regarding protective orders must be proved by a preponderance of the evidence.

Rule 42. Exhibits.

At all hearings and adjudications, exhibits shall be handled in accordance with Code of Judicial Administration Rule 4-206.

Rule 43. Evidence.

(a) Except as set forth herein or as otherwise provided by law, the juvenile court shall adhere to the Utah Rules of Evidence.

(b) All oral testimony before the court shall be given under oath unless waived by the parties, and may be narrative in form or by stipulated proffer of testimony or as otherwise provided by these Rules.

(c) Written notice of the intent to offer a statement under Utah Code Section 78-3a-116(5) must be given to all parties at least five days prior to the adjudication hearing in which the statement is going to be offered. The court may, upon good cause shown, waive the requirement for five days notice.

SECTION XII. ADJUDICATION AND JUDGMENT

Rule 44. Findings and conclusions.

(a) If, upon the conclusion of an adjudicatory hearing, the court determines that the material allegations of the petition are established, it shall announce its ruling. The findings of fact upon which it bases its determination may also be announced or reserved for entry by the court in an order as provided in these

Rules. In cases concerning any minor who has violated any federal, state, or local law or municipal ordinance, or any person under 21 years of age who has violated any such law or ordinance before becoming 18 years of age, findings of fact shall not be necessary. If, after such a determination, the dispositional hearing is not held immediately and the minor is in detention or shelter care, the court shall determine whether the minor shall be released or continued in detention, shelter care or the least restrictive alternative available.

(b) In certification proceedings and permanent deprivation cases, the court shall enter findings of fact and conclusions of law with specific reference to each statutory requirement considered, setting forth the complete basis for its determination. Such findings and conclusions may be prepared by counsel at the direction of the court, but shall be reviewed and modified as deemed appropriate by the court prior to the court's acceptance and signing of the documents submitted by counsel.

(c) The court may at any time during or at the conclusion of any hearing, dismiss a petition and terminate the proceedings relating to the minor if such action is in the interest of justice and the welfare of the minor. The court shall dismiss any petition which has not been proven.

(d) After the dispositional hearing, the court shall enter an appropriate order or decree of disposition.

(e) Adjudication of a petition alleging abuse, neglect, or dependency of a minor shall be conducted also in accordance with Utah Code Section 78-3a-308 and Section 78-3a-309. *78-6-310 78A-6-309*

(f) Adjudication of a petition to review the removal of a child from foster care shall be conducted also in accordance with Utah Code Section 78-3a-315. *78A-6-318*

Rule 45. Pre-disposition reports and social studies.

(a) Unless waived by the court, a pre-disposition report shall be prepared in all proceedings which result in the filing of a petition. The pre-disposition report shall be deemed waived, unless otherwise ordered, in all traffic, fish and game and boating cases, and other bailable offenses. The report shall conform to the requirements in the Code of Judicial Administration.

(b) In delinquency cases, investigation of the minor and family for the purpose of preparing the pre-disposition report shall not be commenced before the allegations have been proven without the consent of the parties.

(c) The pre-disposition report shall not be submitted to or considered by the judge before the adjudication of the charges or allegations to which it pertains. If no pre-disposition report has been prepared or completed before the dispositional hearing, or if the judge wishes additional information not contained in the report, the dispositional hearing may be continued for a reasonable time to a date certain.

(d) For the purpose of determining proper disposition of the child and for the purpose of establishing the fact of neglect or dependency, written reports and other material relating to the child's mental, physical, and social history and condition may be received in evidence and may be considered by the court along with other evidence. The court may require that the person

who wrote the report or prepared the material appear as a witness if the person is reasonably available.

(e) The pre-dispositional report and social studies shall be provided by the author to the minor's counsel, the prosecuting attorney, the guardian ad litem, and counsel for the parent, guardian or custodian of the minor at least two days prior to the dispositional hearing. When the minor or the minor's parent, guardian or custodian are not represented by counsel, the court may limit inspection of reports by the minor or the minor's parent, guardian or custodian if the court determines it is in the best interest of the minor to do so.

Rule 46. Disposition hearing.

(a) Disposition hearings may be separate from the hearing at which the petition is proved or may follow immediately after that portion of the hearing at which the allegations of the petition are proved. Disposition hearings shall be conducted in an informal manner to facilitate the opportunity for all participants to be heard.

(b) The court may receive any information that is relevant to the disposition of the case including reliable hearsay and opinions. Counsel for the parties are entitled to examine under oath the person who prepared the pre-disposition report if such person is reasonably available. The parties are entitled to compulsory process for the appearance of any person, including character witnesses, to testify at the hearing. A minor's parent or guardian may address the court regarding the disposition of the case, and may address other issues with the permission of the court.

(c) After the disposition hearing, the court shall enter an appropriate order. After announcing its order, the court shall advise any party who is present and not represented by counsel of the right to appeal the court's decision.

(d) The disposition order made and entered by the court shall be reduced to writing and a copy mailed or furnished to the minor and parent, guardian or custodian, or counsel for the minor and parent, guardian or custodian, if any, the prosecuting attorney, the guardian ad litem, and any agency or person affected by the court's order. The disposition order may be prepared by counsel at the direction of the court, but shall be reviewed and modified as deemed appropriate by the court prior to the court's acceptance and signing of submission.

(e) Disposition of a petition alleging abuse, neglect, or dependency of a minor shall be conducted also in accordance with Utah Code Section 78-3a-118, Section 78-3a-310, and Section 78-3a-311. *78A-6-117 78A-6-109 78A-6-312*

Rule 47. Reviews and modification of orders.

(a) Reviews.

(a)(1) At the time of disposition in any case wherein a minor is placed on probation, under protective supervision or in the legal custody of an individual or agency, the court shall also order that the individual supervising the youth or the placement, submit a written report to the court at a future date and appear personally, if directed by the court, for the purpose of a court review of the case. If a date certain is not scheduled at the time of disposition, notice by mail of such review shall be given by the party requesting the review not less than 5 days prior to the review. Such notice shall

also be given to the guardian ad litem, if one was appointed.

(a)(2) No modification of a prior dispositional order shall be made at a report review that would have the effect of further restricting the rights of the parent, guardian, custodian or minor, unless the affected parent, guardian custodian or minor waives the right to a hearing and stipulates in open court or in writing to the modification. If a guardian ad litem is representing the minor, the court shall give a copy of the report to the guardian prior to the report review.

(b) *Review hearings.*

(b)(1) Any party in a case subject to review may request a review hearing. The request must be in writing and the request shall set forth the facts believed by the requesting party to warrant a review by the court. If the court determines that the alleged facts, if true, would justify a modification of the dispositional order, a review hearing shall be scheduled with notice, including a copy of the request, to all other parties. The court may schedule a review hearing on its own motion.

(b)(2) The court may modify a prior dispositional order in a review hearing upon the stipulation of all parties and upon a finding by the court that such modification would not be contrary to the best interest of the minor and the public.

(b)(3) The court shall not modify a prior order in a review hearing that would further restrict the rights of the parent, guardian, custodian or minor if the modification is objected to by any party prior to or in the review hearing. The court shall schedule the case for an evidentiary hearing and require that a motion for modification be filed with notice to all parties in accordance with Section 78-3a-903. *78A-6-117*

(b)(4) Any individual, agency or institution vested with temporary legal custody or guardianship must make a motion for a review hearing at the expiration of 18 months from the date of the placement order as provided in Utah Code Ann. § 78-3a-516. *78A-6-1106*

(b)(5) All cases which require periodic review hearings under Title 78, Chapter 3a shall be scheduled for court review not less than once every six months from the date of disposition. *The 78A, Chapter 6*

(c) *Disposition reviews.* Upon the petition of any agency, individual or institution vested with legal custody or guardianship by prior court order, the court shall conduct a review hearing to determine if the prior order should remain in effect. Notice of the hearing, along with a copy of the petition, must be provided to all parties not less than 5 days prior to the hearing.

(d) *Review of a case involving abuse, neglect, or dependency of a minor* shall be conducted also in accordance with Section 78-3a-118, Section 78-3a-312, and Section 78-3a-313. *78A-6-117*

(e) *Intervention plans.* *78A-6-245*

(e)(1) In all cases where the disposition order places temporary legal custody or guardianship of the youth with an individual, agency, or institution, a proposed intervention plan shall be submitted by the probation department when probation has been ordered; by the agency having custody or guardianship; or by the agency providing protective supervision, within 30 days following the date of disposition. This intervention plan shall be updated whenever a substantial change in conditions or circumstances arises.

(e)(2) In cases where both parents have been permanently deprived of parental rights, the intervention plan shall identify efforts made by the child placing

agency to secure the adoption of the youth and subsequent review hearings shall be held until the youth has been adopted or permanently placed.

(f) *Progress reports.*

(f)(1) A written progress report relating to the intervention plan shall be submitted to the court and all parties by the agency, which prepared the intervention plan at least two working days prior to the review hearing date.

(f)(2) The progress report shall contain the following:

(f)(2)(i) A review of the original conditions, which invoke the court's jurisdiction.

(f)(2)(ii) Any significant changes in these conditions.

(f)(2)(iii) The number and types of contacts made with each family member or other person related to the case.

(f)(2)(iv) A statement of progress toward resolving the problems identified in the intervention plan.

(f)(2)(v) A report on the family's cooperation in resolving the problems.

(f)(2)(vi) A recommendation for further order by the court.

(g) *In substantiation proceedings*, a party may file a motion to set aside a default judgment or dismissal of a substantiation petition for failure to appear within thirty days after the entry of the default judgment or dismissal. On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party from a default judgment or dismissal if the court finds good cause for the party's failure to appear. The filing of a motion under this subdivision does not affect the finality of a judgment or suspend its operation. *78-30-1 was divided into 78B-6-115 for adults, & 78B-6-117 for minors. I assume we want 117B*

Rule 48. New hearings.

(a) New hearings shall be available in accordance with Utah R. Civ. P. 52, 59 and 60.

(b) If a new hearing is granted, the same burden of proof shall apply.

SECTION XIII. MISCELLANEOUS RULES

Rule 49. Adoptions. *78B-6-117*

Adoption procedures in juvenile court shall be conducted in accordance with Utah Code Ann. § 78-30-1 et seq. *78A-6-114*

Rule 50. Presence at hearings. *78A-6-114*

(a) In abuse, neglect, and dependency cases the court shall exclude all persons who do not have a direct interest in the proceedings except as provided for by Utah Code Section 78-3a-115 and Section 78-3a-115.1. If a motion is made to deny any person access to any part of a hearing, the parties to the hearing, including the person challenged, may address the issue by proffer, but are not entitled to an evidentiary hearing. A person denied access to a proceeding may petition the Utah Court of Appeals under Utah Rule of Appellate Procedure 19. Proceedings shall not be stayed pending appeal. As provided for by Utah Code Section 78-3a-116, a person may file a petition requesting a copy of a record of the proceedings, setting forth the reasons for the request. Upon a finding of good cause by the Court and payment of a fee, the person shall receive an audio recording of a proceeding. The Court may place under seal information received in an open proceeding. *78A-6-115*

This section was recommended white back and didn't update the reference. I'm not sure which section this now applies to. So I don't know what the rewording section would be.

78-30-1 was divided into 78B-6-115 for adults, & 78B-6-117 for minors. I assume we want 117B

78A-6-114

78A-6-115

(b) In delinquency cases the court shall admit all persons who have a direct interest in the case and may admit persons requested by the parent or legal guardian to be present.

(c) In delinquency cases in which the minor charged is 14 years of age or older, the court shall admit any person unless the hearing is closed by the court upon findings on the record for good cause if:

(c)(1) the minor has been charged with an offense which would be a felony if committed by an adult; or

(c)(2) the minor is charged with an offense that would be a class A or B misdemeanor if committed by an adult and the minor has been previously charged with an offense which would be a misdemeanor or felony if committed by an adult.

(d) If any person, after having been warned, engages in conduct which disrupts the court, the person may be excluded from the courtroom. Any exclusion of a person who has the right to attend a hearing shall be noted on the record and the reasons for the exclusion given. Counsel for the excluded person has the right to remain and participate in the hearing.

(e) Videotaping, photographing or recording court proceedings shall be as authorized by the Code of Judicial Administration.

Rule 51. Violation of probation and contempt by a minor.

(a) Any minor may be found in contempt of court for an act committed in the presence of the court.

(b) Contempt proceedings for actions alleged to have been committed by a minor outside of the presence of the court may be commenced by either of the following methods:

(b)(1) Affidavit and order to show cause. An affidavit setting forth the facts of the alleged contempt shall be filed with the court. Based upon the affidavit, the court may execute an order to show cause ordering the minor's parent, guardian or custodian to produce the minor in court at a date, place, and time certain. A copy of the affidavit and the order to show cause shall be personally served upon the minor's parent, guardian or custodian if they fail to appear in response to service by mail.

(b)(2) Petition. A separate petition may be filed and may include an allegation of contempt or an allegation that the minor has violated a term of probation.

(c) Sanctions for contempt shall be as provided by Section 78-3a-901 and Title 78, Chapter 32, Contempt.

Rule 52. Appeals.

(a) An appeal may be taken from the juvenile court to the Court of Appeals from a final judgment, order, or decree, except as otherwise provided by law, by filing a notice of appeal with the clerk of the juvenile court within 30 days after the entry of the judgment, order, or decree appealed from. In non-delinquency cases, a Notice of Appeal of a party who is not a minor must be signed by each party himself or herself.

(b) An appeal from an interlocutory order may be sought by any party by filing a petition for permission to appeal from the interlocutory order with the Court of Appeals within 20 days after the entry of the order of the juvenile court.

(c) The Utah Rules of Appellate Procedure shall govern the appeal process, including preparation of the record and transcript.

(d) No separate order of the juvenile court directing a county to pay transcript costs is required to file a Request for Transcript in an appeal by an impecunious party who was represented during the juvenile court proceedings by court-appointed counsel.

(e) A party claiming entitlement to court-appointed counsel has a continuing duty to inform the court of any material changes that affect indigent status. If at any stage in the trial or appellate proceedings the court makes a finding that a party does not qualify, or no longer qualifies for indigent status, the court may order the party to reimburse the county or municipality for the reasonable value of the services rendered, including all costs.

Rule 53. Appearance and withdrawal of counsel.

(a) *Appearance.* An attorney shall appear in proceedings by filing a written notice of appearance with the court or by appearing personally at a court hearing and advising the court that he is representing a party. Once an attorney has entered an appearance in a proceeding, the attorney shall receive copies of all notices served on the parties.

(b) *Withdrawal.*

(b)(1) *Retained counsel.* Consistent with the Rules of Professional Conduct, a retained attorney may withdraw as counsel of record unless withdrawal may result in a delay of trial or unless a final appealable order has been entered. In such circumstances, a retained attorney may not withdraw except upon written motion and approval of the court.

(b)(2) *Court-appointed counsel.* Court-appointed counsel may not withdraw as counsel of record except upon motion and signed order of the court. If the court grants appointed counsel's motion to withdraw, the court shall promptly appoint new counsel.

(b)(3) If a motion to withdraw is filed after entry by the court of a final appealable judgment, order, or decree, the motion may not be granted unless counsel, whether retained or court-appointed, certifies in a written statement:

(b)(3)(A) that the represented party has been advised of the right to appeal and that, if appropriate, a Notice of Appeal and a Request for Transcript have been filed; and

(b)(3)(B) that the represented party in a delinquency proceeding has been advised of the availability of a motion for a new trial or motion for stay pending appeal and that, if appropriate, the same has been filed.

(b)(4) When an attorney withdraws as counsel of record, written notice of the withdrawal must be served upon the client of the withdrawing attorney by first class mail, to his or her last known address and upon all other parties not in default and a certificate of service must be filed with the court. If a trial date has been set, the notice of withdrawal served upon the client shall include a notification of the trial date.

(b)(5) A guardian ad litem may not withdraw except upon approval of the court.

(c) Parties must submit a written Motion for Substitution of Counsel setting forth in detail the need for new counsel at least ten days prior to the next scheduled hearing date unless otherwise allowed by the court.

Rule 54. Continuances.

(a) Pre-trial and motion matters may be continued once upon stipulation of the parties and the guardian

ad litem and notice to the clerk of the judge to whom the case is assigned. After the first continuance or once a matter has been set for trial, the matter may be continued only with the approval of the court.

(b) A second continuance may be requested by stipulation of the parties and the guardian ad litem, by motion in open court or by written motion clearly stating the grounds for the continuance. Notice of the hearing on the motion shall be served upon all counsel according to Rule 18. The motion and notice of hearing must be served at least 5 days prior to the date of the hearing, unless the court has ordered otherwise and a copy of the court's order is served upon counsel with the motion.

(c) Notwithstanding paragraphs (a) and (b), absent unavoidable circumstances, no continuance shall be granted in any child protection case except upon a showing by the moving party that the continuance will not adversely affect the interest of the child or cause a hearing to be held later than child welfare timelines established by statute.

(d) In sexual abuse cases involving minor victims, continuances may only be granted upon a written finding by the court, or written minute entry which shall include the reason(s) for the continuance.

(e) If the hearing is an "important criminal justice hearing" or an "important juvenile justice hearing" as defined by § 77-38-2 of which the victim has requested notification, the court should consider the impact of the continuance upon the victim.¹

Rule 55. Transfer of minors who present a danger in detention.

The court may order the transfer of any minor age 16 years or older held in any detention center for minors to another place of confinement, including a jail or adult confinement facility which is certified pursuant to Utah Code Ann. § 62A-7-201, upon a showing that the minor's conduct or condition endangers the safety or welfare of others in the detention center. Prior to the transfer, notice shall be given to the minor's counsel or the minor's parent, guardian or custodian in the absence of counsel, and a hearing shall be held concerning the proposed transfer. The minor shall be present at the hearing except when the transfer is held under exigent circumstances or during the non-working hours of the court. Under those circumstances, a hearing on the transfer shall be held within 48 hours after the transfer.

Rule 56. Expungement.

(a) Any person adjudicated in a minor's case may petition the court for an order expunging and sealing the records pursuant to Section 78-3a-905.

(b) Upon filing the petition, the clerk shall calendar the matter for hearing and give at least 30 days notice to the prosecuting attorney, the Juvenile Probation Department, the agency with custody of the records, and any victim or victims representative of record on each adjudication identified by petitioner as being subject to expungement who have requested in writing notice of further proceedings. The petitioner shall obtain and file with the petition verifications from local

law enforcement agencies in every community in which the petitioner has resided during the entire time period covered in the Juvenile's record stating whether petitioner has a criminal record.

(c) If the court finds, upon hearing, that the conditions for expungement under Section 78-3a-905 have been satisfied, the court shall order the records of the case sealed as provided in Section 78-3a-905.

(d)(1) The clerk shall provide certified copies of the executed order of expungement to the petitioner and the petitioner shall deliver a copy of the order to each agency in the State of Utah identified in the order.

(d)(2) Upon receipt of the order, all law enforcement agencies shall remove from their files and computers any information pertaining to the petitioner that was generated while the petitioner was under the age of 18 years and seal said records.

(d)(3) The clerk shall gather in one file all of the juvenile court's legal, social, and administrative files. The file shall be sealed or securely fastened so that any attempt to open the file will be evident. The petitioner's full name, address and date of expungement shall be recorded on the file.

(d)(4) A person whose juvenile record consists solely of nonjudicial adjustments as provided for in Section 78-3a-502 may petition the court for expungement as provided for in Subsection 78-3a-905(6).

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

¹ Criminal only.

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.

Rule 58. Victim rights.

The court shall honor the rights and procedures accorded to victims pursuant to Title 77, Chapter 38, Victim Rights.

Rule 59. Material witnesses.

(a) When the court has good cause to believe that any material witness in a case will not appear and testify unless bond is required, the court may fix a bond with or without sureties, and in a sum the court considers adequate, for the appearance of the witness.

(b) If the witness fails or refuses to post the bond with the clerk of the court, or the court deems it otherwise appropriate, the court may commit the witness to jail, detention, or other place of custody until the witness complies or is otherwise legally discharged. If bail is not ordered, the court shall make specific findings for detaining the witness.

(c)(1) If the witness does provide bond when required, the witness may be examined and cross-examined before the court in the presence of the minor and the testimony shall be recorded. The witness shall then be discharged.

(c)(2) If the witness is unavailable or fails to appear at any subsequent hearing or trial when ordered to do so, the recorded testimony may be used at the hearing or trial in lieu of the personal testimony of the witness.

Rule 60. Judicial bypass procedure to authorize minor to consent to an abortion.

(a) *Petition.* An action for an order authorizing a minor to consent to an abortion without the consent of a parent or guardian is commenced by filing a petition. The petitioner is not required to provide an address or telephone number but must identify the county and state of residence. Blank petition forms will be available at all juvenile court locations. The court shall

provide assistance and a private, confidential area for completing the petition.

(b) *Filing.* The petition may be filed in any county. No filing fee will be charged.

(c) *Appointment of Counsel.* If the petitioner is not represented by a private attorney, the juvenile court shall consider appointing an attorney under Utah Code Ann. § 78-3a-913 and/or the Office of Guardian ad Litem under § 78-3a-912. If the court appoints an attorney, it may also appoint the Office of Guardian ad Litem. The clerk shall immediately notify any attorney appointed.

(d) *Expedited Hearing.* Upon receipt of the petition, the court shall schedule a hearing and resolve the petition within three days. The court may continue the hearing for no more than one day if the court determines that the additional time is necessary to gather and receive more evidence. The clerk shall immediately provide notice of the hearing date and time. The hearing shall be closed to everyone except the petitioner, the petitioner's attorney, the guardian ad litem, and any individual invited by the petitioner. The petitioner shall be present at the hearing. The hearing may be held in chambers if recording equipment or a reporter is available.

(e) *Findings and Order.* The court shall enter an order immediately after the hearing is concluded. The court shall grant the petition if the court finds by a preponderance of the evidence that one of the statutory grounds for dispensing with parental consent exists. Otherwise, the court shall deny the petition. If the petition is denied, the court shall inform the petitioner of her right to an expedited appeal to the Utah Court of Appeals. The court shall provide a copy of the order to individuals designated by the petitioner.

(f) *Confidentiality.* The petition and all hearings, proceedings, and records are confidential. Court personnel are prohibited from notifying a minor's parents, guardian, or custodian that a minor is pregnant or wants to have an abortion, or from disclosing this information to any member of the public.

(g) *Appeal.* A petitioner may appeal an order denying or dismissing a petition to bypass parental consent by filing a notice of appeal with the clerk of the juvenile court within the time allowed under Rule 4 of the Utah Rules of Appellate Procedure. The clerk shall immediately notify the clerk of the court of appeals that the notice of appeal has been filed.

(h) *This rule supercedes* all other procedural rules that might otherwise apply to actions filed under § 76-7-304.5.

Rule 25. Pleas.

(a) A minor may tender a denial of the alleged offense, may tender an admission of the alleged offense, or may, with the consent of the court, tender a plea of no contest which shall have the effect set forth in Utah Code § 77-13-2. If the minor declines to plead, the court shall enter a denial. Counsel for the minor may enter a denial in the absence of the minor, parent, guardian or custodian.

(b) When denial is entered, the court shall set the matter for a trial hearing or for a pre-trial conference.

(c) The court may refuse to accept an admission or a plea of no contest and may not accept such plea until the court has found:

(c)(1) that the right to counsel has been knowingly waived if the minor is not represented by counsel;

(c)(2) that the plea is voluntarily made;

(c)(3) that the minor and, if present, the minor's parent, guardian, or custodian, have been advised of, and the minor has knowingly waived, the right against compulsory self-incrimination, the right to trial, the right to confront and cross-examine opposing witnesses, the right to testify and to have process for the attendance of witnesses;

(c)(4) that the minor and, if present, the minor's parent, guardian, or custodian have been advised of the consequences which may be imposed after acceptance of the admission of the alleged offense or plea of guilty or no contest;

(c)(5) that the minor understands the nature and elements of the offense to which the plea is entered, that upon trial the prosecution would have the burden of proving each of those elements beyond a reasonable doubt, and that the plea is an admission of all those elements; and

(c) ~~(5)~~ (6) that there is a factual basis for the plea. A factual basis is sufficient if it establishes that the charged offense was actually committed by the minor or, if the minor refuses or is otherwise unable to admit culpability, that the prosecution has sufficient evidence to establish a substantial risk that the offense would be found true; and

(c) ~~(6)~~ (7) where applicable, the provisions of paragraph (e) have been met.

(d) The minor may be allowed to tender an admission to a lesser included offense, or an offense of a lesser degree or a different offense which the court may enter, after amending the petition.

(e) Plea discussions and agreements are authorized in conformity with the provisions of Utah Rule of Criminal Procedure 11. The prosecuting attorney may enter into discussions and reach a proposed plea agreement with the minor through the minor's counsel, or if the minor is not represented by counsel, directly with the minor. However, the prosecuting attorney may not enter into settlement discussions with a minor not represented by counsel unless the parent, guardian or custodian is advised of the discussion and given the opportunity to be present.

(f) A minor may tender an admission which is not entered by the court for a stated period of time. Conditions may be imposed upon the minor in that period of time and successful completion of the conditions set shall result in dismissal upon motion. If the minor fails to complete the conditions set, the admission shall be entered and the court shall proceed to order appropriate dispositions.

testimony. ~~The minor may also be present during the child's testimony unless~~ A minor who consents to be hidden from the child's view may also be present unless ~~or~~ the court determines that the child will suffer serious emotional or mental strain if required to testify in the minor's presence, or that the child's testimony will be inherently unreliable if required to testify in the minor's presence. If the court makes that determination, or if the minor consents:

(b)(1)(A) the minor may not be present during the child's testimony;

(b)(1)(B) the court shall ensure that the child cannot hear or see the minor ;

(b)(1)(C) the court shall advise the child prior to testifying that the minor is present at the trial and may listen to the child's testimony;

(b)(1)(D) the minor shall be permitted to observe and hear the child's testimony, and the court shall ensure that the minor has a means of two-way telephonic communication with defense counsel during the child's testimony; and

(b)(1)(E) the conditions of a normal court proceeding shall be approximated as nearly as possible.

(b)(2) Only the judge and ~~attorneys~~ an attorney for each party may question the child.

(b)(3) As much as possible, persons operating equipment shall be confined to an adjacent room or behind a screen or mirror so the child cannot see or hear them.

(c) In any case concerning a charge of child abuse or of a sexual offense against a child, the court may order, upon motion of ~~the prosecution~~ a party and for good cause shown, that the testimony of any ~~witness or victim~~ or other witness younger than 14 years of age be taken outside the courtroom and be recorded. That testimony is admissible as evidence, for viewing in any court proceeding regarding the charges if the provisions of Subsection (b) are observed, in addition to the following provisions:

(c)(1) the recording is ~~both~~ visual and aural and recorded on film, ~~or~~ videotape or by other electronic means;

(c)(2) ~~the recording equipment is capable of making an accurate recording, the operator is competent, and the recording is accurate and is not altered;~~

(c)(3) each voice on the recording is identified; and

(c)(4) each party is given an opportunity to view the recording before it is shown in the courtroom.

(d) If the court orders that the testimony of a child be taken under Subsection (b) or (c), the child may not be required to testify in court at any proceeding where the recorded testimony is used.

Rule 29A. ~~Visual recording~~ Out of court statement or and testimony of child victims or child witnesses of sexual or physical abuse - Conditions of admissibility.

(a) In any delinquency proceeding or proceeding under Section 78-3a-602 or Section 78-3a-603 concerning a charge of child abuse or of a sexual offense against a ~~child~~ minor, the oral statement of a victim or other witness younger than 14 years of age ~~may be~~ which was recorded prior to the filing of a petition, ~~and is~~, upon motion and for good cause shown, is admissible as evidence in any court proceeding regarding the offense if all of the following conditions are met:

(a)(1) the child is available to testify and to be cross-examined at trial, either in person or as provided by law, or the child is unavailable to testify at trial, but the minor had a previous opportunity to cross-examine the child concerning the recorded statement, such that the minor's rights of confrontation are not violated;

(a)(2) no attorney for either party is in the child's presence when the statement is recorded;

(a)(3) the recording is visual and aural and is recorded on film, or videotape or by other electronic means;

~~(a)(4) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and the recording is accurate and has not been altered;~~

(a)(5) each voice in the recording is identified;

(a)(6) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify and be cross-examined by either party;

(a)(7) the minor and the minor's attorney are provided an opportunity to view the recording before it is shown to the court; and

(a)(8) the court views the recording and determines that it is sufficiently reliable and trustworthy and that the interest of justice will best be served by admission of the statement into evidence; ~~and~~.

~~(a)(9) the child is available to testify and to be cross-examined at trial, either in person or as provided by Subsection (b) or (c), or the court determines that the child is unavailable as a witness to testify at trial under the Utah Rules of Evidence. For purposes of this subsection "unavailable" includes a determination, based on medical or psychological evidence or expert testimony, that the child would suffer serious emotional or mental strain if required to testify at trial.~~

(b) In any proceeding concerning a charge of child abuse or of a sexual offense against a child, the court ~~may order~~, upon motion of the prosecution a party and for good cause shown, may order that the testimony of any ~~witness or victim~~ or other witness younger than 14 years of age be taken in a room other than the courtroom. All of the following conditions shall be observed:

(b)(1) Only the judge, attorneys for each party and the testifying child (if any), persons necessary to operate equipment, and a counselor or therapist whose presence contributes to the welfare and emotional well-being of the child may be ~~with~~ in the room during the child during the child's

A Proposal Regarding Rule 29A, and *Crawford*

Paul Wake

9/5/08

Illustrious Committee Members:

I knocked out the following this morning quickly, but I think it accurately tracks most of the changes made to the final version of the similar criminal rule, rule 15.5. These changes to our rule 29A mainly incorporate the criminal rule's new paragraph designed to respond to *Crawford*, which I think we should include in our rule just as the criminal people did in theirs: the new subsection (a)(1) (with a semicolon added). Note that the criminal people forgot to renumber their rule—this version is corrected and that's why some numbering may not match. The criminal people also cleaned up some awkward provisions, which I changed here also. Our rule already had some improvements over the criminal rule, and they actually changed theirs to match ours in some ways, but the two rules are still slightly different to reflect things like that we don't have juries. I did tinker with our rule to change two references to "defendant" and one to "child" so they became "minor," since "minor" is used elsewhere in the rule to mean "defendant" ("child" in the rule means the witness).

There are three additional issues I would be like to bring to the committee about this rule.

First, in (b)(1) the list of who can be there when testimony is being taken by closed circuit TV, seems restrictive. It doesn't mention court security. Also, it doesn't mention that a parent (as opposed to a counselor or therapist) can be there to support a child. I'm wondering if we should add something?

Second, this rule was apparently originally modeled on the criminal rule, which apparently assumed that for purposes of subsection (b) proceedings involving testimony by closed circuit TV, the jury and spectators would stay in the courtroom, and the judge and attorneys would go into another room and question the witness from there. I have found in juvenile court that sometimes it's easier to keep everyone in the courtroom and to send the defendant (and his attorney, if that's what the attorney wants) into another room to watch testimony from there, with the ability to communicate back to the courtroom. Would it be appropriate to make that option available under the rule? Perhaps through something like: "(b)(4) Alternatively, if the judge and the attorneys for the parties agree, the testimony of the child witness can be taken in court, with the minor viewing the testimony from another room, provided the minor has means for direct communication with the courtroom."

Third, the criminal people changed their subsection (d) so that instead of referring to subsections (2) and (3) (whatever that was supposed to mean) it now refers to subsections (a) and (b). I'm wondering if that's wrong. It seems like the logical thing would be for it to refer to subsections (b) and (c) as our rule currently does. Therefore, I didn't change my proposed 29A to match 15.5; if that's wrong, please let me know.