AGENDA

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

WebEx Virtual Conference
August 7, 2020
Noon – 2:00 p.m.

12:00-12:10	**Welcome and Approval of Minutes** *(Draft Minutes of June 5, 2020 —Tab 1)*	David Fureigh
12:10-1:00	**Discussion of Public Comments to the following Rules:** • **Rule 5-Definitions** *(Tab 2)* • **Rule 17-The petition** *(Tab 2)* • **Rule 31-Initiation of truancy proceedings** *(Tab 2)* • **Rule 56-Expungement** *(Tab 2)* • **Rule 52 - Appeal** *(Tab 3)* • **Rule 21-Warrant of arrest or summons in cases under Utah Code § 78A-6-703.3** *(Tab 4)* • **Rule 22-Initial appearance and preliminary examination in cases under Utah Code § 78A-6-703.3** *(Tab 4)* • **Rule 23- Hearing to waive jurisdiction and certify under Section 78A-6-703; bind over to district court** *(Tab 4)* • **Rule 23A-Hearing on condition of Utah Code § 78A-6-703.3 bind over to district court** *(Tab 4)* • **Rule 44-Findings and conclusions** *(Tab 4)*	David Fureigh
1:00-1:25	**Review of Rules Impacted by Legislation (Group 3)**	
	Rule 48-Post-judgment motions *(Tab 5)*	Carol Verdoia
	H.B. 33 Discussion – reunification services hearing *(Tab 6)*	David Fureigh
1:25-1:50	**Discussion of *In re G.J.P.*** *(Tab 7)* *The Committee will discuss the Supreme Court's feedback on In re G.J.P.*	David Fureigh
1:50-2:00	**Old or New Business/Adjourn**	All

TAB 1

Utah Rules of Juvenile Procedure Committee- Meeting Minutes

June 5, 2020	Noon to 2:00 p.m.	Virtual WebEx Conferencing
MEETING DATE	TIME	LOCATION

MEMBERS:	Present	Absent	Excused	MEMBERS:	Present	Absent	Excused
David Fureigh	☒	☐	☐	Michelle Jeffs	☒	☐	☐
Judge Elizabeth Lindsley	☒	☐	☐	Sophia Moore	☒	☐	☐
Judge Mary Manley	☒	☐	☐	Mikelle Ostler	☒	☐	☐
Arek Butler	☒	☐	☐	Jordan Putnam	☒	☐	☐
Monica Diaz	☒	☐	☐	Janette White	☒	☐	☐
Kristin Fadel	☐	☐	☒	Chris Yannelli	☒	☐	☐
	☐	☐	☐	Carol Verdoia (Emeritus)	☒	☐	☐
AOC STAFF:	**Present**		**Excused**	**GUESTS:**	**Present**	**Absent**	
Katie Gregory	☒		☐	Jacqueline Carlton	☒	☐	
Jean Pierce	☒		☐		☐	☐	
Keegan Rank	☒		☐		☐	☐	
Bridget Koza	☒		☐				

AGENDA TOPIC

I. Welcome & Approval of Minutes	**CHAIR: DAVID FUREIGH**
David Fureigh welcomed members and announced that both Keegan Rank and Katie Gregory will be leaving the Committee this month. Mr. Rank is moving out of state and Ms. Gregory is retiring on June 30. The Committee thanked them for their service. Monica Diaz disclosed that she has changed positions and has been appointed as the Director of the Utah Sentencing Commission. The Committee approved the minutes of May 1, 2020.	
Motion: to approve the minutes of May 1, 2020.	By: Judge Manley Second: Sophia Moore
Approval	☒ Unanimous ☐ Vote: In Favor_____ Opposed _____

AGENDA TOPIC

II. Meeting Schedule	**ALL**
The Committee set the following meeting dates for the remainder of 2020: August 7, October 2, November 6 and December 4, 2020. All meetings will be held from 12:00 to 2:00 p.m. and will continue to be held virtually until further notice.	
Action Item:	Bridget Koza will send out calendar appointments for meetings.

AGENDA TOPIC

III. Rule 9-Detention hearings; scheduling; hearing procedure	KATIE GREGORY

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.

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.

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	× Unanimous ☐ 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

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.

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	× Unanimous ☐ 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

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.

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.

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	× Unanimous ☐ 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

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.

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	× Unanimous ☐ 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

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.

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.

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."

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	× Unanimous ☐ Vote: # In Favor_____ # Opposed _____

AGENDA TOPIC

VIII. Rule 44-Findings and conclusions	JUDGE LINDSLEY

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.

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	× Unanimous ☐ Vote: # In Favor_____ # Opposed _____

AGENDA TOPIC

IX. Rule 50-Presence at hearings	BRIDGET KOZA

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.

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	× Unanimous □ Vote: # In Favor_____ # Opposed _____

AGENDA TOPIC

X. Old or New Business	ALL

The Committee discussed potential future agenda items:

1. *In re GJP*, 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.

[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:

(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.]

TAB 2

Rule 5. Definitions.

Terms in these rules have the same definitions as provided in ~~Section~~Utah Code §62A-7-101 and ~~Sections~~Utah Code §78A-6-105 and Utah Code §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~~ Utah Code §§78A-6-302 et seq. and 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~~ an individual who is 18 years ~~of age or over~~ old or older.~~, except that persons 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall be referred to as "minors"~~ "Adult" does not include an individual who is 18 years old or older and whose case is under the continuing jurisdiction of the juvenile court in accordance with Utah Code §78A-6-120.

(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~~ Utah Code §78A-6-117.

(g) "Minor" means:

(g)(1) For the purpose of juvenile delinquency: a child, or an individual who is at least 18 years old and younger than 25 years old and whose case is under the jurisdiction of the juvenile court; and

(g)(2) For all other purposes in these rules: a child, or an individual who is at least 18 years old and younger than 21 years old and whose case is under the jurisdiction of the juvenile court.

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

(~~h~~i) "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~~j) "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~~k) "Ungovernability" means the condition of a child who is beyond the control of the parent/guardian or lawful custodian, to the extent that the child's behavior or condition endangers the child's own welfare or the welfare of others or has run away from home.

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 filed by the prosecuting attorney upon information and belief.

(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) Petitions for adjudication ~~E~~expungement~~s~~ must meet all of the criteria of Utah Code § 78A-6-1503 and ~~The petition~~ shall state: the name, age, and residence of the ~~minor~~ petitioner. ~~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 § 78A-6-1105~~

(c)(3) Petitions for expungement of nonjudicial adjustments must meet all of the criteria of Utah Code § 78A-6-1504 and shall state: the name, age, and residence of the petitioner. Petition for nonjudicial expungement must be served upon the County Attorney, or within a prosecution district, the District Attorney for each jurisdiction in which a nonjudicial adjustment occurred.

(c)(4) Petitions for vacatur must meet all of the criteria of Utah Code § 78A-6-1114 and shall state any agency known or alleged to have documents related to the offense for which vacatur is sought. Petitions for vacatur 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.

(c)(5)~~(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.

Draft: May 1, 2020

Rule 31. Initiation of truancy proceedings.

(a) The referral of a child alleged to come within the jurisdiction of the court as habitually truant shall be accompanied by a statement setting forth all actions taken and efforts made, if required, by school personnel and officials in compliance with Utah Code ~~Ann.~~ § ~~53A-11-103~~ 53G-6-206. A preliminary inquiry shall be conducted by an intake officer. At the preliminary inquiry a determination shall be made as to whether the school has made efforts under Utah Code ~~Ann.~~ § ~~53A-11-103~~ 53G-6-206.

(b) Except as otherwise provided by law, when a petition is filed following a preliminary inquiry, the petition shall allege what efforts have been made by the school under Utah Code ~~Ann.~~ § ~~53A-11-103~~ 53G-6-206.

Draft: May 1, 2020

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~~Utah Code § 78A-6-1501, et. seq~~1105~~.

(b) Adjudication expungement.

(b)(1) 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 may be required to obtain and file verifications from local law enforcement agencies in every community in which the petitioner has resided stating whether petitioner has a criminal record.

(b)(2)~~(c)~~ If the court finds, upon hearing, that the conditions for expungement under ~~Section~~ Utah Code § 78A-6-1503~~1105~~ have been satisfied, the court shall order the records of the case sealed as provided in ~~Section~~ Utah Code § 78A-6-1503~~1105~~.

(c) Nonjudicial expungement.

(c)(1) A person whose juvenile record consists solely of nonjudicial adjustments, as provided for in Utah Code §~~Section~~ 78A-6-602, may petition the court for expungement as provided for in ~~Subsection~~ Utah Code § 78A-6-1504.

(d) The clerk shall provide certified copies of the executed order of expungement, at no cost, 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) A person whose juvenile record consists solely of nonjudicial adjustments as provided for in Section 78A-6-602 may petition the court for expungement as provided for in Subsection 78A-6-1105(6).~~

UTAH COURT RULES – PUBLISHED FOR COMMENT

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To submit a comment or view the comments of others, click on "Continue Reading." To submit a comment, scroll down to the "Leave a Reply" section, and type your comment in the "Comment" field. Type your name and email address in the designated fields and click "Post Comment."

Comments cannot be acknowledged, but all will be considered. Comments are saved to a buffer for review before publication.

Posted: May 28, 2020

Utah Courts

Rules of Juvenile Procedure – Comment Period Closed July 12, 2020

URJP005. Definitions. Amended. Makes revisions to definitions of "adult" and "minor" in juvenile delinquency cases to comply with statutory changes in H.B. 384.

URJP017. The petition. Amended. Makes revisions pertaining to petitions for expungement, including expungement of nonjudicial adjustments and petition for vacatur.

URJP031. Initiation of truancy proceedings. Amended. Corrects outdated statutory references.

URJP056. Expungement. Amended. Makes revisions to statutory changes contained in H.B. 384 regarding procedures for petitioning for expungement of juvenile court adjudications and nonjudicial adjustments.

This entry was posted in URJP005, URJP017, URJP031, URJP056.

« Rules of Juvenile Procedure – Comment Period Closed July 12, 2020

Code of Judicial Conduct – Comment Period Closed July 3, 2020 »

To view all comments submitted during a particular comment period, click on the comment deadline date. To view all comments to an amendment, click on the rule number.

CATEGORIES

- -Alternate Dispute Resolution
- -Code of Judicial Administration
- -Code of Judicial Conduct
- -Fourth District Court Local Rules
- -Licensed Paralegal Practitioners Rules of Professional Conduct
- -Rules Governing Licensed Paralegal Practitioner
- -Rules Governing the State Bar
- -Rules of Appellate Procedure
- -Rules of Civil Procedure

UTAH COURTS

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One thought on "Rules of Juvenile Procedure – Comment Period Closed July 12, 2020"

Chris Yannelli
May 28, 2020 at 7:21 am

All of these changes look great.

- -Rules of Criminal Procedure
- -Rules of Evidence
- -Rules of Juvenile Procedure
- -Rules of Professional Conduct
- -Rules of Professional Practice
- -Rules of Small Claims Procedure
- ADR101
- ADR103
- Appendix B
- Appendix F
- CJA Appendix F
- CJA01-0201
- CJA01-0204
- CJA01-0205
- CJA01-0205
- CJA01-0303
- CJA01-0304
- CJA01-0305
- CJA010-1-020
- CJA02-0103
- CJA02-0104
- CJA02-0106.01
- CJA02-0106.02
- CJA02-0106.03
- CJA02-0106.04
- CJA02-0106.05
- CJA02-0204
- CJA02-0206
- CJA02-0208
- CJA02-0208
- CJA02-0212
- CJA03-0101
- CJA03-0102
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- CJA03-0111.05
- CJA03-0111.06
- CJA03-0112
- CJA03-0114
- CJA03-0115
- CJA03-0116
- CJA03-0117
- CJA03-0201
- CJA03-0201.02
- CJA03-0202

TAB 3

Rule 52. Appeals.

(a) Except as otherwise provided by law, an appeal may be taken from the juvenile court to the Court of Appeals from a final judgment, order, or decree by filing a Notice of Appeal with the clerk of the juvenile court within 30 days after the entry of the judgment, order, or decree appealed from.

(b) Appeals taken from juvenile court orders related to abuse, neglect, dependency, termination and adoption proceedings must be filed within 15 days of the entry of the order appealed from. In non-delinquency cases, a Notice of Appeal of a party who is not a minor or a state agency must be signed by each party himself or herself.

(c) An appeal from an interlocutory order may be sought by any party by filing a petition for permission to appeal from the interlocutory order with the Court of Appeals within ~~20~~ 21 days after the entry of the order of the juvenile court.

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

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

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

Effective: May 13, 2020

UTAH COURT RULES – PUBLISHED FOR COMMENT

The Supreme Court and Judicial Council invite comments about amending these rules. To view the proposed amendment, click on the rule number.

To submit a comment or view the comments of others, click on "Continue Reading." To submit a comment, scroll down to the "Leave a Reply" section, and type your comment in the "Comment" field. Type your name and email address in the designated fields and click "Post Comment."

Comments cannot be acknowledged, but all will be considered. Comments are saved to a buffer for review before publication.

Posted: May 28, 2020

Utah Courts

Rules of Juvenile Procedure – Comment Period Closed July 12, 2020

URJP052. Appeal. Amended. The rule increases from 20 days to 21 days the time in which a party may petition for permission to appeal from an interlocutory order after the entry of the order of the juvenile court. This mirrors the 21 day standard contained in Rule 5(a) of the Utah Rules of Appellate Procedure.

This entry was posted in URJP052.

« Code of Judicial Administration – Comment Period Closed July 25, 2020

Rules of Juvenile Procedure – Comment Period Closed July 12, 2020 »

UTAH COURTS

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- -Rules of Juvenile Procedure
- -Rules of Professional Conduct
- -Rules of Professional Practice
- -Rules of Small Claims Procedure
- ADR101
- ADR103
- Appendix B
- Appendix F
- CJA Appendix F
- CJA01-0201
- CJA01-0204
- CJA01-0205
- CJA01-0205
- CJA01-0303
- CJA01-0304
- CJA01-0305
- CJA010-1-020
- CJA02-0103
- CJA02-0104
- CJA02-0106.01
- CJA02-0106.02
- CJA02-0106.03
- CJA02-0106.04
- CJA02-0106.05
- CJA02-0204
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- CJA03-0111.06
- CJA03-0112
- CJA03-0114
- CJA03-0115
- CJA03-0116
- CJA03-0117
- CJA03-0201
- CJA03-0201.02
- CJA03-0202
- CJA03-0301
- CJA03-0302
- CJA03-0304
- CJA03-0304.01

TAB 4

Draft: May 29, 2020

Rule 21. Warrant of arrest or summons in cases under ~~Section78A-6-702 and Section~~ Utah Code § 78A-6-703.3.

(a) Upon the return of an indictment alleging the commission of a felony governed by ~~Section 78A-6-702 or Section~~ Utah Code § 78A-6-703.3, 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 78A-6-702 or Section~~ Utah Code § 78A-6-703.3, 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~~this section 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 juvenile detention ~~center~~facility.

(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.

Draft: June 5, 2020

Rule 22. Initial appearance and preliminary examination in cases under ~~Section 78A-6-702 and~~ ~~Section~~ Utah Code § 78A-6-703.3

(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 juvenile detention facility ~~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 78A-6-703 or to the right to present evidence regarding the conditions established by Section 78A-6-702.~~ 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.~~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~~ Utah Code § 78A-6-~~702.~~703.3. 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~~ Utah Code § 78A-6-703.3; 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 78A-6-703, the court shall proceed in accordance with Rule 23 to hear evidence presented by the prosecutor regarding the factors of Section 78A-6-703 for waiver of jurisdiction and certification, unless the hearing is waived.~~ If the indictment is filed under ~~Section~~ Utah Code § 78A-6-~~702~~703.3, the court shall proceed in accordance with Rule 23A to hear evidence ~~presented by the minor~~ regarding the factors ~~conditions of~~ contained in ~~Section~~ Utah Code § 78A-6-~~702,~~703.5 ~~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 78A-6-703, the court shall proceed in accordance with Rule 23 to hear evidence presented by the prosecutor regarding the factors of Section 78A-6-703 for waiver of jurisdiction and certification.~~

~~(i)~~(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~~ Utah Code § 78A-6-~~702~~703.3, the court shall proceed in accordance with Rule 23A to hear evidence ~~presented by the minor~~ regarding the ~~conditions~~ factors contained in ~~of Section~~ Utah Code § 78A-6-~~702.~~703.5.

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

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

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

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

Rule 23. ~~Hearing to waive jurisdiction and certify under Section 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 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 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 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 shall enter the appropriate written order.~~

~~(d)(2) Once the minor is bound over to district court, a determination regarding where the minor is held shall be made pursuant to Section 78A-6-703.~~

~~(d)(3) 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)(4) 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. The court may order the minor held in a detention center or released in accordance with Rule 9.~~

Repealed.

Draft: June 10, 2020

Rule 23A. Hearing on ~~conditions~~ factors of ~~Section~~ Utah Code § 78A-6-~~702~~703.3; bind over to district court.

(a) If a criminal indictment under ~~Section~~ Utah Code § 78A-6-~~702~~703.3 alleges the commission of a felony, the court shall, ~~upon the request of the minor,~~ hear evidence and consider the ~~conditions~~ factors in paragraph ~~(c).~~(b).

(b) If a criminal information under ~~Section~~ Utah Code §78A-6-~~702~~ 703.3 alleges the commission of a felony, after a finding of probable cause in accordance with Rule 22, the court shall hear evidence and consider ~~determine whether~~ the ~~conditions of paragraph (c) exist~~ the factors and make findings on:

~~(c) The minor shall have the burden of going forward and presenting evidence of the following conditions as provided in 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;~~

~~(c)(3) that the minor's role in the offense was not committed in a violent, aggressive, or premeditated manner;~~

~~(c)(4) the number and nature of the minor's prior adjudications in the juvenile court; and~~

~~(c)(5) that public safety is better served by adjudicating the minor in the juvenile court or in the district court.~~

(b)(1) the seriousness of the qualifying offense and whether the protection of the community requires that the minor is detained beyond the amount of time allowed under Subsection 78A-6-117(2)(h), or beyond the age of continuing jurisdiction that the court may exercise under Utah Code § 78A-6-703.4;

(b)(2) the extent to which the minor's actions in the qualifying offense were committed in an aggressive, violent, premeditated, or willful manner;

(b)(3) the minor's mental, physical, educational, trauma, and social history;

(b)(4) the criminal record or history of the minor; and

(b)(5) the likelihood of the minor's rehabilitation by the use of services and facilities that are available to the court.

(c) The court may consider any written report or other materials that relates to the minor's mental, physical, educational, trauma, and social history. Upon request by the minor, the minor's parent, guardian, or other interested party, the court shall require the person preparing the report, or other material, to appear and be subject to direct and cross-examination.

(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.~~ At the preliminary examination the minor may testify under oath, call witnesses, cross examine witnesses, and present evidence. ~~The minor may cross-examine adverse witnesses.~~

(e) If the court does not find by a preponderance of evidence that it would be contrary to the best interest of the minor and the best interests of the public to bind the minor over to the jurisdiction of the district court, 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 shall make an initial determination on where the minor is held until the time of trial. ~~court may order the minor committed to jail in accordance with Section 62A-7-201.~~ The court shall enter the appropriate written order.

(f)(2) Once the minor is bound over to district court, a determination regarding where the minor is held shall be made pursuant to ~~Section~~ Utah Code § 78A-6-~~702.~~703.5.

(f)(3) 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)(4) 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 it would be in the best interests of the minor and the public for the juvenile court to retain jurisdiction over the offense, ~~all of the conditions of Section 78A-6-702 are present,~~ the court shall proceed upon the information as if it were a petition. The court may order the minor held in a detention center or released in accordance with Rule 9.

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 under Utah Code §§ 78A-6-703.3 and 703.5 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~~ § 78A-6-309 and ~~Section~~ § 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~~ § 78A-6-318.

UTAH COURT RULES – PUBLISHED FOR COMMENT

The Supreme Court and Judicial Council invite comments about amending these rules. To view the proposed amendment, click on the rule number.

To submit a comment or view the comments of others, click on "Continue Reading." To submit a comment, scroll down to the "Leave a Reply" section, and type your comment in the "Comment" field. Type your name and email address in the designated fields and click "Post Comment."

Comments cannot be acknowledged, but all will be considered. Comments are saved to a buffer for review before publication.

Posted: June 10, 2020

Utah Courts

Rules of Juvenile Procedure – Comment Period Closed July 25, 2020

URJP021. Warrant of arrest or summons in cases under Section 78A-6-702 and Section 78A-6-703. AMENDED. Reflects statutory changes made by H.B. 384-Juvenile Justice Amendments.

URJP022. Initial appearance and preliminary examination in cases under Section 78A-6-702. AMENDED. Reflects statutory changes made by H.B. 384-Juvenile Justice Amendments.

URJP023. Hearing to waive jurisdiction and certify under Section 78A-6703: bind over to district court. AMENDED. Reflects statutory changes made by H.B. 384-Juvenile Justice Amendments.

URJP023A. Hearing on conditions of Section 78A-6-702; bind over to district court. REPEALED. Rule 23A will be repealed because the underlying statute was repealed by H.B. 384-Juvenile Justice Amendments.

URJP044. Findings and conclusions. AMENDED. Reflects statutory changes made by H.B. 384-Juvenile Justice Amendments.

This entry was posted in URJP021, URJP022, URJP023, URJP023A, URJP044.

« Rules of Professional Conduct and Rules Governing the Utah

Code of Judicial Administration – Comment Period Closed July

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CATEGORIES

- -Alternate Dispute Resolution
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- -Rules Governing Licensed Paralegal Practitioner
- -Rules Governing the State Bar
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State Bar – Comment Period Closes August 1, 2020

25, 2020 »

UTAH COURTS

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2 thoughts on "Rules of Juvenile Procedure – Comment Period Closed July 25, 2020"

Earl Tanner
June 11, 2020 at 5:09 pm

URJP022(h) is not comprehensible, probably due to typos.

Travis Erickson
June 12, 2020 at 10:34 am

URJP023A does not address whether particular parties have responsibilities with respect to the provision of information to the courts. In the historical process for "Certification" there were expectations for the Juvenile Probation Department / Officer to develop a comprehensive report. Although much of the information that was previously contained in this report is now available to parties electronically, additional guidance with respect to individual roles and responsibilities may serve beneficial.

- -Rules of Juvenile Procedure
- -Rules of Professional Conduct
- -Rules of Professional Practice
- -Rules of Small Claims Procedure
- ADR101
- ADR103
- Appendix B
- Appendix F
- CJA Appendix F
- CJA01-0201
- CJA01-0204
- CJA01-0205
- CJA01-0205
- CJA01-0303
- CJA01-0304
- CJA01-0305
- CJA010-1-020
- CJA02-0103
- CJA02-0104
- CJA02-0106.01
- CJA02-0106.02
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- CJA03-0304
- CJA03-0304.01

TAB 5

Rule 48. Post judgment motions.

(a) Except as provided in paragraph (c), new hearings shall be available in accordance with Utah R. Civ. P. 52, 59 and 60.

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

(c) Motions filed under Utah R. Civ. P. 52 and/or Utah R. Civ. P. 59 must be filed no later than 14 days after entry of the judgment.

Effective Date: May 1, 2018

TAB 6

ABUSE, NEGLECT, AND DEPENDENCY PROCEEDINGS AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill addresses proceedings in regards to the abuse, neglect, or dependency of a child and termination of parental rights.

Highlighted Provisions:

This bill:

- allows a party to request a hearing on reunification services if a petition for termination of parental rights is filed before a dispositional hearing;
- provides that the court find termination of parental rights is strictly necessary from the child's point of view;
- requires the court to take into account reunification and kinship preferences in determining whether to terminate parental rights; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78A-6-302, as last amended by Laws of Utah 2019, Chapters 136, 335, and 388

78A-6-304, as renumbered and amended by Laws of Utah 2008, Chapter 3

78A-6-306, as last amended by Laws of Utah 2019, Chapters 136, 326, and 335

78A-6-314, as last amended by Laws of Utah 2019, Chapter 71

78A-6-503, as last amended by Laws of Utah 2013, Chapter 340

78A-6-507, as last amended by Laws of Utah 2012, Chapter 281

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78A-6-302** is amended to read:

78A-6-302. Court-ordered protective custody of a child following petition filing -- Grounds.

(1) When a petition is filed under Section 78A-6-304, the court shall apply, in addressing the petition, the least restrictive means and alternatives available to accomplish a compelling state interest and to prevent irretrievable destruction of family life as described in Subsections 62A-4a-201(1) and (7)(a) and Section 78A-6-503.

[~~(1)~~] (2) After a petition has been filed under Section 78A-6-304, if the child who is the subject of the petition is not in the protective custody of the division, a court may order that the child be removed from the child's home or otherwise taken into protective custody if the court finds, by a preponderance of the evidence, that any one or more of the following circumstances exist:

(a) (i) there is an imminent danger to the physical health or safety of the child; and

(ii) the child's physical health or safety may not be protected without removing the child from the custody of the child's parent or guardian;

(b) (i) a parent or guardian engages in or threatens the child with unreasonable conduct that causes the child to suffer harm; and

(ii) there are no less restrictive means available by which the child's emotional health may be protected without removing the child from the custody of the child's parent or guardian;

(c) the child or another child residing in the same household has been, or is considered to be at substantial risk of being, physically abused, sexually abused, or sexually exploited, by a

parent or guardian, a member of the parent's or guardian's household, or other person known to the parent or guardian;

(d) the parent or guardian is unwilling to have physical custody of the child;

(e) the child is abandoned or left without any provision for the child's support;

(f) a parent or guardian who has been incarcerated or institutionalized has not arranged or cannot arrange for safe and appropriate care for the child;

(g) (i) a relative or other adult custodian with whom the child is left by the parent or guardian is unwilling or unable to provide care or support for the child;

(ii) the whereabouts of the parent or guardian are unknown; and

(iii) reasonable efforts to locate the parent or guardian are unsuccessful;

(h) subject to Subsections 78A-6-105(39) and 78A-6-117(2) and Section 78A-6-301.5, the child is in immediate need of medical care;

(i) (i) a parent's or guardian's actions, omissions, or habitual action create an environment that poses a serious risk to the child's health or safety for which immediate remedial or preventive action is necessary; or

(ii) a parent's or guardian's action in leaving a child unattended would reasonably pose a threat to the child's health or safety;

(j) the child or another child residing in the same household has been neglected;

(k) the child's natural parent:

(i) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(ii) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

(iii) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child;

(l) an infant has been abandoned, as defined in Section 78A-6-316;

(m) (i) the parent or guardian, or an adult residing in the same household as the parent

or guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act; and

(ii) any clandestine laboratory operation was located in the residence or on the property where the child resided; or

(n) the child's welfare is otherwise endangered.

[~~(2)~~] (3) (a) For purposes of Subsection [~~(1)~~] (2)(a), if a child has previously been adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency occurs involving the same substantiated abuser or under similar circumstance as the previous abuse, that fact constitutes prima facie evidence that the child cannot safely remain in the custody of the child's parent.

(b) For purposes of Subsection [~~(1)~~] (2)(c):

(i) another child residing in the same household may not be removed from the home unless that child is considered to be at substantial risk of being physically abused, sexually abused, or sexually exploited as described in Subsection [~~(1)~~] (2)(c) or Subsection [~~(2)~~] (3)(b)(ii); and

(ii) if a parent or guardian has received actual notice that physical abuse, sexual abuse, or sexual exploitation by a person known to the parent has occurred, and there is evidence that the parent or guardian failed to protect the child, after having received the notice, by allowing the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of being physically abused, sexually abused, or sexually exploited.

[~~(3)~~] (4) (a) For purposes of Subsection [~~(1)~~] (2), if the division files a petition under Section 78A-6-304, the court shall consider the division's safety and risk assessments described in Section 62A-4a-203.1 to determine whether a child should be removed from the custody of the child's parent or guardian or should otherwise be taken into protective custody.

(b) The division shall make a diligent effort to provide the safety and risk assessments described in Section 62A-4a-203.1 to the court, guardian ad litem, and counsel for the parent or

guardian, as soon as practicable before the shelter hearing described in Section 78A-6-306.

[~~(4)~~] (5) In the absence of one of the factors described in Subsection [~~(1)~~] (2), a court may not remove a child from the parent's or guardian's custody on the basis of:

(a) educational neglect, truancy, or failure to comply with a court order to attend school;

(b) mental illness or poverty of the parent or guardian; or

(c) disability of the parent or guardian, as defined in Section 57-21-2.

[~~(5)~~] (6) A child removed from the custody of the child's parent or guardian under this section may not be placed or kept in a secure detention facility pending further court proceedings unless the child is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.

[~~(6)~~] (7) This section does not preclude removal of a child from the child's home without a warrant or court order under Section 62A-4a-202.1.

[~~(7)~~] (8) (a) Except as provided in Subsection [~~(7)~~] (8)(b), a court or the Division of Child and Family Services may not remove a child from the custody of the child's parent or guardian on the sole or primary basis that the parent or guardian refuses to consent to:

(i) the administration of a psychotropic medication to a child;

(ii) a psychiatric, psychological, or behavioral treatment for a child; or

(iii) a psychiatric or behavioral health evaluation of a child.

(b) Notwithstanding Subsection [~~(7)~~] (8)(a), a court or the Division of Child and Family Services may remove a child under conditions that would otherwise be prohibited under Subsection [~~(7)~~] (8)(a) if failure to take an action described under Subsection [~~(7)~~] (8)(a) would present a serious, imminent risk to the child's physical safety or the physical safety of others.

Section 2. Section **78A-6-304** is amended to read:

78A-6-304. Petition filed.

(1) For purposes of this section, "petition" means a petition to commence proceedings in a juvenile court alleging that a child is:

(a) abused;

(b) neglected; or

(c) dependent.

(2) (a) Subject to Subsection (2)(b), any interested person may file a petition.

(b) A person described in Subsection (2)(a) shall make a referral with the division before the person files a petition.

(3) If the child who is the subject of a petition is removed from the child's home by the division, the petition shall be filed on or before the date of the initial shelter hearing described in Section 78A-6-306.

(4) The petition shall be verified, and contain all of the following:

(a) the name, age, and address, if any, of the child upon whose behalf the petition is brought;

(b) the names and addresses, if known to the petitioner, of both parents and any guardian of the child;

(c) a concise statement of facts, separately stated, to support the conclusion that the child upon whose behalf the petition is being brought is abused, neglected, or dependent; and

(d) a statement regarding whether the child is in protective custody, and if so, the date and precise time the child was taken into protective custody.

(5) If a petition is filed under this section, and a petition for termination of parental rights is filed under Section 78A-6-504 before a dispositional hearing, a party may request a hearing on whether reunification services are appropriate in accordance with the factors described in Subsections 78A-6-312(21) and (23).

Section 3. Section **78A-6-306** is amended to read:

78A-6-306. Shelter hearing.

(1) A shelter hearing shall be held within 72 hours excluding weekends and holidays after any one or all of the following occur:

(a) removal of the child from the child's home by the division;

(b) placement of the child in the protective custody of the division;

(c) emergency placement under Subsection 62A-4a-202.1(4);

(d) as an alternative to removal of the child, a parent enters a domestic violence shelter at the request of the division; or

(e) a "Motion for Expedited Placement in Temporary Custody" is filed under Subsection 78A-6-106(4).

(2) If one of the circumstances described in Subsections (1)(a) through (e) occurs, the division shall issue a notice that contains all of the following:

(a) the name and address of the person to whom the notice is directed;

(b) the date, time, and place of the shelter hearing;

(c) the name of the child on whose behalf a petition is being brought;

(d) a concise statement regarding:

(i) the reasons for removal or other action of the division under Subsection (1); and

(ii) the allegations and code sections under which the proceeding has been instituted;

(e) a statement that the parent or guardian to whom notice is given, and the child, are entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be provided in accordance with Title 78B, Chapter 22, Indigent Defense Act; and

(f) a statement that the parent or guardian is liable for the cost of support of the child in the protective custody, temporary custody, and custody of the division, and the cost for legal counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial ability of the parent or guardian.

(3) The notice described in Subsection (2) shall be personally served as soon as possible, but no later than one business day after removal of the child from the child's home, or the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection 78A-6-106(4), on:

(a) the appropriate guardian ad litem; and

(b) both parents and any guardian of the child, unless the parents or guardians cannot be located.

(4) The following persons shall be present at the shelter hearing:

(a) the child, unless it would be detrimental for the child;

(b) the child's parents or guardian, unless the parents or guardian cannot be located, or fail to appear in response to the notice;

(c) counsel for the parents, if one is requested;

(d) the child's guardian ad litem;

(e) the caseworker from the division who is assigned to the case; and

(f) the attorney from the attorney general's office who is representing the division.

(5) (a) At the shelter hearing, the court shall:

(i) provide an opportunity to provide relevant testimony to:

(A) the child's parent or guardian, if present; and

(B) any other person having relevant knowledge; [~~and~~]

(ii) subject to Section 78A-6-305, provide an opportunity for the child to testify[~~.~~]; and

(iii) in accordance with Subsections 78A-6-307(18)(c) through (e), grant preferential consideration to a relative or friend for the temporary placement of the child.

(b) The court:

(i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile Procedure;

(ii) shall hear relevant evidence presented by the child, the child's parent or guardian, the requesting party, or their counsel; and

(iii) may in its discretion limit testimony and evidence to only that which goes to the issues of removal and the child's need for continued protection.

(6) If the child is in the protective custody of the division, the division shall report to the court:

(a) the reason why the child was removed from the parent's or guardian's custody;

(b) any services provided to the child and the child's family in an effort to prevent removal;

(c) the need, if any, for continued shelter;

(d) the available services that could facilitate the return of the child to the custody of the child's parent or guardian; and

(e) subject to Subsections 78A-6-307(18)(c) through (e), whether any relatives of the child or friends of the child's parents may be able and willing to accept temporary placement of the child.

(7) The court shall consider all relevant evidence provided by persons or entities authorized to present relevant evidence pursuant to this section.

(8) (a) If necessary to protect the child, preserve the rights of a party, or for other good cause shown, the court may grant no more than one continuance, not to exceed five judicial days.

(b) A court shall honor, as nearly as practicable, the request by a parent or guardian for a continuance under Subsection (8)(a).

(c) Notwithstanding Subsection (8)(a), if the division fails to provide the notice described in Subsection (2) within the time described in Subsection (3), the court may grant the request of a parent or guardian for a continuance, not to exceed five judicial days.

(9) (a) If the child is in the protective custody of the division, the court shall order that the child be returned to the custody of the parent or guardian unless it finds, by a preponderance of the evidence, consistent with the protections and requirements provided in Subsection 62A-4a-201(1), that any one of the following exists:

(i) subject to Subsection (9)(b)(i), there is a serious danger to the physical health or safety of the child and the child's physical health or safety may not be protected without removing the child from the custody of the child's parent;

(ii) (A) the child is suffering emotional damage that results in a serious impairment in the child's growth, development, behavior, or psychological functioning;

(B) the parent or guardian is unwilling or unable to make reasonable changes that would sufficiently prevent future damage; and

(C) there are no reasonable means available by which the child's emotional health may be protected without removing the child from the custody of the child's parent or guardian;

(iii) there is a substantial risk that the child will suffer abuse or neglect if the child is not removed from the custody of the child's parent or guardian;

(iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same household has been, or is considered to be at substantial risk of being, physically abused, sexually abused, or sexually exploited by a:

(A) parent or guardian;

(B) member of the parent's household or the guardian's household; or

(C) person known to the parent or guardian;

(v) the parent or guardian is unwilling to have physical custody of the child;

(vi) the child is without any provision for the child's support;

(vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe and appropriate care for the child;

(viii) (A) a relative or other adult custodian with whom the child is left by the parent or guardian is unwilling or unable to provide care or support for the child;

(B) the whereabouts of the parent or guardian are unknown; and

(C) reasonable efforts to locate the parent or guardian are unsuccessful;

(ix) subject to Subsections 78A-6-105(39)(b) and 78A-6-117(2) and Section 78A-6-301.5, the child is in immediate need of medical care;

(x) (A) the physical environment or the fact that the child is left unattended beyond a reasonable period of time poses a threat to the child's health or safety; and

(B) the parent or guardian is unwilling or unable to make reasonable changes that would remove the threat;

(xi) (A) the child or a minor residing in the same household has been neglected; and

(B) the parent or guardian is unwilling or unable to make reasonable changes that would prevent the neglect;

(xii) the parent, guardian, or an adult residing in the same household as the parent or guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine laboratory operation was located in the residence or on the property where the child resided;

(xiii) (A) the child's welfare is substantially endangered; and

(B) the parent or guardian is unwilling or unable to make reasonable changes that would remove the danger; or

(xiv) the child's natural parent:

(A) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

(C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.

(b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is established if:

(A) a court previously adjudicated that the child suffered abuse, neglect, or dependency involving the parent; and

(B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.

(ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly allowed the child to be in the physical care of a person after the parent received actual notice that the person physically abused, sexually abused, or sexually exploited the child, that fact constitutes prima facie evidence that there is a substantial risk that the child will be physically abused, sexually abused, or sexually exploited.

(10) (a) (i) The court shall also make a determination on the record as to whether

reasonable efforts were made to prevent or eliminate the need for removal of the child from the child's home and whether there are available services that would prevent the need for continued removal.

(ii) If the court finds that the child can be safely returned to the custody of the child's parent or guardian through the provision of those services, the court shall place the child with the child's parent or guardian and order that those services be provided by the division.

(b) In making the determination described in Subsection (10)(a), and in ordering and providing services, the child's health, safety, and welfare shall be the paramount concern, in accordance with federal law.

(11) Where the division's first contact with the family occurred during an emergency situation in which the child could not safely remain at home, the court shall make a finding that any lack of preplacement preventive efforts was appropriate.

(12) In cases where actual sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home, return a child to the child's home, provide reunification services, or attempt to rehabilitate the offending parent or parents.

(13) The court may not order continued removal of a child solely on the basis of educational neglect as defined in Section 78A-6-105, truancy, or failure to comply with a court order to attend school.

(14) (a) Whenever a court orders continued removal of a child under this section, the court shall state the facts on which that decision is based.

(b) If no continued removal is ordered and the child is returned home, the court shall state the facts on which that decision is based.

(15) If the court finds that continued removal and temporary custody are necessary for the protection of a child pursuant to Subsection (9)(a), the court shall order continued removal regardless of:

(a) any error in the initial removal of the child;

(b) the failure of a party to comply with notice provisions; or

(c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child and Family Services.

Section 4. Section **78A-6-314** is amended to read:

78A-6-314. Permanency hearing -- Final plan -- Petition for termination of parental rights filed -- Hearing on termination of parental rights.

(1) (a) When reunification services have been ordered in accordance with Section 78A-6-312, with regard to a minor who is in the custody of the Division of Child and Family Services, a permanency hearing shall be held by the court no later than 12 months after the day on which the minor was initially removed from the minor's home.

(b) If reunification services were not ordered at the dispositional hearing, a permanency hearing shall be held within 30 days after the day on which the dispositional hearing ends.

(2) (a) If reunification services were ordered by the court in accordance with Section 78A-6-312, the court shall, at the permanency hearing, determine, consistent with Subsection (3), whether the minor may safely be returned to the custody of the minor's parent.

(b) If the court finds, by a preponderance of the evidence, that return of the minor to the minor's parent would create a substantial risk of detriment to the minor's physical or emotional well-being, the minor may not be returned to the custody of the minor's parent.

(c) Prima facie evidence that return of the minor to a parent or guardian would create a substantial risk of detriment to the minor is established if:

(i) the parent or guardian fails to:

(A) participate in a court approved child and family plan;

(B) comply with a court approved child and family plan in whole or in part; or

(C) meet the goals of a court approved child and family plan; or

(ii) the minor's natural parent:

(A) intentionally, knowingly, or recklessly causes the death of another parent of the

minor;

(B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the minor; or

(C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the minor.

(3) In making a determination under Subsection (2)(a), the court shall review and consider:

(a) the report prepared by the Division of Child and Family Services;

(b) any admissible evidence offered by the minor's guardian ad litem;

(c) any report submitted by the division under Subsection 78A-6-315(3)(a)(i);

(d) any evidence regarding the efforts or progress demonstrated by the parent; and

(e) the extent to which the parent cooperated and used the services provided.

(4) With regard to a case where reunification services were ordered by the court, if a minor is not returned to the minor's parent or guardian at the permanency hearing, the court shall, unless the time for the provision of reunification services is extended under Subsection (7):

(a) order termination of reunification services to the parent;

(b) make a final determination regarding whether termination of parental rights, adoption, or permanent custody and guardianship is the most appropriate final plan for the minor, taking into account the minor's primary permanency plan established by the court pursuant to Section 78A-6-312; and

(c) establish a concurrent permanency plan that identifies the second most appropriate final plan for the minor, if appropriate.

(5) The court may order another planned permanent living arrangement for a minor 16 years old or older upon entering the following findings:

(a) the Division of Child and Family Services has documented intensive, ongoing, and unsuccessful efforts to reunify the minor with the minor's parent or parents, or to secure a

placement for the minor with a guardian, an adoptive parent, or an individual described in Subsection 78A-6-306(6)(e);

(b) the Division of Child and Family Services has demonstrated that the division has made efforts to normalize the life of the minor while in the division's custody, in accordance with Sections 62A-4a-210 through 62A-4a-212;

(c) the minor prefers another planned permanent living arrangement; and

(d) there is a compelling reason why reunification or a placement described in Subsection (5)(a) is not in the minor's best interest.

(6) Except as provided in Subsection (7), the court may not extend reunification services beyond 12 months after the day on which the minor was initially removed from the minor's home, in accordance with the provisions of Section 78A-6-312.

(7) (a) Subject to Subsection (7)(b), the court may extend reunification services for no more than 90 days if the court finds, beyond a preponderance of the evidence, that:

(i) there has been substantial compliance with the child and family plan;

(ii) reunification is probable within that 90-day period; and

(iii) the extension is in the best interest of the minor.

(b) (i) Except as provided in Subsection (7)(c), the court may not extend any reunification services beyond 15 months after the day on which the minor was initially removed from the minor's home.

(ii) Delay or failure of a parent to establish paternity or seek custody does not provide a basis for the court to extend services for that parent beyond the 12-month period described in Subsection (6).

(c) In accordance with Subsection (7)(d), the court may extend reunification services for one additional 90-day period, beyond the 90-day period described in Subsection (7)(a), if:

(i) the court finds, by clear and convincing evidence, that:

(A) the parent has substantially complied with the child and family plan;

(B) it is likely that reunification will occur within the additional 90-day period; and

(C) the extension is in the best interest of the minor;

(ii) the court specifies the facts upon which the findings described in Subsection (7)(c)(i) are based; and

(iii) the court specifies the time period in which it is likely that reunification will occur.

(d) A court may not extend the time period for reunification services without complying with the requirements of this Subsection (7) before the extension.

(e) In determining whether to extend reunification services for a minor, a court shall take into consideration the status of the minor siblings of the minor.

(8) The court may, in its discretion:

(a) enter any additional order that it determines to be in the best interest of the minor, so long as that order does not conflict with the requirements and provisions of Subsections (4) through (7); or

(b) order the division to provide protective supervision or other services to a minor and the minor's family after the division's custody of a minor has been terminated.

(9) (a) If the final plan for the minor is to proceed toward termination of parental rights, the petition for termination of parental rights shall be filed, and a pretrial held, within 45 calendar days after the permanency hearing.

(b) If the division opposes the plan to terminate parental rights, the court may not require the division to file a petition for the termination of parental rights, except as required under Subsection 78A-6-316(2).

(10) (a) Any party to an action may, at any time, petition the court for an expedited permanency hearing on the basis that continuation of reunification efforts are inconsistent with the permanency needs of the minor.

(b) If the court so determines, it shall order, in accordance with federal law, that:

(i) the minor be placed in accordance with the permanency plan; and

(ii) whatever steps are necessary to finalize the permanent placement of the minor be completed as quickly as possible.

(11) Nothing in this section may be construed to:

(a) entitle any parent to reunification services for any specified period of time;

(b) limit a court's ability to terminate reunification services at any time before a permanency hearing; or

(c) limit or prohibit the filing of a petition for termination of parental rights by any party, or a hearing on termination of parental rights, at any time prior to a permanency hearing provided that relative placement and custody options have been fairly considered in accordance with Sections 62A-4a-201 and 78A-6-503.

(12) (a) Subject to Subsection (12)(b), if a petition for termination of parental rights is filed prior to the date scheduled for a permanency hearing, the court may consolidate the hearing on termination of parental rights with the permanency hearing.

(b) For purposes of Subsection (12)(a), if the court consolidates the hearing on termination of parental rights with the permanency hearing:

(i) the court shall first make a finding regarding whether reasonable efforts have been made by the Division of Child and Family Services to finalize the permanency plan for the minor; and

(ii) any reunification services shall be terminated in accordance with the time lines described in Section 78A-6-312.

(c) A decision on a petition for termination of parental rights shall be made within 18 months from the day on which the minor is removed from the minor's home.

(13) If a court determines that a minor will not be returned to a parent of the minor, the court shall consider appropriate placement options inside and outside of the state.

(14) (a) If a minor 14 years of age or older desires an opportunity to address the court or testify regarding permanency or placement, the court shall give the minor's wishes added weight, but may not treat the minor's wishes as the single controlling factor under this section.

(b) If the court's decision under this section differs from a minor's express wishes if the minor is of sufficient maturity to articulate the wishes in relation to permanency or the minor's

placement, the court shall make findings explaining why the court's decision differs from the minor's wishes.

Section 5. Section **78A-6-503** is amended to read:

78A-6-503. Judicial process for termination -- Parent unfit or incompetent -- Best interest of child.

(1) Under both the United States Constitution and the constitution of this state, a parent possesses a fundamental liberty interest in the care, custody, and management of the parent's child. For this reason, the termination of family ties by the state may only be done for compelling reasons.

(2) The court shall provide a fundamentally fair process to a parent if a party moves to terminate the parent's parental rights.

(3) If the party moving to terminate parental rights is a governmental entity, the court shall find that any actions or allegations made in opposition to the rights and desires of a parent regarding the parent's child are supported by sufficient evidence to satisfy a parent's constitutional entitlement to heightened protection against government interference with the parent's fundamental rights and liberty interests.

(4) (a) The fundamental liberty interest of a parent concerning the care, custody, and management of the parent's child is recognized, protected, and does not cease to exist simply because:

(i) a parent may fail to be a model parent; or [~~because~~]

(ii) the parent's child is placed in the temporary custody of the state.

(b) The court should give serious consideration to the fundamental right of a parent to rear the parent's child, and concomitantly, of the right of the child to be reared by the child's natural parent.

(5) At all times, a parent retains a vital interest in preventing the irretrievable destruction of family life.

(6) Prior to an adjudication of unfitness, government action in relation to a parent and a

parent's child may not exceed the least restrictive means or alternatives available to accomplish a compelling state interest.

(7) Until parental unfitness is established and the children suffer, or are substantially likely to suffer, serious detriment as a result, the child and the child's parent share a vital interest in preventing erroneous termination of their relationship and the court may not presume that a child and the child's parents are adversaries.

(8) It is in the best interest and welfare of a child to be raised under the care and supervision of the child's natural parents. A child's need for a normal family life in a permanent home, and for positive, nurturing family relationships is usually best met by the child's natural parents. Additionally, the integrity of the family unit and the right of parents to conceive and raise their children are constitutionally protected. For these reasons, the court should only transfer custody of a child from the child's natural parent for compelling reasons and when there is a jurisdictional basis to do so.

(9) The right of a fit, competent parent to raise the parent's child without undue government interference is a fundamental liberty interest that has long been protected by the laws and Constitution of this state and of the United States, and is a fundamental public policy of this state.

(10) (a) The state recognizes that:

[~~(a)~~] (i) a parent has the right, obligation, responsibility, and authority to raise, manage, train, educate, provide for, and reasonably discipline the parent's [~~children~~] child; and

[~~(b)~~] (ii) the state's role is secondary and supportive to the primary role of a parent.

[~~(c)~~] (b) It is the public policy of this state that [~~parents~~] a parent retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of [~~their children~~] the parent's child.

[~~(d)~~] (c) The interests of the state favor preservation and not severance of natural familial bonds in situations where a positive, nurturing parent-child relationship can exist, including extended family association and support.

(11) This part provides a judicial process for voluntary and involuntary severance of the parent-child relationship, designed to safeguard the rights and interests of all parties concerned and promote their welfare and that of the state.

(12) (a) Wherever possible, family life should be strengthened and preserved, but if a parent is found, by reason of [~~his~~] the parent's conduct or condition, to be unfit or incompetent based upon any of the grounds for termination described in this part, the court shall then consider the welfare and best interest of the child of paramount importance in determining whether termination of parental rights shall be ordered.

(b) In determining whether termination is in the best interest of the child, and in finding that termination of parental rights, from the child's point of view, is strictly necessary, the court shall consider, among other relevant factors, whether:

(i) sufficient efforts were dedicated to reunification in accordance with Subsection 78A-6-507(3)(a); and

(ii) the efforts to place the child with kin who have, or are willing to come forward to care for the child, were given due weight.

Section 6. Section **78A-6-507** is amended to read:

78A-6-507. Grounds for termination of parental rights -- Findings regarding reasonable efforts.

(1) Subject to the protections and requirements of Section 78A-6-503, and if the court finds termination of a parent's parental rights, from the child's point of view, is strictly necessary, the court may terminate all parental rights with respect to [~~a~~] the parent if the court finds any one of the following:

(a) that the parent has abandoned the child;

(b) that the parent has neglected or abused the child;

(c) that the parent is unfit or incompetent;

(d) (i) that the child is being cared for in an out-of-home placement under the supervision of the court or the division;

(ii) that the parent has substantially neglected, wilfully refused, or has been unable or unwilling to remedy the circumstances that cause the child to be in an out-of-home placement; and

(iii) that there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care in the near future;

(e) failure of parental adjustment, as defined in this chapter;

(f) that only token efforts have been made by the parent:

(i) to support or communicate with the child;

(ii) to prevent neglect of the child;

(iii) to eliminate the risk of serious harm to the child; or

(iv) to avoid being an unfit parent;

(g) (i) that the parent has voluntarily relinquished the parent's parental rights to the child; and

(ii) that termination is in the child's best interest;

(h) that, after a period of trial during which the child was returned to live in the child's own home, the parent substantially and continuously or repeatedly refused or failed to give the child proper parental care and protection; or

(i) the terms and conditions of safe relinquishment of a newborn child have been complied with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child.

(2) The court may not terminate the parental rights of a parent because the parent has failed to complete the requirements of a child and family plan.

(3) (a) Except as provided in Subsection (3)(b), in any case in which the court has directed the division to provide reunification services to a parent, the court must find that the division made reasonable efforts to provide those services before the court may terminate the parent's rights under Subsection (1)(b), (c), (d), (e), (f), or (h).

(b) Notwithstanding Subsection (3)(a), the court is not required to make the finding

under Subsection (3)(a) before terminating a parent's rights:

(i) under Subsection (1)(b), if the court finds that the abuse or neglect occurred subsequent to adjudication; or

(ii) if reasonable efforts to provide the services described in Subsection (3)(a) are not required under federal law, and federal law is not inconsistent with Utah law.

TAB 7

459 P.3d 982
Supreme Court of Utah.

IN RE G.J.P.
Office of Public Guardian, Petitioner,
v.
The Honorable Judge Julie Lund, Third Judicial District Juvenile Court, Respondent.

No. 20190733
|
Heard November 15, 2019
|
Filed February 5, 2020

Synopsis

Background: Office of Public Guardian moved to set aside order appointing it as guardian ad litem for mother in termination of parental rights proceeding. The Third District Court, Salt Lake, Julie Lund, J., denied motion. Office filed petition for extraordinary relief and the Court of Appeals certified petition.

Holdings: The Supreme Court, Pearce, J., held that:

petition for extraordinary relief was proper vehicle for Office to challenge juvenile court's appointment of Office as guardian ad litem for mother;

juvenile court may appoint a guardian ad litem for an incompetent adult in a matter properly before the court; but

juvenile court abused its discretion by appointing Office as guardian ad litem for mother.

Petition granted; remanded.

***983** On Petition for Extraordinary Relief, Third District, Salt Lake, The Honorable Judge Julie Lund, No. 1153247

Attorneys and Law Firms

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Brent M. Johnson, Salt Lake City, for respondent

Thomas A. Luchs, Cottonwood Heights, for Mother, J.R.

Martha Pierce, Salt Lake City, Guardian ad Litem for G.J.P.

Justice Pearce authored the opinion of the Court, in which Chief Justice Durrant, Associate Chief Justice Lee, Justice Himonas, and Justice Petersen joined.

Justice Pearce, opinion of the Court:

INTRODUCTION

¶1 The juvenile court appointed the Office of Public Guardian (OPG) as guardian ad litem for a mother (Mother) in a parental rights termination proceeding. OPG did not consent to the appointment and does not believe it is the appropriate entity to represent Mother. OPG filed this petition for extraordinary relief contending that the juvenile court lacks authority to appoint a guardian ad litem for an adult. OPG also contends that, even if the juvenile court has that ability, the court exceeded its discretion by appointing OPG. We grant the petition and afford OPG the relief it seeks. Although the juvenile court possesses the authority to appoint a guardian ad litem for an adult, the juvenile court strayed beyond the bounds of its discretion by appointing OPG in this matter.

BACKGROUND

¶2 In August of 2017, Mother was admitted to the University of Utah Hospital inpatient psychiatric unit. While hospitalized, she ***984** gave birth to G.J.P. G.J.P. experienced problems breathing and eating and was placed in the neonatal intensive care unit. G.J.P. remained hospitalized for several months. After treatment at the University of Utah Hospital, Mother was committed to the Utah State Hospital.

¶3 Soon after the birth of G.J.P., and with Mother still in the psychiatric unit, the Division of Child and Family Services (DCFS) began to inquire what it needed to do to ensure G.J.P.'s well-being. DCFS met with Mother and G.J.P.'s alleged father, both of whom acknowledged, according to DCFS, that they were unable to care for the child. DCFS also attempted to help Mother identify appropriate family to care for G.J.P., but these efforts, along with DCFS's independent search for family members, did not identify anyone who could raise G.J.P.

¶4 DCFS moved for temporary custody of G.J.P., and the court granted prehearing custody to DCFS. DCFS also filed a stipulated motion to appoint a guardian for Mother. The motion noted Mother's diagnosis and civil commitment and informed the court that Mother's counsel did not believe that Mother understood what was happening in the termination proceedings. During hearings on DCFS's motion, the juvenile court questioned whether it had jurisdiction to appoint a guardian for Mother.

¶5 Meanwhile, the parties tried, without success, to contact Mother's sister who may have previously served as Mother's guardian. Eventually the juvenile court granted custody to DCFS, and DCFS placed G.J.P. with foster parents.

¶6 The juvenile court also concluded that it needed to determine if it could order reunification services or if Mother's illness rendered her incapable of taking part in those efforts. Accordingly, the court ordered Mother to participate in two psychological evaluations. Following the evaluations, Mother's counsel again moved to appoint a guardian for Mother, noting that her illness "renders [Mother] mentally incompetent to assist in her own defense and communicate meaningfully with counsel." The State did not object. The court found Mother incompetent, granted the motion, and appointed "a public guardian for [Mother]."

¶7 A month and a half later, the juvenile court issued an order explaining the multiple avenues it had explored to find someone to serve as Mother's guardian. The court reported that the Utah Office of Guardian Ad Litem could not represent Mother because its representation of G.J.P. created a conflict. The court also recited that it could find no relative or friend willing or able to serve. And the court noted that it was unaware of any other mechanism it could employ to identify and appoint an attorney to act as guardian ad litem for Mother. But the juvenile court noted that, under its reading of the Utah Code, OPG could petition or agree to represent Mother and directed that a representative of OPG appear at the next hearing "so that the powers of its office may be further discussed."

¶8 In response to the juvenile court's directive, OPG argued that it was not a proper entity to represent Mother because OPG's statutorily defined role is narrow and does not generally include advising or representing individuals in litigation. [1] OPG also argued that the juvenile court was not authorized to find a parent "sufficiently incompetent to appoint a guardian for purposes of assistance in litigation." OPG therefore "declin[ed] to file a petition on behalf of [Mother]."

***985** ¶9 Mother's counsel replied and claimed that OPG was not being asked to advise or represent Mother but to serve as guardian ad litem and "make decisions on her behalf which are in her best interest."

¶10 The juvenile court held a hearing where OPG reiterated its concerns. Despite those concerns, the juvenile court ordered OPG to "represent" Mother.

¶11 OPG moved to set aside the juvenile court's order, arguing again that the juvenile court lacked jurisdiction to appoint a guardian for an adult. The court denied the motion reasoning "[t]here is no person available to serve as a guardian for her" and "[t]he Office of the Public Guardian can provide a person to serve as a guardian for [Mother]."

¶12 OPG filed an interlocutory appeal of the order of appointment, and the termination proceeding was stayed. The court of appeals certified the appeal to this court. Upon its arrival at this court, we dismissed the petition because a non-party may not file an interlocutory appeal, but we did so with leave to refile as a petition for extraordinary relief. OPG then petitioned for relief. The court of appeals certified the petition to this court.

STANDARD OF REVIEW

¶13 A person may petition for extraordinary relief on any of the specified grounds under rule 65B of the Utah Rules of Civil Procedure only when "no other plain, speedy and adequate remedy is available." UTAH R. CIV. P. 65B(a). "This court has broad discretion to grant or deny extraordinary relief." *Gilbert v. Maughan*, 2016 UT 31, ¶ 14, 379 P.3d 1263. In deciding whether to grant a petition we may consider the "egregiousness of the alleged error, the significance of the legal issue presented by the petition, the severity of the consequences occasioned by the alleged error," or any other relevant consideration. *State v. Barrett*, 2005 UT 88, ¶ 24, 127 P.3d 682.

¶14 Whether the juvenile court has authority to appoint a guardian ad litem presents a question of law. We review questions of law for correctness. *See State v. Moreno*, 2009 UT 15, ¶ 7, 203 P.3d 1000. And we review the juvenile court's

decision to appoint a specific guardian ad litem for an abuse of discretion. *See Hanson v. La Flamme*, 761 F. App'x 685, 689 (9th Cir. 2019) (applying an abuse of discretion standard to review trial court's decision of who would serve as guardian ad litem); *Gardner by Gardner v. Parson*, 874 F.2d 131, 139 (3d Cir. 1989) (same).

ANALYSIS

¶15 Before we address the questions OPG presents, we need to highlight an issue that raises serious concerns meriting further exploration. No one has directly challenged whether the appointment of a guardian ad litem in these circumstances violates Mother's due process rights. [2] But the guardian ad litem representing G.J.P. raised important questions about this issue.

¶16 Citing federal case law, the guardian ad litem argued that Mother would be entitled to a hearing if the purpose of the guardian was to override Mother's legal decisions. We understand the concern. The juvenile court's order was somewhat vague on the proposed role the guardian ad litem would play, and that left room for G.J.P.'s guardian ad litem to legitimately worry that the court had authorized the proposed guardian ad litem to make Mother's decisions for her. In addition, Mother's counsel made repeated references in briefing and oral arguments to the proposed guardian ad litem making decisions for Mother. *See supra* ¶ 9. Although these concerns lurked amidst the arguments—as did a concern that not appointing someone to assist Mother would also violate her due process rights—OPG's petition does not ask us to address these due process questions.

¶17 We can see the substantial and important questions that may be implicated by the juvenile court's decision to appoint a guardian ad litem, but they are difficult to address in the abstract. The calculus could change if the juvenile court envisioned a guardian ad ***986** litem who would "sit next to [M]other and answer her questions," as OPG asserts the juvenile court explained at one point, instead of a guardian ad litem expected to, as Mother's counsel asserted, make Mother's decisions for her. The power of a guardian ad litem, depending on how the role is defined, may have significant effects on an incompetent person's rights and the due process that should be afforded before a court infringes those rights.

¶18 Courts have recognized that "[t]here is something fundamental in the matter of a litigant being able to use his personal judgment and intelligence in connection with a lawsuit affecting him, and in not having a guardian's judgment and intelligence substituted relative to the litigation affecting the alleged incompetent."*Graham v. Graham*, 40 Wash.2d 64, 240 P.2d 564, 566 (1952). Indeed, the Fifth Circuit has held that declaring someone incompetent and appointing a guardian ad litem implicates a "protected liberty interest" and the due process requirements of the Fifth Amendment. *Thomas v. Humfield*, 916 F.2d 1032, 1033 (5th Cir. 1990) (citing *Wisconsin v. Constantineau*, 400 U.S. 433, 437, 91 S.Ct. 507, 27 L.Ed.2d 515 (1971)). "The appointment of a *guardian ad litem* deprives the litigant of the right to control the litigation and subjects him to possible stigmatization." *Id.* at 1034 (italics in original). Furthermore, "[t]he interposition of a guardian ad litem could very well substitute his judgment, inclinations and intelligence for an alleged incompetent's," and "the retention of legal counsel or the employment of a different attorney could be determined solely by the guardian ad litem ...." *Graham*, 240 P.2d at 566.

¶19 We also note that Utah Rule of Civil Procedure 17(b) instructs that a "guardian ad litem may be appointed in any case when it is deemed by the court in which the action or proceeding is prosecuted expedient to represent the minor, insane or incompetent person in the action or proceeding ...." Our rules authorize courts to appoint a guardian ad litem but provide no guidance as to the role that the guardian ad litem can or will play in the litigation.

¶20 Moreover, rule 17(b) delineates no safeguards a court should employ before appointing a guardian ad litem for an allegedly insane or incompetent person. Because these issues are not before us in this petition, we are not in a position to opine on the due process to which Mother may be entitled should the juvenile court seek to appoint a different guardian ad litem on remand. [3]

¶21 Additionally, before we reach the merits of OPG's contentions, because of some confusion in the juvenile court's order and some cross-talk in the briefing, we believe it helpful to clarify what we talk about when we talk about a guardian. Specifically, it is helpful to distinguish between a "guardian" and a "guardian ad litem."

¶22 A general guardian for an incapacitated individual [4] has broad power over the person and her rights and affairs. Unless otherwise limited by the court, a general guardian "has the same powers, rights, and duties respecting the ward that a parent has respecting the parent's unemancipated minor

child." UTAH CODE § 75-5-312(2). This generally includes having custody of the ward, establishing the ward's place of abode, even if outside of the state, receiving the ward's money and property for the ward's support, and consenting to any professional care. *Id.* § 75-5-312(3). Statutory processes govern this action. *See, e.g.*, *id.* ch. 75-5 & 75-5b. For example, when someone petitions the court for a finding that an adult is incapacitated and in need of a guardian, the court must hold a hearing, and the allegedly incapacitated person has a right to be present, have counsel, present evidence, cross-examine witnesses, and have a trial by jury. *Id.* § 75-5-303. In statute, there are also guidelines for ***987** who can serve as a guardian, *id.* § 75-5-311, requirements for notice, *id.* § 75-5-309, actions for emergency appointment, *id.* § 75-5-310, and other detailed procedures. *See id.* §§ 75-5-301 to -317.

¶23 In contrast, the role a guardian ad litem may play is much less defined. According to those who purport to know such things, *Ad litem* is Latin for "to suit." *Ad litem*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining *ad litem* as "for the purposes of the suit"); *Ad Litem*, MERRIAM-WEBSTER DICTIONARY ONLINE, www.merriam-webster.com/dictionary/ad%20*l*item (defining *ad litem* as "for the lawsuit or action"); *Guardian ad litem*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining *guardian ad litem as* "[a] guardian, usu[ally] a lawyer, appointed by the court *to appear in a lawsuit* on behalf of an incompetent or minor party" (emphasis added)). In other words, a guardian ad litem is appointed for a specific matter before the court.

¶24 Utah's statutes governing the appointment of a "guardian" do not, by their express terms, apply to the appointment of a guardian ad litem. [5] And Utah Rule of Civil Procedure 17(b) allows a guardian ad litem to be appointed even when there is already a general guardian over the person. However, beyond this understanding, the role of guardian ad litem for an incompetent adult is largely unspecified in Utah law.

¶25 The role of a guardian ad litem for *a minor* is principally defined in statute. *See*UTAH CODE § 78A-2-701 to -705. Whereas, the role a guardian ad litem for an incapacitated adult is addressed only in stray references throughout the code. Utah Code section 75-3-203(4), for example, provides that a guardian ad litem is prohibited from nominating someone to serve as a personal representative under the Probate Code. And section 75-1-403 provides that a court can appoint a guardian ad litem to represent the interest of, and approve an agreement on behalf of, an incapacitated person in estate proceedings. *See id.* § 75-1-403(4).

¶26 OPG contends that the juvenile court did not specify in its order whether it was appointing OPG as a general guardian or a guardian ad litem. True enough. But it is reasonable to conclude, from the context and statements the court made, that it appointed OPG as a guardian ad litem to assist Mother in this case. The juvenile court found "there is no procedure available to the Court to act as Guardian ad Litem," and "there is no other person willing or able to act as Guardian ad Litem." Moreover, the juvenile court noted that OPG may "agree to represent [Mother] *in this action*." (Emphasis added). Thus, we are confident that the juvenile court envisioned appointing OPG to represent Mother in the termination case only. And our analysis proceeds from the conclusion that we are examining the appointment of a guardian ad litem and not a general guardian.

I. OPG Can Seek Extraordinary Relief Because It Lacks a Plain, Speedy, and Adequate Remedy to Address Its Appointment

¶27 Under rule 65B of the Utah Rules of Civil Procedure, "where no other plain, speedy and adequate remedy is available," *id.* 65B(a), a person may petition for relief from a court's wrongful use of judicial authority, *id.* 65B(d). The person petitioning on this ground for relief must be a "person aggrieved or whose interests are threatened by any of the acts" specified. *Id.* 65B(d)(1). Rule 65B(d) contemplates that a person may seek a petition "where an inferior court ... has exceeded its jurisdiction or abused its discretion." *Id.* 65B(d)(2)(A).

¶28 OPG asserts both. OPG claims that the juvenile court exceeded its jurisdiction by appointing any guardian ad litem for an adult and that it went beyond the bounds of its discretion by appointing OPG specifically. OPG has no plain, speedy, and adequate remedy because it is not a party to the action below. Indeed, OPG attempted to appeal its appointment, but this court dismissed that appeal because OPG was not a party to the ***988** action. *Supra* ¶ 12; *see Brigham Young Univ. v. Tremco Consultants, Inc.*, 2005 UT 19, ¶ 46 & n.7, 110 P.3d 678 (noting that nonparties may not appeal lower court orders and that extraordinary writ would be the proper vehicle to challenge such order), *overruled on other grounds by Madsen v. JPMorgan Chase Bank, N.A.*, 2012 UT 51, ¶ 5, 296 P.3d 671. Additionally, this petition

could not first be brought to the district court because the juvenile court "is of equal status with the district courts of the state." *See*UTAH CODE § 78A-6-102(3). Thus, a petition for an extraordinary relief constitutes the proper vehicle for OPG to advance its arguments.

II. The Juvenile Court has Inherent Authority to Appoint a Guardian Ad Litem

¶29 OPG first asserts that because juvenile courts are courts of limited jurisdiction created by statute, they do not have authority to appoint a guardian ad litem for a parent in a matter before the court. We disagree.

¶30 All courts have a responsibility to ensure the fair and just proceeding of matters before them. This includes the requirement that the court protect the rights of incompetent parties that come before it. 53 AM. JUR. 2d *Mentally Impaired Persons* § 174 (2019). Court proceedings can exercise the ultimate power of the government to interfere with rights and freedoms inherent in the individuals that enter the courtroom doors. If a person is not "competent, understandingly and intelligently, to comprehend the significance of legal proceedings," *Graham v. Graham*, 40 Wash.2d 64, 240 P.2d 564, 565 (1952), her most fundamental rights could be gravely affected.

¶31 Courts are tasked with adjudicating vital disputes, like considering whether a parent should be stripped of the right to raise her child, and are duly obligated to ensure the parties affected are competent to be involved in the process. Indeed, we have codified this important principle in our Rules of Civil Procedure. Rule 17(b) states that "an insane or incompetent person who is a party must appear either by a general guardian or by a guardian ad litem appointed in the particular case by the court in which the action is pending."

¶32 OPG nevertheless asserts that a juvenile court, exercising its duly granted jurisdiction to hear a case, cannot protect an incompetent party by appointing her a guardian ad litem. This ignores the long-standing principle, recognized by our sister states and federal courts, that the authority to appoint a guardian ad litem is inherent in the court's exercise of its proper subject matter jurisdiction.

¶33 For example, in *Graham*, a mother petitioned the Washington Supreme Court to prohibit the trial court from appointing a guardian ad litem for her in a child visitation dispute. 240 P.2d at 565. Much like the present case, the trial court in *Graham* had called a psychiatrist to testify about the mother's mental health in regards to the underlying matter but, after that testimony, "felt compelled to protect the interests of [the mother] by appointing a guardian ad litem for her." *Id.* The mother's counsel objected. *Id.* The Washington Supreme Court had to decide, it noted, whether the trial court acted "within and not in excess of" its jurisdiction. *Id.* That court then reasoned that "the principle is well established" for courts to appoint guardian ad litem when needed, "[i]rrespective of specific statutory authorization." *Id.* Such a party may not "comprehend the significance of legal proceedings and the effect [and] relationship of such proceedings in terms of [his or her] best interests."*Id.* Thus, the power to appoint a guardian ad litem is "part of and incidental to" the court's jurisdiction over the underlying case. *Id.*

¶34 In *Guardianship of H.L.*, the Vermont Supreme Court concluded that "the appointment of a guardian ad litem is a power inherent in courts in dealing with those appearing before them who are under disability." 143 Vt. 62, 460 A.2d 478, 479 (1983). The court reasoned that the trial court had to be able to fulfill its duty to see that the interests of an incompetent person were fully protected, especially when fundamental rights were involved. *Id.* Similar to the case here, that case involved the right of a parent to the custody of her child. *Id.* That court noted ***989** these rights as basic rights and held that when the incompetent's counsel raised the issue to the court, it was "incumbent upon the court to insure that [mother's] interests were protected," and that the court therefore erred in not investigating further or appointing a guardian ad litem. *Id.* at 480.

¶35 In the same fashion, the Colorado Supreme Court held that a juvenile court had power to appoint a guardian ad litem for an adult even in a wider scope of cases than relevant statutes contemplated. *See People in Interest of M.M.*, 726 P.2d 1108, 1118–20 (Colo. 1986). That court held that it was "well established" and "proper" for a court to appoint a guardian ad litem for an incompetent party. *Id.* at 1118. The court further reasoned that this principle was well supported by the court's rule of procedure requiring the protection of incompetent persons and appointment of guardian ad litem in some circumstances. *Id.* at 1119.

¶36 These courts are not outliers. The principle is well established across the country. *See, e.g.*, *Zaro v. Strauss*, 167 F.2d 218, 220 (5th Cir. 1948) ("Even in the absence of an

inquisition of insanity or of a commitment, where a person is incompetent courts generally have inherent power to protect the interests of the incompetent by appointing a guardian ad litem to represent the incompetent in proceedings."); *Estate of Leonard, ex rel., Palmer v. Swift*, 656 N.W.2d 132, 139 (Iowa 2003) ("In addition to [the rules of civil procedure], the court has the inherent power to do whatever is essential to the performance of its constitutional functions, ... including the appointment of a guardian ad litem." (citation omitted)); *In re Interest of A.M.K.*, 227 Neb. 888, 420 N.W.2d 718, 719 (1988) (reviewing a parental rights termination proceeding from juvenile division and holding that "[e]very court has inherent power to appoint a guardian ad litem to represent an incapacitated person in that court"); *Buckingham v. Alden*, 315 Mass. 383, 53 N.E.2d 101, 104 (1944) ("[T]he authority to appoint a guardian ad litem or next friend is not limited to the foregoing statutory provisions. Such power is inherent in the court and its exercise at times becomes necessary for the proper functioning of the court."); *Schultz v. Oldenburg*, 202 Minn. 237, 277 N.W. 918, 922 (1938) ("[T]his power of the district courts to [appoint a guardian ad litem] is not taken away by the statutes authorizing the probate courts to appoint general guardians for insane persons." (citation omitted)); *Wilson v. Ball*, 337 S.C. 493, 523 S.E.2d 804, 806 (App. 1999) ("[T]he authority for a circuit court to appoint a guardian ad litem is inherent in the court itself ...."); *In re Serafin*, 272 Ill.App.3d 239, 208 Ill.Dec. 612, 649 N.E.2d 972, 976 (1995) ("The circuit court is charged with a duty to protect the interests of its ward and has, by statute and otherwise, those powers necessary to appoint a guardian *ad litem* to represent the interests of the respondent during the court's exercise of its jurisdiction." (italics in original)); *Berman v. Grossman*, 24 A.D.2d 432, 260 N.Y.S.2d 736, 738 (1965) ("The power to appoint a guardian ad litem to appear for and represent the incompetent in the proceeding, absent prohibitory legislation, is among the court's inherent powers in the matter of supervision over the person and property of the incompetent."); 53 AM. JUR. 2d *Mentally Impaired Persons* § 174 ("A court has the inherent power to appoint a guardian ad litem to represent an incompetent person in that court.").

¶37 After reviewing this case law, we similarly agree that a court, even a statutorily-created juvenile court, may appoint a guardian ad litem for an incompetent adult in a matter properly before the court. This power is inherent in the court's jurisdiction independent of a specific statutory grant of authority.

¶38 OPG raises several arguments attempting to keep us from this conclusion. First, OPG argues that the juvenile court does not have inherent power because it is a legislatively created court of limited jurisdiction. For this proposition, OPG cites to *Western Water, LLC v. Olds*, 2008 UT 18, 184 P.3d 578, and its discussion of *State ex rel. B.B.*, 2004 UT 39, 94 P.3d 252.

¶39 In *Western Water*, we allowed a district court to award costs even when it lacked subject matter jurisdiction over the underlying matter because, we said, the district court has inherent power over its processes, ***990** including attorneys. *See*2008 UT 18, ¶ 42, 184 P.3d 578. In contrast, in *State ex rel. B.B.* we did not allow a juvenile court to award costs because it did not have jurisdiction over the underlying matter. *See*2004 UT 39, ¶ 20, 94 P.3d 252. We distinguished *State ex rel. B.B.* because juvenile courts, unlike district courts, are courts of limited jurisdiction. *W. Water*, 2008 UT 18, ¶¶ 46–47, 184 P.3d 578. OPG points to the intersection of these holdings and argues that juvenile courts are limited to those powers enshrined in statute.

¶40 OPG's argument misses the mark. The jurisdiction at issue in *State ex rel. B.B.* was the juvenile court's subject matter jurisdiction. We reasoned that the juvenile court could not award costs because it did not have subject matter jurisdiction over the underlying dispute. *State ex rel. B.B.*, 2004 UT 39, ¶ 19, 94 P.3d 252; *see also W. Water*, 2008 UT 18, ¶ 46, 184 P.3d 578. In other words, the juvenile court did not have "inherent" power to do something in aid of a case over which it lacked subject matter jurisdiction. In contrast, here there is no question that the juvenile court has subject matter jurisdiction over a parental rights termination proceeding. *See*UTAH CODE § 78A-6-103(1). And, as described above, we join the throng of other states that have concluded that a court has inherent power to appoint a guardian ad litem to aid the progress of a case within its subject matter jurisdiction.

¶41 Second, OPG notes that the Juvenile Court Act specifically spells out that juvenile courts have "exclusive original jurisdiction in proceedings concerning ... appointment of a guardian of the person or other guardian of a minor who comes within the court's jurisdiction ...." *Id.* § 78A-6-103(1)(d). OPG asserts that a ruling that juvenile courts have inherent authority to appoint a guardian ad litem would render this statute superfluous. We disagree. This statute simply excepts other courts from having original jurisdiction to name guardians for minors who are under the juvenile court's proper jurisdiction. There is no indication in the statute that the Legislature intended this statement of the

juvenile court's original jurisdiction to strip the juvenile court of its inherent authority to appoint a guardian ad litem for an incompetent adult in a matter properly before it.

¶42 Third, OPG points to the Utah Probate Code, which outlines the procedures for appointing a guardian, and asserts that those provisions deny the juvenile court the jurisdiction to appoint a guardian for an adult. Specifically, OPG asserts that the Probate Code provides the sole basis for appointing a guardian for an incapacitated adult.

¶43 OPG argues that Utah Code section 75-5b-202 states that a "court of this state has jurisdiction to appoint a guardian" if certain requirements are met, and that the phrase "court of this state" does not encompass juvenile courts. OPG correctly asserts that the Probate Code defines "court" as those courts "having jurisdiction in matters relating to the affairs of decedents." *Id.* § 75-1-201(8). Because the juvenile court does not have jurisdiction over the affairs of decedents, it is not, reasons OPG, a court within the meaning of the Probate Code. Thus, OPG argues that because section 75-5b-201 states that these statutes are the exclusive jurisdictional basis for appointing a guardian, the juvenile court could not have jurisdiction to appoint OPG in this case.

¶44 This argument fails however, because when the Probate Code speaks of guardians, it refers to general guardians and not guardians ad litem; as noted, the definitions that apply to the Probate Code define "guardian" but specifically exclude a "guardian ad litem" from that definition. *See id.* § 75-1-201(20). OPG nevertheless contends that this definition of guardian applies only generally throughout the Probate Code and that there is another, more specific definition of guardian in the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). *Id.* §§ 75-5b-101, *et seq.* There, guardian is defined as "a person appointed by the court to make decisions *regarding the person* of an adult, including a person appointed under Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons." *Id.* § 75-5b-102(4) (emphasis added). Because this definition does not contain the carve out for guardians ad litem found in the general definition, OPG believes that UAGPPJA's requirements for appointing an adult guardian, ***991** including vesting the district court with exclusive jurisdiction for that appointment, applies to guardians ad litem for an adult as well. *See id.* § 75-5b-201.

¶45 Although OPG is correct that UAGPPJA's definition of guardian does not contain the general definition's exclusion of guardians ad litem, we are not convinced that this evinces a legislative intent that UAGPPJA govern the appointment of guardians ad litem for an adult. This is because UAGPPJA applies to a guardian appointed "to make decisions regarding the person of an adult." *Id.* § 75-5b-102(4). This hearkens back to the term of art "guardian of the person," which is sometimes employed to describe a guardian "responsible for caring for someone who is incapable of caring for himself or herself because of infancy, incapacity, or disability." *Guardian of the person*, BLACK'S LAW DICTIONARY (11th ed. 2019); *accord Home Town Fin. Corp. v. Frank*, 13 Utah 2d 26, 368 P.2d 72, 75 (1962) (referring to "guardian of his person" as one who "look[s] after his personal affairs"). It also echoes language that we use to talk about a general guardian who has "general care and control of the ward's person and estate." *General guardian*, BLACK'S LAW DICTIONARY (11th ed. 2019).

¶46 Moreover, UAGPPJA is based upon the uniform act. The commentary to the act states that the uniform legislation "would not ordinarily apply to a guardian ad litem." NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT 8 (2007). Our Legislature adopted the uniform act's definition. Because of this, we have little trouble concluding that the Legislature did not intend UAGPPJA to divest juvenile courts of their inherent ability to appoint a guardian ad litem.

¶47 Finally, OPG argues that Utah Rule of Civil Procedure 17(b), which requires an incompetent person to appear by guardian or guardian ad litem, cannot increase a juvenile court's jurisdiction or run contrary to statute. We agree that this court could not, by rule, give the juvenile court subject matter jurisdiction over a category of disputes from which the Legislature had deliberately excluded it by statute. But, as discussed above, the appointment of a guardian ad litem is inherent in the court's jurisdiction to manage the cases over which it has proper subject matter jurisdiction and so does not increase the court's authority.

III. The Juvenile Court Exceeded its Discretion by Appointing the Office of Public Guardian As Guardian Ad Litem

¶48 OPG next asserts that even if we conclude, as we have, that the juvenile court does have the authority to appoint

a guardian ad litem for an adult, it was wrong to appoint OPG. OPG argues that it is an entity created in statute whose "powers and duties" are defined solely by statute, *see*UTAH CODE § 62A-14-103, and that the juvenile court's order contravenes these statutes.

¶49 The statute directs OPG to "serve as a guardian, conservator, or both for a ward upon appointment by a court when no other person is able and willing to do so and the office petitioned for or agreed in advance to the appointment." *Id.* § 62A-14-105(1)(a)(ii). "Guardian" here is defined by reference to the guardianship statutes that specifically exclude guardian ad litem. *See id.* § 62A-14-102(4). Thus, OPG argues, it would be expressly outside its enabling statutes to serve as a guardian ad litem.

¶50 The Legislature also decreed that OPG must have "petitioned for or agreed in advance to the appointment" before a court can draft it into service. *Id.* § 62A-14-105(1)(a)(ii). That did not occur here. OPG reiterates that the juvenile court "cannot compel OPG to do more than what it is authorized to do by statute."

¶51 We take OPG's point. The Legislature appears to have created OPG for a very specific purpose. And the Legislature empowered OPG to be the sole arbiter of when it will serve. Against this statutory backdrop, the juvenile court exceeded the bounds of its discretion in appointing OPG without its consent.

¶52 This does not mean, however, that the juvenile court has depleted its options. There appears to be nothing in statute that speaks to the qualifications to serve as a guardian ad ***992** litem for an adult. Certainly, the parties have not pointed us to anything that would limit who can serve. Our rules appear to be similarly bereft of requirements. Thus, the pool of people who could potentially be appointed as guardian ad litem in a case such as this is vast.

¶53 We can understand why the juvenile court looked to OPG when efforts to locate a family member or friend failed.[6] But it strayed outside the boundaries of its discretion when it appointed OPG without its consent.

CONCLUSION

¶54 The juvenile court has inherent authority to appoint a guardian ad litem for an incompetent party appearing before it in a matter over which it has subject matter jurisdiction. However, because it is contrary to OPG's statutorily granted role, the juvenile court exceeded its discretion by ordering OPG to serve as guardian ad litem. We grant the petition and remand for further proceedings.

All Citations

459 P.3d 982, 2020 UT 4

Footnotes

1 The Office of Public Guardian is a statutorily created entity. *See*UTAH CODE §§ 62A-14-101 to -111. Section 105, entitled, "Powers and duties of the office," allows OPG to, among other things, "serve as a guardian, conservator, or both for a ward upon appointment by a court when no other person is able and willing to do so and the office petitioned for or agreed in advance to the appointment." *Id.* § 62A-14-105(1)(a)(ii). OPG generally only serves in the last instant when no one else can. Section 75-5-311(3) creates a prioritized list of who can serve as guardian—the Legislature places OPG as the very last option right after "any competent person or suitable institution." *Id.* § 75-5-311(3)(i). Even then, the Legislature has invested OPG with the ability to decide when it will serve as a guardian. Section 62A-14-110 instructs that a court cannot appoint OPG without its consent. *Id.* § 62A-14-110(1) ("The office may not be appointed as the guardian or conservator of a person unless the office petitioned for or agreed in advance to the appointment.").

2 Similarly, the question of whether the juvenile court correctly determined whether Mother needs a guardian ad litem is not before this court.

3 In addition to flagging the issue for remand, we ask our standing committees on the rules of civil and juvenile procedure to examine the issue and suggest ways to address the question.

4 "Incapacity" is defined in Utah statute. UTAH CODE § 75-1-201(22). The statutes governing the court appointment of a guardian for an adult require a finding of incapacity. *Id.* § 75-5-303. The juvenile court in this case stated that it found Mother to be "an incompetent person," and not an incapacitated person within the meaning of section 201.

5 The Probate Code provides that " '[g]uardian' means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, or by written instrument ..., but excludes one who is merely a guardian ad litem." UTAH CODE § 75-1-201(20).

6 The juvenile court correctly noted that we have devised no formal process for the court to appoint an attorney to serve as guardian ad litem for an adult when more traditional candidates—like a family member or friend—cannot be found. But this lack of procedure does not warrant drawing OPG into the matter contrary to its statutory mandate.

And while we understand that the juvenile court may have perceived that it had exhausted its efforts to find someone to help Mother, we note the long tradition in our state of attorneys stepping up to serve in difficult situations when requested. Rule 6.1 of the Utah Rules of Professional Conduct urges attorneys to participate in activities that serve the legal system and profession. Many attorneys have kept faith with that rule by agreeing to serve as pro bono counsel in Post-Conviction Remedies Act cases. Many of us have, at some point in our careers, received a call from a judge who, having seen potential merit in a Post-Conviction Remedies Act petition, is searching for a volunteer to represent the petitioner. We appreciate the many attorneys who have responded to those calls. Cases like this appear to be another way that attorneys could fulfill rule 6.1's mandate.

Because a guardian ad litem does not have to be an attorney, there may be other groups, such as social work clinics and mental health advocacy groups, who may be willing to help identify individuals willing to serve in difficult situations.

We appreciate that this is far from a perfect solution, and that we should not systemically rely on vague procedures and the good will of our bar and community to ensure that our system treats people fairly. As our rules committees examine ways we might improve our rules with respect to the appointment of guardians ad litem for adults, we ask that they consider how the courts can better identify and appoint suitable guardians ad litem for incompetent adults.