

# AGENDA

## SUPREME COURT'S ADVISORY COMMITTEE ON THE RULES OF JUVENILE PROCEDURE

WebEx Virtual Conference  
April 3, 2020  
Noon – 2:00 p.m.

- |             |  |                              |
|-------------|--|------------------------------|
| 12:00-12:10 | <b>Welcome and Approval of Minutes</b><br><i>(Draft Minutes of February 7, 2020—Tab 1)</i>   | David Fureigh                |
| 12:10-12:40 | <b>Rule 27A-Admissibility of Statements Given by Minors</b><br><i>The Committee will discuss the Supreme Court's final feedback on Rule 27A. (Rule 27A-draft dated February 19, 2020—Tab 2)</i>  | David Fureigh                |
| 12:40-1:15  | <b>Rule 9-Detention Hearings; scheduling; hearing procedure</b><br><i>Continued Discussion of Rule 9 drafts</i><br><i>Draft of Rule 9 dated February 7, 2020 created by Judge Lindsley (Tab—3)</i><br><i>Draft of Rule 9 dated March 27, 2020 created by Monica Diaz</i><br><i>Incorporating Legislative Revisions from H.B. 384 (Tab—4)</i> | David Fureigh<br>Monica Diaz |
| 1:15-1:30   | <b>Rule 32-Initiation of Ungovernability and Runaway Cases</b><br><i>Ms. Gregory will address a minor revision to Rule 32 from S.B. 65, lines 960-965 (Rule 32-draft dated March 30, 2020 Tab—5)</i>   | Katie Gregory                |
| 1:30-1:55   | <b>Identification of Other Legislative Bills Requiring Rule Changes</b><br><i>Please come prepared to share any recent case law and/or legislation which may require rule changes or consideration. We need to begin composing a list of these for future meeting agendas.</i>   | David Fureigh                |
| 1:55-2:00   | <b>Old or New Business</b> <ul style="list-style-type: none"><li>• Next Meeting May 1, 2020</li></ul>  | All                          |
| 2:00        | <b>Adjourn</b>   |                              |

# **TAB 1**

# Utah Rules of Juvenile Procedure Committee- Meeting Minutes

February 7, 2020                      Noon to 2:00 p.m.                      Conference Room A  
 MEETING DATE                      TIME                      LOCATION

MEMBERS:			Present	Absent	Excused	MEMBERS:			Present	Absent	Excused
David Fureigh	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Michelle Jeffs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
Judge Elizabeth Lindsley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sophia Moore	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>				
Judge Mary Manley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Mikelle Ostler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
Arek Butler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Jordan Putnam	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
Monica Diaz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Janette White	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
Kristin Fadel	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Chris Yannelli	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>				
Daniel Gubler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Carol Verdoia (Emeritus)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
AOC STAFF:			Present	Excused	GUESTS:			Present	Absent		
Katie Gregory	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bridget Koza	<input checked="" type="checkbox"/>	<input type="checkbox"/>						
Jean Pierce	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>						
Keegan Rank	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>						

## AGENDA TOPIC

<b>I. Welcome &amp; Approval of Minutes</b>		CHAIR: DAVID FUREIGH
The Committee approved the minutes of January 3, 2020.		
Motion: to approve the minutes of January 3, 2020.	By: Judge Manley	Second: Mikelle Ostler
Approval	<input checked="" type="checkbox"/> Unanimous	<input type="checkbox"/> Vote: In Favor _____ Opposed _____

## AGENDA TOPIC

<b>II. Legislative Response Teams</b>	DAVID FUREIGH
David Fureigh reported on a recent meeting between the Supreme Court and Advisory Committee Chairs and staff regarding responding to requests from legislators and welcoming legislative staff who attend meetings of the various rules committees. The Supreme Court requested that the Advisory Committees designate members who may respond to legislation more quickly if the need arises. The following members volunteered to assist when a rapid response to legislation is necessary: Monica Diaz, Michelle Jeffs, Janette White and Daniel Gubler.	

## AGENDA TOPIC

<b>III. Rule 9-Detention Hearings; scheduling; hearing procedure</b>	DAVID FUREIGH
The current comment period for Rule 9 closed in January. The committee discussed whether to proceed or to hold further discussion of Rule 9 until Representative Snow's extensive bill on juvenile justice reform is publically available. The committee previously discussed Judge Leavitt's public comment at its meeting on January 3, 2020 and asked Judge Lindsley to seek clarification from him. She shared the discussion she had with Judge Leavitt and his suggestions to clarify the intent of his comment. Judge Leavitt suggested that his comment be amended as follows:	





# TAB 2

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**Rule 27A. Admissibility of statements given by minors.**

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

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

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

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

(d) The state shall retain the burden of proving that the waiver of the minor's rights was knowing and voluntary regardless of the age of the child or minor.

**Advisory Committee Notes**

~~This rule is intended to recognize the right to counsel, and the right against self-incrimination as established by statute, constitution, or caselaw.~~

# TAB 3



**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 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:~~

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~~(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) If a minor is admitted into a detention facility without a warrant, the court shall make a determination whether there is a reasonable basis for admission within 24 hours including weekends and holidays.

(c)(b) The court shall hold a detention hearing within 48 hours of the minor's admission to detention, excluding weekends and holidays, to determine (1) if not previously determined under paragraph (b), whether there was a reasonable basis for placement in detention and (2) whether the minor should remain in detention. If a judge had previously determined under paragraph (b)

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25 that a reasonable basis for detention existed, the juvenile would not be barred from objecting to  
26 that finding at the hearing. ~~weekends and holidays excluded. A minor may not be held in a~~  
27 detention facility longer than 48 hours before a detention hearing, excluding weekends and  
28 holidays, unless the court has entered an order for continued detention. The officer in charge of  
29 the detention facility shall notify the minor, parent, guardian or custodian and attorney of the  
30 date, time, place and manner of such hearing.

31 ~~(d)(e)~~ The court may at any time order the release of a minor whether a detention hearing is  
32 held or not.

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33 ~~(e)(d)~~ The court may order a minor to be held in the detention facility or be placed in another  
34 appropriate facility, subject to further order of the court, only if the court finds at a detention  
35 hearing that:

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36 ~~(e)(d)(1)~~ releasing the minor to minor's parent, guardian, or custodian presents an  
37 unreasonable risk to public safety;

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38 ~~(e)(d)(2)~~ less restrictive non-residential alternatives to detention have been considered and,  
39 where appropriate, attempted; and

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40 ~~(e)(d)(3)~~ the minor is eligible for detention under the division guidelines for detention  
41 admissions established by the Division of Juvenile Justice Services, under Section 62A-7-202  
42 and under Section 78A-6-112.

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43 ~~(f)(ed)~~ At the beginning of the detention hearing, the court shall advise all persons present as  
44 to the reasons or allegations giving rise to the minor's admission to detention and the limited  
45 scope and purpose of the hearing ~~as set forth in paragraph (g).~~ If the minor is to be arraigned at  
46 the detention hearing, the provisions of Rules 24 and 26 shall apply.

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47 ~~(g)(fe)~~ The court may receive any information, including hearsay and opinion, that is relevant  
48 to the decision whether to detain or release the minor. Privileged communications may be  
49 introduced only in accordance with the Utah Rules of Evidence.

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50 ~~(h)(ef)~~ A detention hearing may be held without the presence of the minor's parent, guardian  
51 or custodian if they fail to appear after receiving notice. The court may delay the hearing for up

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52 to 48 hours to permit the parent, guardian or custodian to be present or may proceed subject to  
53 the rights of the parent, guardian or custodian. The court may appoint counsel for the minor with  
54 or without the minor's request.

55 | ~~(i)(hg)~~ If the court determines that no reasonable basis exists for the offense or condition  
56 alleged as required in Rule 6 as a basis for admission, it shall order the minor released  
57 immediately without restrictions.

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58 | ~~(j)(i)~~ If the court determines that ~~reasonable cause exists for continued detention, a less~~  
59 ~~restrictive alternative to detention is appropriate~~ it may ~~order continued detention~~, place the  
60 minor on home detention, ~~another alternative program~~, or order the minor's release upon  
61 compliance with certain conditions pending further proceedings. Such conditions may  
62 include:

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63 | ~~(j)(hg)~~(1) a requirement that the minor remain in the physical care and custody of a parent,  
64 guardian, custodian or other suitable person;

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65 | ~~(j)(hg)~~(2) a restriction on the minor's travel, associations or residence during the period of the  
66 minor's release; and

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67 | ~~(j)(hg)~~(3) other requirements deemed reasonably necessary and consistent with the criteria for  
68 detaining the minor.

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69 | ~~(k)(i)(h)~~ If the court determines that a reasonable basis exists as to the offense or condition  
70 alleged as a basis for the minor's admission to detention but that the minor can be safely left in  
71 the care and custody of the parent, guardian or custodian present at the hearing, it may order  
72 release of the minor upon the promise of the minor and the parent, guardian or custodian to  
73 return to court for further proceedings when notified.

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74 | ~~(l)(k)(j)~~ If the court determines that the offense is one governed by Section 78A-6-701,  
75 Section 78A-6-702, or Section 78A-6-703, the court may by issuance of a warrant of arrest order  
76 the minor committed to the county jail in accordance with Section 62A-7-201.

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77 | ~~(m)(l)(k)~~ Any predisposition order to detention shall be reviewed by the court once every  
78 seven days, unless the minor is ordered to home detention or an alternative detention program.

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79 Predisposition orders to home detention or an alternative detention program shall be reviewed by  
80 the court once every 15 days. The court may, on its own motion or on the motion of any party,  
81 schedule a detention review hearing at any time.

82 Advisory Committee Notes

83 ~~Paragraph (j) of this Rule is a change to permit the court to review the detention~~  
84 ~~order without waiting for a party to bring the issue to the court.~~

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# TAB 4

**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 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) If a minor is admitted into a detention facility without a warrant, the court shall make a determination whether there is a reasonable basis for admission **probable cause for the minor's arrest**, within 24 hours **of the minor's admission to detention** including weekends and holidays.

~~(c)(b)~~ The court shall hold a detention hearing within 48 hours of the minor's admission to detention, ~~weekends and holidays excluded~~. **A minor may not be held in a detention facility longer than 48 hours before a detention hearing, excluding weekends and holidays, unless the court has entered an order for continued detention.** The officer in charge of the detention facility

**Comment [MG1]:** I suggest we revert back to the original language.

25 shall notify the minor, parent, guardian or custodian and attorney of the date, time, place and  
26 manner of such hearing.

27 ~~(d)~~~~(e)~~ The court may at any time order the release of a minor whether a detention hearing is  
28 held or not.

29 ~~(e)~~ A probable cause determination and detention hearing may occur concurrently so long as  
30 the probable cause determination and the detention hearing occur pursuant to the times frames in  
31 paragraphs (b) and (c).

32 ~~(f)~~~~(e)~~ The court may order a minor to be held in the detention facility or placed in another  
33 appropriate facility, subject to further order of the court, only if the court finds a detention  
34 hearing that:

35 ~~(e)~~~~(f)~~~~(1)~~ releasing the minor to ~~the~~ minor's parents, guardian, or custodian presents an  
36 unreasonable risk to public safety;

37 ~~(e)~~~~(f)~~~~(2)~~ less restrictive nonresidential alternatives to detention have been considered and,  
38 where appropriate, attempted; and

39 ~~(e)~~~~(f)~~~~(3)~~ the minor is eligible for detention under the division guidelines for detention  
40 admission established by the Division of Juvenile Justice Services, under Section 62A-7-202 and  
41 under Section 78A-6-112.

42 ~~(d)~~~~(g)~~ At the beginning of the detention hearing, the court shall advise all persons present as  
43 to the reasons or allegations giving rise to the minor's admission to detention and the limited  
44 scope and purpose of the hearing as set forth in ~~paragraph (g)~~. If the minor is to be arraigned at  
45 the detention hearing, the provisions of Rules 24 and 26 shall apply.

46 ~~(e)~~~~(h)~~ The court may receive any information, including hearsay and opinion, that is relevant  
47 to the decision whether to detain or release the minor. Privileged communications may be  
48 introduced only in accordance with the Utah Rules of Evidence.

49 ~~(f)~~~~(i)~~ A detention hearing may be held without the presence of the minor's parent, guardian or  
50 custodian if they fail to appear after receiving notice. The court may delay the hearing for up to

51 48 hours to permit the parent, guardian or custodian to be present or may proceed subject to the  
52 rights of the parent, guardian or custodian. The court may appoint counsel for the minor with or  
53 without the minor's request.

54 ~~(e)(j)~~ If the court determines that no ~~reasonable basis~~ probable cause exists for the  
55 arrest and or the offense or condition alleged ~~as required~~ does not meet the requirements in Rule  
56 6 as a basis for admission, it shall order the minor released immediately without restrictions.

57 (k) If the court determines that ~~reasonable cause exists for continued detention, a less~~  
58 restrictive alternative to detention is appropriate it may ~~order continued detention, another~~  
59 alternative program, place the minor on home detention, or order the minor's release upon  
60 compliance with certain conditions pending further proceedings. Such conditions may include:

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

63 ~~(e)(k)~~(2) a restriction on the minor's travel, associations or residence during the period of the  
64 minor's release; and

65 ~~(e)(k)~~(3) other requirements deemed reasonably necessary and consistent with the criteria for  
66 detaining the minor.

67 ~~(l)(h)~~ If the court determines that a ~~reasonable basis~~ probable cause exists as to the offense or  
68 condition alleged as a basis for the minor's admission to detention but that the minor can be  
69 safely left in the care and custody of the parent, guardian or custodian present at the hearing, it  
70 may order release of the minor upon the promise of the minor and the parent, guardian or  
71 custodian to return to court for further proceedings when notified.

72 (m)(i) If the court determines that the offense is one governed by Section 78A-6-701, Section  
73 78A-6-702, or Section 78A-6-703, the court may by issuance of a warrant of arrest order the  
74 minor committed to the county jail in accordance with Section 62A-7-201.

75 (n)(j) Any predisposition order to detention shall be reviewed by the court once every seven  
76 days, unless the minor is ordered to home detention or an alternative detention program.  
77 Predisposition orders to home detention or an alternative detention program shall be reviewed by



78 the court once every 15 days. The court may, on its own motion or on the motion of any party,  
79 schedule a detention review hearing at any time.

# TAB 5

1

2 **Rule 32. Initiation of ungovernability and runaway cases.**

3 (a) Proceedings involving a child alleged to be beyond control of the child's parent, guardian or  
4 lawful custodian, or alleged to be a runaway, shall be initiated by petition.

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

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

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13 [See lines 960-964 of SB 65 at the link below]

14 <https://le.utah.gov/~2020/bills/static/SB0065.html>