

From: Carol Verdoia
To: Gregory, Katie
Date: 11/12/2008 11:56 AM
Subject: Re: URJP Save the Date Jan. 9th

Rule 47 revisions

Hi Katie-

I'm following up on my offer to research the odd reference we found in rule 47, as part of the recodification changes. Rule 47 (b)(4) referenced 78-3a-516, and no one thought that provision was an accurate statement of the law in any event. The provision referenced in (b)(4) was originally in 78-3a-518 (not 516 -- must've been a typo), then was renumbered to 78-3a-119 in 1998 but changed to reflect "12 months" not 18 months. Now the statute is 78A-6-118 but the text has been changed and the rule is no longer an accurate statement of the law. I'd recommend (just like the committee did) that (b)(4) be deleted.

>>> Katie Gregory 11/7/2008 2:49 PM >>>

URJP Members:

Our next meeting will be January 9, 2009 from noon until 2:00 p.m. Please mark your calendars.

Thanks!

Katie

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Katie Gregory - Statutory References within Utah R. Juv. P 12-18

From: Brent Bartholomew
To: Katie Gregory
Date: 11/14/2008 3:48 PM
Subject: Statutory References within Utah R. Juv. P 12-18

I reviewed Utah R. Juv. P. 12-18 and found the following changes:

1. Rule 12 does have a change: Third line should be changed to read Title 78A, Chapter 6, Part 3, Abuse When we talked you indicated there was no change, but the foregoing change is necessary for this rule to make sense.
2. Rule 13: 13(a), second line, should be changed to Section 78A-6-306 and Section 78A-6-307. 13(b), third line, should be changed to Section 62A-4a-202.2. 13(e), second and ninth line, should be changed to Section 78A-6-306. 13(f), last line, should be changed to Section 78A-6-306, too. And 13(g), last line, should also be changed to Section 78A-6-306. I think all these are the changes you indicated should be made.
3. Rules 14 through 16: No statutory references.
4. Rule 17: 17(c)(2), last line, should be changed to Utah Code Ann. 78A-6-1105, as you indicated.
5. Rule 18: 18(a)(1), fourth line, should be changed to Section 78A-6-109. 18(a)(2)(B), line 7, should be changed to Section 78A-6-1001. 18(b)(2), line 12: the reference to Utah Code Ann. 15-2-1 should not be changed because that citation was not re-numbered. 18(b)(4), line 7, should be changed to Section 78A-6-703.

Hope this helps. Please let me know if you have any questions.

Brent Bartholomew

Final versions

on "S"

to Tim Shea

11/19/08

-20-23

✓ 30-39

✓ 43-49

1-19

50-60

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-121~~ 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~~. 78A-6-306

(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.

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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-

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(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.

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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.

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(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.

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(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.

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Advisory Committee Notes

78A-6-603

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.

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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-314~~ 78A-6-312.

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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.

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(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.

78B-6-101

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.~~

B

Part 30

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.

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