

From: Paul Wake
To: Gregory, Katie
Date: 9/14/2011 10:39 AM
Subject: Re: URJP: Scheduling a Fall Meeting

Here is an issue I would like to discuss with the URJP committee:

Rule 23A has a sentence in it that seems either not appropriate, or placed in the wrong subsection. Before getting to that, let me provide a bit of background on the Serious Youth Offender process, which Rule 23A deals with.

There are three ways to send a minor to district court to be tried as an adult: 1) the Utah Code 78A-6-701 direct file process, under which minors 16 and 17 who kill someone, or who commit a felony after having already been in secure confinement, go directly to district court without ever seeing a juvenile judge; 2) the Utah Code 78A-6-702 SYO process under which minors 16 or 17 who commit one of ten enumerated felonies get a preliminary hearing before a juvenile judge, and then after the prosecutor shows probable cause and the minor can't show that specified retention factors apply, the minor is bound over to district court; and 3) the Utah Code 78A-6-703 certification process under which if a minor 14 or older who commits any felony the prosecutor thinks is really bad, the prosecutor can ask the judge to certify that the minor is irredeemable and should be transferred to district court, and the judge then holds a hearing and refuses to certify.

Most of Rule 23A--sections (a) through (e)--deals with the SYO procedure up to the point at which the juvenile judge makes a decision on bindover. Sections (f) and (g) deal with what to do once the judge makes that decision. 23A(f)(1) says: "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." The second to the last sentence is problematic.

Several months ago in Utah County we had a SYO case in which a judge bound a defendant over and was in the process of finishing up the order to send him to jail, when the defense attorney realized to his surprise that his client would be going to jail once bound over to be tried as an adult. The attorney was in a dither, and asked for a continuance, and asked me if there was any way out of this, and I told him I didn't think so but I did point him at that sentence in 23A(f)(1) that provided a possible loophole. He used that to argue to the judge that his client should be kept in juvenile detention. This thing had never happened before in Utah County, and it is nuts, but it got me thinking. The "[t]he court may order the minor held in a detention center or released in accordance with Rule 9" sentence in 23A(f)(1) is really odd. Rule 9 deals with juvenile detention, and with release from juvenile detention, which doesn't involve bail. So in Rule 23A we're saying that we're going to set bail, but then the defendant might be kept in a juvenile facility despite being in the process of being tried as an adult, and if so can apparently use a non-bail-related detention rule to determine release. It seems as if that sentence makes more sense in 23A(g), which deals with SYO situations in which there is probable cause but the defendant proves the retention factors, and so ends up remaining in juvenile court to be tried as a juvenile. In that circumstance, it would make sense that being held in detention would be affected by Rule 9, since there are provisions there about continuing predisposition detention reviews.

Unfortunately for me, there's an even clearer answer to this situation that I should have remembered at the time of my SYO case, but forgot until reminded by a colleague in Salt Lake County. In 2010's SB140, the legislature amended Utah Code 62A-7-201(2)(a) (JJS provisions on detention referenced by Rule 23A) to try to take out the detention loophole, the one that the SYO in my recent case availed himself of: the legislature changed "may be detained in a jail" to "shall be detained in a jail" ("Children charged with crimes under Section 78A-6-701 [the direct file provision], as a serious youth offender under Section 78A-

6-702 and bound over to the jurisdiction of the district court, or certified to stand trial as an adult pursuant to Section 78A-6-703, if detained, shall be detained in a jail or other place of detention used for adults.") In addition, the legislature amended Utah Code 78A-6-702(8) to say: "When a minor has been bound over to district court under this section, the jurisdiction of the Division of Juvenile Justice Services and the juvenile court over the minor is terminated regarding that offense..." Looking at that second change, it's hard to see how JJS would have jurisdiction to hold a minor for a bound over offense. Now, I do observe that the legislative history of SB140 is a mess. The legislators seemed to confuse direct file and the SYO process mentioned above. In the middle of some of this confusion, Jacey Skinner of the Utah Sentencing Commission explained to a committee that SB 140 was not viewed as a change, but as a clarification of the intent of the legislature. She said that the main thrust of the legislation was not the "may" to "shall" change, but the addition of a citation to Utah Code § 78A-6-701 to the Title 62A statute, because direct file was not previously listed along with serious youth offender and certification cases as cases in which minors would be held in jail (the assumption apparently having been that it was unnecessary to list direct file cases since JJS and the juvenile court were not expected to have contact with such cases). Ms. Skinner then added that in serious youth offender cases and certification cases, transfer of jurisdiction is when transfer of holding would take place. So, it seems the legislature assumes, and thought it had already made clear in law but needed to make clearer, that people transferred to the adult system actually go to the adult system. Rule 23A's loophole appears to be at odds with legislative intent on a substantive legal issue.

It seems to me that the offending sentence in 23A(f) should either be excised, or moved to 23A(g), but I would like to hear the greater wisdom of the committee on that matter.

Paul Wake

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

(a) If a criminal indictment under Section 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 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 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 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 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 78A-6-702 are present, the court shall proceed upon the information as if it were a petition.

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Code](#)[Title
62A](#) Utah Human Services Code[Chapter
7](#) Juvenile Justice Services[Section
201](#) Confinement -- Facilities -- Restrictions.**62A-7-201. Confinement -- Facilities -- Restrictions.**

(1) Children under 18 years of age, who are apprehended by any officer or brought before any court for examination under any provision of state law, may not be confined in jails, lockups, or cells used for persons 18 years of age or older who are charged with crime, or in secure postadjudication correctional facilities operated by the division, except as provided in Subsection (2), other specific statute, or in conformance with standards approved by the board.

(2) (a) Children charged with crimes under Section [78A-6-701](#), as a serious youth offender under Section [78A-6-702](#) and bound over to the jurisdiction of the district court, or certified to stand trial as an adult pursuant to Section [78A-6-703](#), if detained, shall be detained in a jail or other place of detention used for adults.

(b) Children detained in adult facilities under Section [78A-6-702](#) or [78A-6-703](#) prior to a hearing before a magistrate, or under Subsection [78A-6-113](#)(3), may only be held in certified juvenile detention accommodations in accordance with rules promulgated by the division. Those rules shall include standards for acceptable sight and sound separation from adult inmates. The division certifies facilities that are in compliance with the division's standards. The provisions of this Subsection (2)(b) do not apply to juveniles held in an adult detention facility in accordance with Subsection (2)(a).

(3) In areas of low density population, the division may, by rule, approve juvenile holding accommodations within adult facilities that have acceptable sight and sound separation. Those facilities shall be used only for short-term holding purposes, with a maximum confinement of six hours, for children alleged to have committed an act which would be a criminal offense if committed by an adult. Acceptable short-term holding purposes are: identification, notification of juvenile court officials, processing, and allowance of adequate time for evaluation of needs and circumstances regarding release or transfer to a shelter or detention facility. The provisions of this Subsection (3) do not apply to juveniles held in an adult detention facility in accordance with Subsection (2)(a).

(4) Children who are alleged to have committed an act which would be a criminal offense if committed by an adult, may be detained in holding rooms in local law enforcement agency facilities for a maximum of two hours, for identification or interrogation, or while awaiting release to a parent or other responsible adult. Those rooms shall be certified by the division, according to the division's rules. Those rules shall include provisions for constant supervision and for sight and sound separation from adult inmates.

(5) Willful failure to comply with any of the provisions of this section is a class B misdemeanor.

(6) (a) The division is responsible for the custody and detention of children under 18 years of age who require detention care prior to trial or examination, or while awaiting assignment to a home or facility, as a dispositional placement under Subsection [78A-6-117](#)(2)(f)(i) or [78A-6-1101](#)(3)(a), and of youth offenders under Subsection [62A-7-504](#)(8). The provisions of this Subsection (6)(a) do not apply to juveniles held in an adult detention facility in accordance with Subsection (2)(a).

(b) The division shall provide standards for custody or detention under Subsections (2)(b), (3), and (4), and shall determine and set standards for conditions of care and confinement of children in detention facilities.

(c) All other custody or detention shall be provided by the division, or by contract with a public or private agency willing to undertake temporary custody or detention upon agreed terms,

or in suitable premises distinct and separate from the general jails, lockups, or cells used in law enforcement and corrections systems. The provisions of this Subsection (6)(c) do not apply to juveniles held in an adult detention

facility in accordance with Subsection (2)(a).

Amended by Chapter 38, 2010 General Session

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[701](#) Jurisdiction of district court.**78A-6-701. Jurisdiction of district court.**

(1) The district court has exclusive original jurisdiction over all persons 16 years of age or older charged with:

(a) an offense which would be murder or aggravated murder if committed by an adult; or

(b) an offense which would be a felony if committed by an adult if the minor has been previously committed to a secure facility as defined in Section [62A-7-101](#). This Subsection (1)(b) shall not apply if the offense is committed in a secure facility.

(2) When the district court has exclusive original jurisdiction over a minor under this section, it also has exclusive original jurisdiction over the minor regarding all offenses joined with the qualifying offense, and any other offenses, including misdemeanors, arising from the same criminal episode. The district court is not divested of jurisdiction by virtue of the fact that the minor is allowed to enter a plea to, or is found guilty of, a lesser or joined offense.

(3) (a) Any felony, misdemeanor, or infraction committed after the offense over which the district court takes jurisdiction under Subsection (1) or (2) shall be tried against the defendant as an adult in the district court or justice court having jurisdiction.

(b) If the qualifying charge under Subsection (1) results in an acquittal, a finding of not guilty, or a dismissal of the charge in the district court, the juvenile court under Section [78A-6-103](#) and the Division of Juvenile Justice Services regain any jurisdiction and authority previously exercised over the minor.

Amended by Chapter 38, 2010 General Session

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[702](#) Serious youth offender -- Procedure.**78A-6-702. Serious youth offender -- Procedure.**

(1) Any action filed by a county attorney, district attorney, or attorney general charging a minor 16 years of age or older with a felony shall be by criminal information and filed in the juvenile court if the information charges any of the following offenses:

(a) any felony violation of:

(i) Section [76-6-103](#), aggravated arson;

(ii) Subsection [76-5-103](#)(1)(a), aggravated assault, involving intentionally causing serious bodily injury to another;

(iii) Section [76-5-302](#), aggravated kidnapping;

(iv) Section [76-6-203](#), aggravated burglary;

(v) Section [76-6-302](#), aggravated robbery;

(vi) Section [76-5-405](#), aggravated sexual assault;

(vii) Section [76-10-508.1](#), felony discharge of a firearm;

(viii) Section [76-5-202](#), attempted aggravated murder; or

(ix) Section [76-5-203](#), attempted murder; or

(b) an offense other than those listed in Subsection (1)(a) involving the use of a dangerous weapon which would be a felony if committed by an adult, and the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon which also would have been a felony if committed by an adult.

(2) All proceedings before the juvenile court related to charges filed under Subsection (1) shall be conducted in conformity with the rules established by the Utah Supreme Court.

(3) (a) If the information alleges the violation of a felony listed in Subsection (1), the state shall have the burden of going forward with its case and the burden of proof to establish probable cause to believe that one of the crimes listed in Subsection (1) has been committed and that the defendant committed it. If proceeding under Subsection (1)(b), the state shall have the additional burden of proving by a preponderance of the evidence that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon.

(b) If the juvenile court judge finds the state has met its burden under this Subsection (3), the court shall order that the defendant be bound over and held to answer in the district court in the same manner as an adult unless the juvenile court judge finds that all of the following conditions exist:

(i) 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;

(ii) 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

(iii) that the minor's role in the offense was not committed in a violent, aggressive, or premeditated manner.

(c) Once the state has met its burden under this Subsection (3) as to a showing of probable cause, the defendant shall have the burden of going forward and presenting evidence as to the existence of the above conditions.

(d) If the juvenile court judge finds by clear and convincing evidence that all the above conditions are satisfied, the court shall so state in its findings and order the minor held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

(4) If the juvenile court judge finds that an offense has been committed, but that the state has not met its burden of proving the other criteria needed to bind the defendant over under

Subsection (1), the juvenile court judge shall order the defendant held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

(5) At the time of a bind over to district court a criminal warrant of arrest shall issue. The defendant shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

(6) If an indictment is returned by a grand jury charging a violation under this section, the preliminary examination held by the juvenile court judge need not include a finding of probable cause that the crime alleged in the indictment was committed and that the defendant committed it, but the juvenile court shall proceed in accordance with this section regarding the additional considerations listed in Subsection (3)(b).

(7) When a defendant is charged with multiple criminal offenses in the same information or indictment and is bound over to answer in the district court for one or more charges under this section, other offenses arising from the same criminal episode and any subsequent misdemeanors or felonies charged against him shall be considered together with those charges, and where the court finds probable cause to believe that those crimes have been committed and that the defendant committed them, the defendant shall also be bound over to the district court to answer for those charges.

(8) When a minor has been bound over to the district court under this section, the jurisdiction of the Division of Juvenile Justice Services and the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against the minor, except as provided in Subsection (12).

(9) A minor who is bound over to answer as an adult in the district court under this section or on whom an indictment has been returned by a grand jury is not entitled to a preliminary examination in the district court.

(10) Allegations contained in the indictment or information that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon, or is 16 years of age or older, are not elements of the criminal offense and do not need to be proven at trial in the district court.

(11) If a minor enters a plea to, or is found guilty of, any of the charges filed or any other offense arising from the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

(12) The juvenile court under Section [78A-6-103](#) and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

Amended by Chapter 38, 2010 General Session

Amended by Chapter 218, 2010 General Session

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Juvenile Court Act of 1996

Section
703

Certification hearings -- Juvenile court to hold preliminary hearing -- Factors considered by juvenile court for waiver of jurisdiction to district court.

78A-6-703. Certification hearings -- Juvenile court to hold preliminary hearing -- Factors considered by juvenile court for waiver of jurisdiction to district court.

(1) If a criminal information filed in accordance with Subsection [78A-6-602\(3\)](#) alleges the commission of an act which would constitute a felony if committed by an adult, the juvenile court shall conduct a preliminary hearing.

(2) At the preliminary hearing the state shall have the burden of going forward with its case and the burden of establishing:

(a) probable cause to believe that a crime was committed and that the defendant committed it; and

(b) by a preponderance of the evidence, that it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction.

(3) In considering whether or not it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction, the juvenile court shall consider, and may base its decision on, the finding of one or more of the following factors:

(a) the seriousness of the offense and whether the protection of the community requires isolation of the minor beyond that afforded by juvenile facilities;

(b) whether the alleged offense was committed by the minor under circumstances which would subject the minor to enhanced penalties under Section [76-3-203.1](#) if the minor were adult and the offense was committed:

(i) in concert with two or more persons;

(ii) for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section [76-9-802](#); or

(iii) to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section [76-9-802](#);

(c) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(d) whether the alleged offense was against persons or property, greater weight being given to offenses against persons, except as provided in Section [76-8-418](#);

(e) the maturity of the minor as determined by considerations of the minor's home, environment, emotional attitude, and pattern of living;

(f) the record and previous history of the minor;

(g) the likelihood of rehabilitation of the minor by use of facilities available to the juvenile court;

(h) the desirability of trial and disposition of the entire offense in one court when the minor's associates in the alleged offense are adults who will be charged with a crime in the district court;

(i) whether the minor used a firearm in the commission of an offense; and

(j) whether the minor possessed a dangerous weapon on or about school premises as provided in Section [76-10-505.5](#).

(4) The amount of weight to be given to each of the factors listed in Subsection (3) is discretionary with the court.

(5) (a) Written reports and other materials relating to the minor's mental, physical, educational, and social history may be considered by the court.

(b) If requested by the minor, the minor's parent, guardian, or other interested party, the court shall require the person or agency preparing the report and other material to appear and be

subject to both direct and cross-examination.

(6) At the conclusion of the state's case, the minor may testify under oath, call witnesses, cross-examine adverse witnesses, and present evidence on the factors required by Subsection (3).

(7) If the court finds the state has met its burden under Subsection (2), the court may enter an order:

(a) certifying that finding; and

(b) directing that the minor be held for criminal proceedings in the district court.

(8) If an indictment is returned by a grand jury, the preliminary examination held by the juvenile court need not include a finding of probable cause, but the juvenile court shall proceed in accordance with this section regarding the additional consideration referred to in Subsection (2)(b).

(9) The provisions of Section [78A-6-115](#), Section [78A-6-111](#), and other provisions relating to proceedings in juvenile cases are applicable to the hearing held under this section to the extent they are pertinent.

(10) A minor who has been directed to be held for criminal proceedings in the district court is not entitled to a preliminary examination in the district court.

(11) A minor who has been certified for trial in the district court shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

(12) When a minor has been certified to the district court under this section, the jurisdiction of the Division of Juvenile Justice Services and the jurisdiction of the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against the minor, except as provided in Subsection (14).

(13) If a minor enters a plea to, or is found guilty of any of the charges filed or on any other offense arising out of the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

(14) The juvenile court under Section [78A-6-103](#) and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

Amended by Chapter 38, 2010 General Session

Amended by Chapter 193, 2010 General Session

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Memorandum

To: Utah Rules of Juvenile Procedure Advisory Committee Members

From: Alan B. Sevison, Utah Assistant Attorney General

Date: December 2, 2011

Re: Changes to Utah Rules of Civil Procedure that might affect the URJP

At the request of Carol Verdoia and Katie Gregory, I have reviewed the recent changes to the Utah Rules of Civil Procedure (URCP) and noted changes that might impact the Utah Rules of Juvenile Procedure (URJP). Accompanying this memorandum is a copy of the redline version of the URCP. Please feel welcome to offer comments, corrections, or additions. Thanks.

A good beginning point for the review of URCP changes is the advisory note to Rule 1:

A primary purpose of the 2011 amendments is to give effect to the long-standing but often overlooked directive in Rule 1 that the Rules of Civil Procedure should be construed and applied to achieve "the just, speedy, and inexpensive determination of every action." The amendments serve this purpose by limiting parties to discovery that is proportional to the stakes of the litigation, curbing excessive expert discovery, and requiring the early disclosure of documents, witnesses and evidence that a party intends to offer in its case-in-chief. The committee's purpose is to restore balance to the goals of Rule 1, so that a just resolution is not achieved at the expense of speedy and inexpensive resolutions, and greater access to the justice system can be afforded to all members of society.

Generally, even substantial changes to the URCP do not require substantial changes to the URJP. The URJP often makes general reference to a URCP rule rather than to specific provisions which might have been amended. In the table below I try to specify, summarize, or note all substantial changes to the URCP; however, the vast majority of those changes do not affect the URJP. (Those who practice under the URCP will have to make significant changes to their practice, however, particularly to discovery and disclosure.)

Many URCP changes were simply renumbering of rules or paragraphs.

The most significant changes to the URCP were to the rules regarding discovery, URCP 26. Illustrative of the major changes are the ten pages of advisory notes that were added. However, the impact on the URJP was minimal, as shown in the table below.

In addition to language and provision changes, a new rule was implemented, URCP 26.1, which delineates provisions for discovery and disclosure in domestic relations actions. URJP 20 should be further reviewed in light of URCP 26.1 to determine whether a general reference ought to be made as many juvenile court actions might fit under the designation "domestic relations actions." But I am uncertain whether juvenile court actions would be so designated.

I hope committee members find the following table useful. I invite additions, corrects, and changes. I do not pretend to practice discovery and disclosure often enough to discern what other URJP changes might be necessary. So I welcome the sage and august comments of more experienced committee members.

URCP Rule	Fundamental Changes	Impact on URCP
Rule 1: General provisions	<ul style="list-style-type: none"> ▶ Language changes with no significant substance change 	None
Rule 8: General rules of pleadings	<ul style="list-style-type: none"> ▶ modifies claims for damages ▶ simplifies form of denials ▶ clarifies general denials for statements in a claim ▶ sets forth requirement for affirmative defenses ▶ provides additional non-substantive language changes 	None
Rule 9: Pleading special matters	<ul style="list-style-type: none"> ▶ deletes some language relating to information that supports allocating fault to a non-party. 	None
Rule 16: Pretrial conferences (formerly "Pretrial conference, scheduling, and management conferences")	<ul style="list-style-type: none"> ▶ deletes section entitled ▶ "Scheduling and management conferences and orders" and incorporates its provisions into the section entitled "Pretrial conferences" with no substantive changes ▶ permits parties and requires plaintiff to certify discovery is complete and mediation/ADR is complete or excused ▶ simplifies language regarding final pretrial conference 	<ul style="list-style-type: none"> ▶ None
Rule 26: General provisions governing disclosure and discover (formerly "General provisions regarding discovery")	<ul style="list-style-type: none"> ▶ mandates application of rule unless changed or supplemented by specific practice area rules ▶ generally, requires disclosures "without waiting for a discovery request" ▶ modifies initial disclosure requirements: <ul style="list-style-type: none"> ▶ requires disclosing each fact witness and testimony ▶ requires disclosing all documents referenced in pleadings ▶ modifies timing language ▶ separates exemptions into own section 	<p>URJP 20A(a): No impact. "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."</p> <p>URJP 20A(i): Protective order language moved to URCP 37. Suggested change: "Protective orders. Any party or person from whom discovery is sought may request a protective order pursuant to Utah R. Civ. P. 26(e) <u>37(b).</u>"</p>

Rule 26 (continued)

- ▶ substantially modifies expert witness discovery, including
 - ▶ information about expert
 - ▶ expert report requirements
 - ▶ limits on expert discovery
 - ▶ expert witness costs
 - ▶ timing of expert discovery
 - ▶ experts in multiparty actions
 - ▶ non-retained expert testimony
- ▶ modifies pretrial disclosures
 - ▶ not required to disclose impeachment witnesses
 - ▶ requires disclosures deposition witnesses and transcript of deposition
 - ▶ requires summary of demonstrative exhibits
- ▶ Discovery scope:
 - ▶ Proportionality requirement and standards established
 - ▶ Discovering party has burden of showing proportionality and relevance
 - ▶ Language changes to discovery of electronically stored information
 - ▶ Section on Discovery Limitations deleted
 - ▶ Insubstantial changes to Trial preparation - materials
 - ▶ Insubstantial changes to Statement previously made about the action
- ▶ Substantial changes to Trial preparation - experts
 - ▶ Draft reports or disclosures protected]
 - ▶ Communication between attorneys and experts protected
 - ▶ Trial prep experts not discoverable
 - ▶ Discovery protective orders section moved to Rule 37
- ▶ New section: "Methods, sequence and timing of discovery; tiers; limits on standard discovery; extraordinary discovery"
 - ▶ Discovery methods identified
 - ▶ Sequence and timing modified to "discovery may be used in any sequence."
 - ▶ No party may seek discovery before initial disclosure

URJP 20A(j): Supplemental response language moved from (e) to (d). **Suggested change:** "Supplementation of responses. Parties have a duty to supplement responses and disclosures pursuant to Utah R. Civ. P. 26(e) (d)."

Rule 26 (continued)

- ▶ New section: Tiers for standard discovery defined
- ▶ New section: Damages defined
- ▶ New section: Limits on standard fact discovery
- ▶ New section: Extraordinary discovery
- ▶ New section: Requirements for disclosure/response; by organization; failure to disclose; initial and supplemental disclosures/responses.
- ▶ Section (e)(2) eliminated (duty to amend response)
- ▶ Section (f) eliminated (Discovery and scheduling conference)
- ▶ Significant changes to "Signing discovery requests, responses, and objections"

Rule 26.1: Disclosure and discovery in domestic relations actions (New Rule)

- ▶ "Disclosure and discovery in domestic relations actions"; new sections:
 - ▶ Scope
 - ▶ Time for disclosure
 - ▶ Financial declaration
 - ▶ Certificate of service
 - ▶ Exempted agencies
 - ▶ Sanctions
 - ▶ Failure to comply
 - ▶ Notice of requirements

Rule 29: Stipulations regarding disclosure and discovery procedure (formerly "Stipulations regarding discovery procedure")

- ▶ Significant changes to Stipulations regarding disclosure and discovery procedure

None

Rule 30: Depositions upon oral questions (formerly "Depositions upon oral examination")

- ▶ Significant changes to procedures and requirements for depositions
 - ▶ No distorting appearance or demeanor of counsel or witnesses
 - ▶ Changes to method of recording, including "remote electronic means"
 - ▶ Attendance of nonparty may be compelled by subpoena

URJP 20A(c): Language and paragraph numbering changes are required. **Suggested changes:** "Depositions upon oral examination questions. After the filing of the answer, a party may take the testimony of any person, including a party, by deposition upon oral examination question without leave of the court. The attendance of witnesses may be compelled by subpoena as provided

Rule 30 (continued)	<ul style="list-style-type: none"> ▶ Substantial changes to "Examination and cross-examination; objections" to "Limits" to "Submission to witnesses; changes; signing" to "Record of deposition; certification and delivery by officer; exhibits; copies" ▶ New section: "Deposition in action pending in another state" ▶ New section: "Stipulations regarding deposition procedures" 	<p>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) <u>(f)</u> 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."</p>
Rule 31: Depositions upon written questions	<ul style="list-style-type: none"> ▶ Insubstantial language changes ▶ Written deposition questions cannot exceed 15 in standard discovery, including subparts, by plaintiffs, defendants, third-party defendants 	None
Rule 33: Interrogatories to parties	<ul style="list-style-type: none"> ▶ Rewritten "Availability; procedure for use" ▶ New section: "Answers and objections" including substantial changes to answers and objections ▶ Rewritten "Scope; use at trial" 	<p>None</p> <p>(Related Rule: URJP 20A(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.")</p>
Rule 34: Production of documents and things and entry upon land for inspection and other purposes	<ul style="list-style-type: none"> ▶ No substantial changes 	<p>None</p> <p>(Related rule: URJP 20(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."</p>
Rule 35: Physical and mental examination of persons	<ul style="list-style-type: none"> ▶ Person being examined may record examination ▶ Significant changes to "Report" section ▶ Significant changes to "Sanctions" section 	<p>None</p> <p>(Related rule: URJP 20(f): "Physical and mental examination of persons. Physical and mental examinations may be conducted pursuant to Utah R. Civ. P. 35.")</p>

Rule 36: Request for admission

- ▶ Substantial changes to Request for admission
- ▶ Substantial changes to Answer or objection

None

(Related rule: URJP 20(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.")

Rule 37: Discovery and disclosure motions; Sanctions (formerly "Failure to make or cooperate in discovery; sanctions")

- ▶ Significant changes to Motion for order compelling
- ▶ Significant changes to Motion for protective order
- ▶ Substantial changes to Orders
- ▶ Significant changes to Expense and sanctions for motions
- ▶ Significant changes to Failure to comply with order
- ▶ Significant changes to Expenses on failure to admit
- ▶ Significant changes to Failure of party to attend own deposition

None

(Related rule: URJP 20(k): "Failure to cooperate in discovery. As applicable, failure to cooperate with discovery shall be governed by Utah R. Civ. P. 37.")

Rule 54: Judgments; costs

- ▶ No substantial changes

None

From: Paul Wake
To: Gregory, Katie
Date: 9/14/2011 10:39 AM
Subject: Re: URJP: Scheduling a Fall Meeting

Here is an issue I would like to discuss with the URJP committee:

Rule 23A has a sentence in it that seems either not appropriate, or placed in the wrong subsection. Before getting to that, let me provide a bit of background on the Serious Youth Offender process, which Rule 23A deals with.

There are three ways to send a minor to district court to be tried as an adult: 1) the Utah Code 78A-6-701 direct file process, under which minors 16 and 17 who kill someone, or who commit a felony after having already been in secure confinement, go directly to district court without ever seeing a juvenile judge; 2) the Utah Code 78A-6-702 SYO process under which minors 16 or 17 who commit one of ten enumerated felonies get a preliminary hearing before a juvenile judge, and then after the prosecutor shows probable cause and the minor can't show that specified retention factors apply, the minor is bound over to district court; and 3) the Utah Code 78A-6-703 certification process under which if a minor 14 or older who commits any felony the prosecutor thinks is really bad, the prosecutor can ask the judge to certify that the minor is irredeemable and should be transferred to district court, and the judge then holds a hearing and refuses to certify.

Most of Rule 23A--sections (a) through (e)--deals with the SYO procedure up to the point at which the juvenile judge makes a decision on bindover. Sections (f) and (g) deal with what to do once the judge makes that decision. 23A(f)(1) says: "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." The second to the last sentence is problematic.

Several months ago in Utah County we had a SYO case in which a judge bound a defendant over and was in the process of finishing up the order to send him to jail, when the defense attorney realized to his surprise that his client would be going to jail once bound over to be tried as an adult. The attorney was in a dither, and asked for a continuance, and asked me if there was any way out of this, and I told him I didn't think so but I did point him at that sentence in 23A(f)(1) that provided a possible loophole. He used that to argue to the judge that his client should be kept in juvenile detention. This thing had never happened before in Utah County, and it is nuts, but it got me thinking. The "[t]he court may order the minor held in a detention center or released in accordance with Rule 9" sentence in 23A(f)(1) is really odd. Rule 9 deals with juvenile detention, and with release from juvenile detention, which doesn't involve bail. So in Rule 23A we're saying that we're going to set bail, but then the defendant might be kept in a juvenile facility despite being in the process of being tried as an adult, and if so can apparently use a non-bail-related detention rule to determine release. It seems as if that sentence makes more sense in 23A(g), which deals with SYO situations in which there is probable cause but the defendant proves the retention factors, and so ends up remaining in juvenile court to be tried as a juvenile. In that circumstance, it would make sense that being held in detention would be affected by Rule 9, since there are provisions there about continuing predisposition detention reviews.

Unfortunately for me, there's an even clearer answer to this situation that I should have remembered at the time of my SYO case, but forgot until reminded by a colleague in Salt Lake County. In 2010's SB140, the legislature amended Utah Code 62A-7-201(2)(a) (JJS provisions on detention referenced by Rule 23A) to try to take out the detention loophole, the one that the SYO in my recent case availed himself of: the legislature changed "may be detained in a jail" to "shall be detained in a jail" ("Children charged with crimes under Section 78A-6-701 [the direct file provision], as a serious youth offender under Section 78A-

Katie Gregory - Research

From: Judge Christine Decker
To: kierstyl@email.utcourts.gov
Date: 2/25/2011 2:34 PM
Subject: Research

Kiersty--

I have received a Motion Requesting that I declare Juvenile Court Rule 29A facially unconstitutional based on Crawford v. Washington. Please prepare a memo addressing the constitutionality. Arguments are not scheduled until April so there is time. Thanks

6-702 and bound over to the jurisdiction of the district court, or certified to stand trial as an adult pursuant to Section 78A-6-703, if detained, shall be detained in a jail or other place of detention used for adults.") In addition, the legislature amended Utah Code 78A-6-702(8) to say: "When a minor has been bound over to district court under this section, the jurisdiction of the Division of Juvenile Justice Services and the juvenile court over the minor is terminated regarding that offense..." Looking at that second change, it's hard to see how JJS would have jurisdiction to hold a minor for a bound over offense. Now, I do observe that the legislative history of SB140 is a mess. The legislators seemed to confuse direct file and the SYO process mentioned above. In the middle of some of this confusion, Jacey Skinner of the Utah Sentencing Commission explained to a committee that SB 140 was not viewed as a change, but as a clarification of the intent of the legislature. She said that the main thrust of the legislation was not the "may" to "shall" change, but the addition of a citation to Utah Code § 78A-6-701 to the Title 62A statute, because direct file was not previously listed along with serious youth offender and certification cases as cases in which minors would be held in jail (the assumption apparently having been that it was unnecessary to list direct file cases since JJS and the juvenile court were not expected to have contact with such cases). Ms. Skinner then added that in serious youth offender cases and certification cases, transfer of jurisdiction is when transfer of holding would take place. So, it seems the legislature assumes, and thought it had already made clear in law but needed to make clearer, that people transferred to the adult system actually go to the adult system. Rule 23A's loophole appears to be at odds with legislative intent on a substantive legal issue.

It seems to me that the offending sentence in 23A(f) should either be excised, or moved to 23A(g), but I would like to hear the greater wisdom of the committee on that matter.

Paul Wake