

AGENDA TOPIC

III. Rule 9-Detention hearings; scheduling; hearing procedure		KATIE GREGORY
<p>Rule 9 was sent out for its fifth comment period in mid-April. The comment period closed and no written comments were received. During a legislative update, court staff noted that the revised statute requires a detention hearing within 48 hours of the juvenile's arrest. The rule requires that the hearing be held within 48 hours of the juvenile's admission to detention. The Committee discussed if the rule should be amended to mirror the statute.</p> <p>The Committee considered that many juveniles are arrested on charges that do not qualify for detention so arrest should not be used as the triggering event. In addition, it is the booking into detention that triggers Rule 9 and the purpose of the probable cause determination is so that a juvenile does not continue in detention without the determination being made. Some Committee members also noted that the exact time of arrest is not generally documented, while the time of admission to detention is recorded. After discussion, the Committee determined that the better practice is to leave Rule 9 in its current form.</p>		
Action Item:	Present Rule 9 to Supreme Court for final approval.	
Motion: to approve the April 13, 2020 draft of Rule 9 without additional revisions.	By: Monica Diaz	Second: Michelle Jeffs
Approval	<input checked="" type="checkbox"/> Unanimous <input type="checkbox"/> Vote: # In Favor _____ # Opposed _____	

AGENDA TOPIC

IV. Rule 21-Warrant of arrest or summons in cases under Utah Code § 78A-6-703.3		CHRIS YANNELLI
<p>Chris Yannelli presented a draft of Rule 21 dated May 29, 2020. The changes were made to comport to statutory changes made in HB 384-Juvenile Justice Amendments. He called the Committee's attention to line 21, paragraph (c)(2), and requested the Committee consider whether the appropriate language should be "juvenile detention center" or "juvenile detention facility." He noted that juvenile detention facility is used in HB 384, but compared it to the definition of "detention center" in § 78A-6-105. Ultimately the Committee determined that the terms are substantially interchangeable.</p>		
Action Item:	Request that the Supreme Court approve Rule 21 for public comment.	
Motion: to approve the May 29, 2020 draft of Rule 21 as written.	By: Judge Lindsley	Second: Arek Butler
Approval	<input checked="" type="checkbox"/> Unanimous <input type="checkbox"/> Vote: # In Favor _____ # Opposed _____	

AGENDA TOPIC

V. Rule 22-Initial appearance and preliminary examination in cases under Utah Code § 78A-6-703.3		JUDGE LINDSLEY
<p>Judge Lindsley presented a draft of Rule 22 dated May 28, 2020. She discussed proposed revisions, some of which are based on the Legislature’s repealing of § 78A-6-702 and § 78A-6-703. She updated several paragraphs to reflect that the court should apply factors in the new § 78A-6-703.3. She also took out the reference at line 18 and 19 to appointing counsel without expense if the juvenile is unable to obtain counsel because all juveniles are now given counsel.</p> <p>Michelle Wilkes requested that on line 50 the word “of” be deleted as unnecessary and that on line 49 the reference to code be corrected to read § 78A-6-703.3, which was partially stricken in the draft. She also addressed the structure of lines 30-32. She recommended that the sentence which reads “If the minor waives the right to a preliminary examination the court shall proceed in accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code § 78A-6-703.5.” should instead read “If the minor waives the right to the probable cause determination at a preliminary examination, the court shall proceed in accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code § 78A-6-703.5.” The Committee agreed with these additional revisions to the May 28, 2020 draft of Rule 22.</p>		
Action Item:	Request that the Supreme Court approve Rule 22 for public comment.	
Motion: to approve the May 28, 2020 draft of Rule 22 with the further revisions proposed by the committee at lines 30-32, line 49 and line 50.	By: Judge Lindsley	Second: Chris Yannelli
Approval	<input checked="" type="checkbox"/> Unanimous <input type="checkbox"/> Vote: # In Favor _____ # Opposed _____	

AGENDA TOPIC

VI. Rule 23-Hearing to waive jurisdiction and certify under Section 78A-6-703; bind over to district court		JUDGE LINDSLEY
<p>Judge Lindsley presented a draft of Rule 23 dated May 28, 2020. She recommended that the entire rule be repealed because Utah Code § 78A-6-703 was repealed and certification to district court is no longer an option to transfer a minor.</p>		
Action Item:	Request that the Supreme Court approve the Committee’s request to repeal Rule 23 and send the request out for public comment.	
Motion: to repeal Rule 23 in its entirety because the statute has been repealed.	By: Judge Manley	Second: Janette White
Approval	<input checked="" type="checkbox"/> Unanimous <input type="checkbox"/> Vote: # In Favor _____ # Opposed _____	

AGENDA TOPIC

VII. Rule 23A-Hearing on condition of Utah Code § 78A-6-703.3 bind over to district court		JUDGE LINDSLEY
<p>Judge Lindsley presented a draft of Rule 23A dated May 28, 2020. The revisions include replacing all references to repealed Utah Code § 78A-6-702 with §78A-6-703.3. The revisions also replace reference to “conditions” with the term “factors.” New paragraphs (b)(1) through (b)(5) and paragraph (c) contain the new statutory factors the court shall consider and on which the court must make findings pertaining to whether the minor should be retained in the juvenile system. It deletes the old conditions under Utah Code § 78A-6-702 at lines 11 through 21. Paragraph (d) clarifies that the minor has the ability to cross-examine the state’s witnesses as to the factors listed. Lines 45-46 add that the court shall make an initial determination on where the minor is held until the time of trial. Lines 54-55 add the new standard, which considers whether it is in the best interest of the minor and the public for the juvenile court to retain jurisdiction over the offense.</p> <p>In addition to the revisions proposed in the May 28 draft, Monica Diaz proposed that the word “conditions” be changed to “factors” in the title of Rule 23A. She additionally proposed that paragraph (d) at lines 36-38 be amended to read “At the preliminary examination, the minor may testify under oath, call witnesses, cross-examine witnesses and present evidence.” Judge Lindsley then proposed striking “The minor may cross-examine adverse witnesses” at lines 37 through 38.</p> <p>Judge Lindsley further noted that Rules 21 through 23A are contained in Section VI of the juvenile rules, which is currently titled “Proceedings under Sections 78A-6-702 and 78A-6-703.” This should be amended to read “Sections 78A-7-703.1 through 78A-6-703.6.”</p>		
Action Item:	Request that the Supreme Court approve Rule 23A for public comment. Change the header in Section VI of the juvenile rules to 78A-6-703.1 through 78A-6-703.6.	
Motion: to adopt the May 28, 2020 draft of Rule 23A with the additional changes in the title and at lines 35 through 38.	By: Judge Lindsley Second: Michelle Jeffs	
Approval	<input checked="" type="checkbox"/> Unanimous <input type="checkbox"/> Vote: # In Favor _____ # Opposed _____	

AGENDA TOPIC

VIII. Rule 44-Findings and conclusions		JUDGE LINDSLEY
<p>Judge Lindsley presented a draft of Rule 44 dated May 28, 2020. The rule was amended to reflect that the statute providing for certification proceedings has been repealed and replaced by new statutory provisions for proceedings conducted pursuant to Utah Code § 78A-6-703.3 and § 78A-6-703.5.</p>		
Action Item:	Request that the Supreme Court approve Rule 44 for public comment.	
Motion: to approve the May 28, 2020 draft of Rule 44.	By: Monica Diaz Second: Sophia Moore	
Approval	<input checked="" type="checkbox"/> Unanimous <input type="checkbox"/> Vote: # In Favor _____ # Opposed _____	

AGENDA TOPIC

IX. Rule 50-Presence at hearings		BRIDGET KOZA
<p>Bridget Koza reviewed the Committee’s action on Rule 50. She compiled the changes made at the last meeting and created a new draft dated May 1, 2020. Ms. Koza proposed revising lines 29 and 30 to cite the United State Code section as 25 U.S.C. §§ 1901-1963. She further suggested that the word “Section” be changed to a section sign on lines 4 and 8. In addition, she explained that the language included at lines 53-58 is proposed for the purpose of a corresponding amendment to the Supreme Court’s rule on the unauthorized practice of law contained in Utah Special Practice Rule 14-802 to create an exception for when non-attorney tribal representative appears in a case.</p>		
Action Item:	Request that the Supreme Court approve Rule 50 for public comment. Discuss proposed lines 47 through 58 with the Supreme Court and request amendments to Utah Special Practice Rule 14-802.	
Motion: to approve the May 1, 2020 draft of Rule 50, lines 1 through 45, with the additional amendments to lines 4, 8 and 29-30.	By: Judge Manley	Second: Jordan Putnam
Approval	<input checked="" type="checkbox"/> Unanimous <input type="checkbox"/> Vote: # In Favor _____ # Opposed _____	

AGENDA TOPIC

X. Old or New Business		ALL
<p>The Committee discussed potential future agenda items:</p> <ol style="list-style-type: none"> 1. <i>In re GJP</i>, 2020 Utah 4—Supreme Court’s request to consider the appointment of attorneys for parents who may be incompetent. Sophia Moore volunteered to work on this issue for a future meeting. She asked David Fureigh to discuss the case with the Supreme Court for additional clarification. 2. Rule 48 Post-judgment motions. Carol Verdoia suggested that the Committee review related statutes and case law for any conflicts with Rule 48. 3. H.B. 33: Consider if any additional action is needed due to legislative changes made in HB 33. The new law allows a parent to request some kind of hearing or consideration by the court of reunification services if a termination petition has been filed by anyone prior to a dispositional hearing. Do judges or parental defenders feel it would be helpful to put a process in rule to address HB 33 procedure? 4. Follow up on Rules out for public comment: At the August meeting, the Committee will address any comments on the rules in Group I and Group II discussed at the April, May and June meetings. In addition, Rule 52 was adopted by emergency rule making and is currently in effect. If any comments are received on rule 52 prior to the August meeting, the comments should also be addressed at the August meeting. <p><i>[Committee Secretary's Note: Following the June 5, 2020 meeting the Committee took additional action on Rule 9 by email vote. The Committee approved the amendment of Rule 9(m) as follows:</i></p>		

Approved August 7, 2020

(m) If the court determines that the offense is one governed by Utah Code §78A-6-703.2, §78A-6-703.3, §78A-6-703.5, or §78A-6-703.6, Section 78A-6-701, Section 78A-6-702, or Section 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~~ Utah Code §62A-7-201.

The additional revisions were necessitated by the repeal of Utah Code §§ 78A-6-701, 78A-6-702, and 78A-6-703.]