



Utah Supreme Court's Advisory Committee on the Rules of Juvenile Procedure

Meeting Agenda

David W. Fureigh, Chair

Location: Webex Meeting:
<https://utcourts.webex.com/utcourts/j.php?MTID=m6ed2f9fdd245f1af928fc01c661bd282>

Date: January 8, 2021

Time: 12:00 pm – 2:00 pm

12:00 – 12:10	Action: Welcome and approve December 4, 2020 Meeting minutes	Tab 1	David Fureigh
12:10 – 12:40	Action: Venue Transfer and Rule 16	Tab 2	Janette White Chris Yanelli
12:40 – 1:05	Action: Petition contents and Rule 17	Tab 3	Bridget Koza
1:05 – 1:25	Action: Rights of minors in delinquency proceedings and Rule 26	Tab 4	Bridget Koza
1:25 – 1:50	Discussion: Rule 45 and 46 – Disposition Reports	Tab 5	Bridget Koza Carol Verdoia
1:50 – 2:00	Discussion: Old business/new business		All

<https://www.utcourts.gov/utc/juvenile-procedure/>

Meeting Schedule:

February 5, 2021

May 7, 2021

September 3, 2021

December 3, 2021

March 5, 2021

June 4, 2021

October 1, 2021

April 2, 2021

August 6, 2021

November 5, 2021

TAB 1



**Utah Supreme Court's
Advisory Committee on the Rules of Juvenile Procedure**

Draft Meeting Minutes

December 4, 2020

Webex Meeting:

<https://utcourts.webex.com/utcourts/j.php?MTID=m2f9d3f32d3c5a5a1f32db9e8b4850c03>
12:00 pm – 2:00 pm

David Fureigh, Chair

<p><u>Attendees:</u> David Fureigh, Chair Judge Mary Manley Judge Elizabeth Lindsley Arek Butler Monica Diaz Kristin Fadel Michelle Jeffs Matthew Johnson Sophia Moore Mikelle Ostler Jordan Putnam Janette White Carol Verdoia, Emeritus Member</p>	<p><u>Staff:</u> Bridget Koza Meg Sternitzky, Juvenile Court Law Clerk Xen Fedison, Juvenile Court Law Clerk</p> <p><u>Guests:</u> Jacqueline Carlton, Office of Legislative Research and General Counsel Representative Marsha Judkins, Utah House of Representatives Michael Drechsel, Assistant Court Administrator</p>
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1. Welcome and approval of the November 6, 2020 meeting minutes: (David Fureigh)

David Fureigh welcomed everyone to the meeting and asked for approval of the minutes.

Michelle Jeffs moved to approve the November 6, 2020 meeting minutes. Monica Diaz seconded the motion, and it passed unanimously.

2. Discussion – Juvenile Interrogation and Rule 27A: (David Fureigh)

Representative Marsha Judkins wanted to discuss with the committee the admissibility of statements by a minor and waiving their Miranda rights.

The committee first introduced themselves since it was Representative Judkins first time attending the committee's meeting.

Representative Judkins discussed that a concern about minors' waiving their Miranda rights during an interrogation given the science known about brain development. She has looked at other states' laws around the admissibility of a minor's statement including Indiana which generally does not allow for a minor to waive their Miranda rights unless the minor is emancipated; the parent/guardian is present, is not involved in the alleged crime, and is acting in the minor's best interest; or the minor's counsel is present.

The committee members summarized for Representative Judkins the discussion the committee had when working on Rule 27A, including reviewing articles about brain science, Utah's common law regarding the age of 14 creating a demarcation for a minor's ability to understand and waive certain rights, and statutes from other states. The committee did not unanimously vote for the current version of Rule 27A. Currently, every minor is appointed counsel who can assist with filing motions to suppress a minor's statements. Judge Lindsley extended an invitation for Representative Judkins to observe delinquency hearings. The committee appreciated Representative Judkins speaking with the committee members today.

3. Discussion - Service by publication and Rule 18: (Judge Lindsley, Meg Sternitzky & Xen Fedison)

Based the research memo provided by Meg Sternitzky and Xen Fedison, Judge Lindsley explained that the statute would need to be changed before the Rule 18 regarding service by publication could be amended. The statute is specific in how service by publication occurs.

The committee agreed that changes to Rule 18 regarding service by publication will have wait until the statute is changed.

4. Action - Venue Transfer and Rule 16: (Bridget Koza & Janette White)

Bridget Koza presented to the committee the revised Rule 16 that Chris Yannelli drafted. Rule 16 has been amended to reflect language about when and how delinquency case can be transferred. The language in Utah Code 78A-6-110(2) & (3) is not included in the draft Juvenile Court Act recodification bill. The committee discussed the internal court process for transferring case files and documents when a case is transferred between judicial districts. The committee agreed to add in language about the transferring court shall notify the receiving court of the case being transferred.

Judge Lindsley moved to present the revised Rule 16 to the Supreme Court to obtain permission to publish it for public comment. Sophie Moore seconded the motion, and it passed unanimously.

Janette White discussed with the committee draft Rule 16A which addresses the transfer of non-delinquency cases since the language in Utah Code 78A-6-110(2) & (3) is not included in the draft Juvenile Court Act recodification bill. The committee discussed the practice around the state about how non-delinquency cases are transferred from one judicial district to another. The committee made changes to draft Rule 16A, including changing “initial permanency hearing” in paragraph (d) to “initial disposition hearing” and combining paragraphs (a) and (c) to state: “After the adjudication of a petition in a non-delinquency proceeding, the court may transfer the case to the district where the minor or parent resides so long as the court finds it is in the best interest of the minor.”

The committee discussed that venue language in Utah Code 78A-6-110 may be removed from the next draft Juvenile Court Act recodification bill so the committee will wait to review the next draft bill before moving forward with Rule 16A.

The committee agreed that Rule 16A will be placed on the January 8, 2021 agenda. Bridget Koza will talk with Michael Dreschel about whether the venue language in Utah Code 78A-6-110 will be removed in the next draft Juvenile Court Recodification bill.

5. Discussion – Petition contents and Rule 17: (Bridget Koza)

Bridget Koza reviewed with the committee amended Rule 17 to reflect language about what to include in a termination of parental rights petition. The language is not included in the draft Juvenile Court Act recodification bill. The amended language is from Utah Code 78A-6-505(1).

Mikelle Ostler moved to present the revised Rule 17 to the Supreme Court to obtain permission to publish it for public comment. Janette White seconded the motion. The committee did not vote on the motion and Rule 17 will be placed on the January 8, 2021 agenda.

6. Action – Rights of minors in delinquency proceedings and Rule 26: (Bridget Koza)

Bridget Koza reviewed with the committee amended Rule 26 to reflect legislative changes from the 2019 Indigent Defense Act. Bridget Koza discussed with the committee whether paragraph (e) conflicts with Utah Code 78B-22-204 regarding how a minor can waive the right to counsel.

The committee agreed that Rule 26 will be placed on the January 8, 2021 agenda.

7. Discussion – Rule 45 and 46 – Disposition Reports: (Bridget Koza)

Bridget Koza explained why Rules 45 and 46 were on the agenda. Utah Code 78A-6-115(4) has been stricken in the draft Juvenile Court Act recodification bill. Rules 45 and 46 address this subsection but do not include a reference to the documents the court can review in a termination of parental rights proceedings.

The committee agreed that Rules 45 and 46 will be placed on the January 8, 2021 agenda.

8. Old business/new business: (All)

The Committee discussed potential future agenda items:

- Bridget Koza asked the committee whether the Juvenile Rules will need to be updated given that the new Juvenile Disposition Guidelines went into effect on December 1, 2020. Monica Diaz will see if any rules will need to be changed.

The meeting adjourned at 1:59 pm. The next meeting will be held on January 8, 2021, at 12:00 pm via Webex.

TAB 2

Rule 16. Transfer of delinquency case

(a) Transfer of delinquency case for preliminary inquiry.

(a)(1) When a minor resides in a county within the state other than the county in which the alleged delinquency occurred, and it appears that the minor qualifies for a nonjudicial adjustment pursuant to statute, the intake probation officer of the county of occurrence shall, unless otherwise directed by court order, transfer the referral to the county of residence for a preliminary inquiry to be conducted in accordance with Rule 15. If any of the following circumstances are found to exist at the time of preliminary inquiry, the referral shall be transferred back to the county of occurrence for filing of a petition and further proceedings:

(a)(1)(A) if a minor, the child or the child's parent, guardian or custodian cannot be located or failed to appear after notice for the preliminary inquiry;

(a)(1)(B) if a minor, the child or the child's parent, guardian or custodian declines an offer for a nonjudicial adjustment;

(a)(1)(C) if a minor or the minor's custodian cannot be located or fails to appear after notice for the preliminary inquiry or the minor declines an offer for a nonjudicial adjustment;

(a)(1)(D) there are circumstances in the case that require adjudication in the county of

occurrence in the interest of justice; or

(a)(1)(E) there are multiple minors involved who live in different counties.

(b) If the referral is not returned to the county of occurrence, a petition may be filed in the county of residence, and the arraignment and all further proceedings may be conducted in that county if the petition is admitted.

(c) After the filing of a petition alleging a delinquency or criminal action, the court may transfer the case to the district where the minor resides or the district where the violation of

28 law or ordinance is alleged to have occurred. The court may, in its discretion, after
29 adjudication certify the case for disposition to the court of the district in which the minor
30 resides.

31 (d) The transferring or certifying court shall notify the receiving court and transmit all
32 documents and legal and social records, or certified copies to the receiving court. The receiving
33 court shall proceed with the case as if the petition had been originally filed or the adjudication
34 had been originally made in that court.

35 (e) The dismissal of a petition in one district where the dismissal is without prejudice and
36 where there has been no adjudication upon the merits shall not preclude refiling within the
37 same district or another district where there is venue of the case.

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Rule 16A. Transfer of a non-delinquency proceeding.

(a) After the adjudication of a petition in a non-delinquency proceeding, the court may transfer the case to the district where the minor or parent resides so long as the court finds it is in the best interest of the minor.

(b) A case may not be transferred prior to adjudication unless the court finds good cause to transfer the matter to another district.

(c) The court may not transfer the case to another district after the initial disposition hearing unless the transferring court first communicates and consults with the receiving court.

(d) The receiving court shall schedule a hearing within 30 days of receiving notice of the transfer.

(e) The transferring or certifying court shall notify the receiving court and transmit all documents and legal and social records, or certified copies to the receiving court. The receiving court shall proceed with the case as if the petition had been originally filed or the adjudication had been originally made in that court.

(f) The dismissal of a petition in one district where the dismissal is without prejudice and where there has been no adjudication upon the merits shall not preclude refileing within the same district or another district where there is venue of the case.

West's Utah Code Annotated
Title 78a. Judiciary and Judicial Administration (Refs & Annos)
Chapter 6. Juvenile Court Act (Refs & Annos)
Part 1. General Provisions (Refs & Annos)

U.C.A. 1953 § 78A-6-110
Formerly cited as UT ST § 78-3a-111

§ 78A-6-110. Venue--Transfer or certification to other
districts--Dismissal without adjudication on merits

[Currentness](#)

(1) Proceedings in minor's cases shall be commenced in the court of the district in which the minor is living or is found, or in which an alleged violation of law or ordinance occurred.

(2) After the filing of a petition, the court may transfer the case to the district where the minor resides or to the district where the violation of law or ordinance is alleged to have occurred. The court may, in its discretion, after adjudication certify the case for disposition to the court of the district in which the minor resides.

(3) The transferring or certifying court shall transmit all documents and legal and social records, or certified copies to the receiving court, and the receiving court shall proceed with the case as if the petition had been originally filed or the adjudication had been originally made in that court.

(4) The dismissal of a petition in one district where the dismissal is without prejudice and where there has been no adjudication upon the merits shall not preclude refiling within the same district or another district where there is venue of the case.

Credits

Laws 2008, c. 3, § 376, eff. Feb. 7, 2008.

U.C.A. 1953 § 78A-6-110, UT ST § 78A-6-110

Current with laws through the 2020 Sixth Special Session. Some statutes sections may be more current, see credits for details.

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TAB 3

2 **Rule 17. The petition.**

3 (a) **Delinquency cases.**

4 (a)(1) The petition shall allege the offense as it is designated by statute or
5 ordinance, and shall state: in concise terms, the definition of the offense together
6 with a designation of the section or provision of law allegedly violated; the name,
7 age and date of birth of the minor; the name and residence address of the minor's
8 parents, guardian or custodian; the date and place of the offense; and the name or
9 identity of the victim, if known.

10 (a)(2) The petition shall be verified and filed by the prosecuting attorney upon
11 information and belief.

12 (b) **Neglect, abuse, dependency, permanent termination and ungovernability cases.**

13 (b)(1) The petition shall set forth in plain and concise language the jurisdictional
14 basis as designated by statute, the facts supporting the court's jurisdiction, and the
15 relief sought. The petition shall state: the name, age and residence of the minor;
16 the name and residence of the minor's parent, guardian or custodian; and if the
17 parent, guardian or custodian is unknown, the name and residence of the nearest
18 known relative or the person or agency exercising physical or legal custody of the
19 minor.

20 (b)(2) The petition must be verified and statements made therein may be made on
21 information and belief.

22 (b)(3) A petition filed by a state human services agency shall either be prepared or
23 approved by the office of the attorney general. When the petitioner is an employee
24 or agent of a state agency acting in his or her official capacity, the name of the
25 agency shall be set forth and the petitioner shall designate his or her title.

26 (b)(4) A petition for termination of parental rights shall also include, to the best
27 information or belief of the petitioner: the name and residence of the petitioner;
28 the sex and place of birth of the minor; the relationship of the petitioner to the
29 minor; the dates of the birth of the minor's parents, if known; and the name and
30 address of the person having legal custody or guardianship, or acting in loco
31 parentis to the minor, or the organization or agency having legal custody or
32 providing care for the minor.

33 (c) **Other cases.**

34 (c)(1) Protective orders. Petitions may be filed on forms available from the court
35 clerk and must conform to the format and arrangement of such forms.

36 (c)(2) Petitions for adjudication expungements must meet all of the criteria of Utah
37 Code section 78A-6-1503 and petitioner. Petitions for expungement must be
38 accompanied by an original criminal history report obtained from the Bureau of
39 Criminal Identification and proof of service upon the County Attorney, or within
40 a prosecution district, the District Attorney for each jurisdiction in which an
41 adjudication occurred prior to being filed with the Clerk of Court.

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

47 (c)(4) Petitions for vacatur must meet all of the criteria of Utah Code section 78A-
48 6-1114 and shall state any agency known or alleged to have documents related to
49 the offense for which vacatur is sought. Petitions for vacatur must be accompanied
50 by an original criminal history report obtained from the Bureau of Criminal
51 Identification and proof of service upon the County Attorney, or within a

52 prosecution district, the District Attorney for each jurisdiction in which an
53 adjudication occurred prior.

54 (c)(5) Petitions in other proceedings shall conform to Rule 10 of the Utah Rules of
55 Civil Procedure, except that in adoption proceedings, the petition must be
56 accompanied by a certified copy of the Decree of Permanent Termination.

West's Utah Code Annotated
Title 78a. Judiciary and Judicial Administration (Refs & Annos)
Chapter 6. Juvenile Court Act (Refs & Annos)
Part 5. Termination of Parental Rights Act (Refs & Annos)

U.C.A. 1953 § 78A-6-505
Formerly cited as UT ST § 78-3a-405

§ 78A-6-505. Contents of petition

Currentness

(1) The petition for termination of parental rights shall include, to the best information or belief of the petitioner:

(a) the name and place of residence of the petitioner;

(b) the name, sex, date and place of birth, and residence of the child;

(c) the relationship of the petitioner to the child;

(d) the names, addresses, and dates of birth of the parents, if known;

(e) the name and address of the person having legal custody or guardianship, or acting in loco parentis to the child, or the organization or agency having legal custody or providing care for the child;

(f) the grounds on which termination of parental rights is sought, in accordance with [Section 78A-6-507](#); and

(g) the names and addresses of the persons or the authorized agency to whom legal custody or guardianship of the child might be transferred.

(2) A copy of any relinquishment or consent, if any, previously executed by the parent or parents shall be attached to the petition.

Credits

Laws 2008, c. 3, § 428, eff. Feb. 7, 2008.

Notes of Decisions (2)

U.C.A. 1953 § 78A-6-505, UT ST § 78A-6-505

Current with laws through the 2020 Sixth Special Session. Some statutes sections may be more current, see credits for details.

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West's Utah Code Annotated
Title 78a. Judiciary and Judicial Administration (Refs & Annos)
Chapter 6. Juvenile Court Act (Refs & Annos)
Part 1. General Provisions (Refs & Annos)

U.C.A. 1953 § 78A-6-108
Formerly cited as UT ST § 78-3a-109

§ 78A-6-108. Title of petition and other court documents--Form and contents of petition--Order for temporary custody or protective services--Physical or psychological examination of minor, parent, or guardian--Dismissal of petition

Effective: May 12, 2020
[Currentness](#)

(1) The petition and all subsequent court documents in the proceeding shall be entitled:

“State of Utah, in the interest of....., an individual under 18 years old (or an individual under 21 years old).”

(2) The petition shall be verified and statements in the petition may be made upon information and belief.

(3) The petition shall be written in simple and brief language and include the facts which bring the minor within the jurisdiction of the court, as provided in Section 78A-6-103.

(4) The petition shall further state:

(a) the name, age, and residence of the minor;

(b) the names and residences of the minor's parents;

(c) the name and residence of the guardian, if there is one;

(d) the name and address of the nearest known relative, if no parent or guardian of a minor is known; and

(e) the name and residence of the person having physical custody of the minor. If any of the facts required are not known by the petitioner, the petition shall so state.

(5) At any time after a petition is filed, the court may make an order:

- (a) providing for temporary custody of the minor; or
 - (b) that the division provide protective services to the child, if the court determines that:
 - (i) the child is at risk of being removed from the child's home due to abuse or neglect; and
 - (ii) the provision of protective services may make the removal described in Subsection (5)(b)(i) unnecessary.
- (6)(a) The court may order that a minor concerning whom a petition has been filed shall be examined by a physician, surgeon, psychiatrist, or psychologist and may place the minor in a hospital or other facility for examination.
- (b) After notice and a hearing set for the specific purpose, the court may order a similar examination of a parent or guardian whose ability to care for a minor is at issue, if the court finds from the evidence presented at the hearing that the parent's or guardian's physical, mental, or emotional condition may be a factor in causing the neglect, dependency, or delinquency of the minor.
- (7) An examination conducted in accordance with Subsection (6) is not a privileged communication under [Utah Rules of Evidence, Rule 506\(d\)\(3\)](#), and is exempt from the general rule of privilege.
- (8) The court may dismiss a petition at any stage of the proceedings.
- (9) If the petition is filed under [Section 78A-6-304](#) or [78A-6-505](#), or if the matter is referred to the court under Subsection 78A-6-104(5), the court may require the parties to participate in mediation in accordance with Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act.

Credits

[Laws 2008, c. 3, § 374, eff. Feb. 7, 2008; Laws 2020, c. 214, § 41, eff. May 12, 2020.](#)

[Notes of Decisions \(3\)](#)

U.C.A. 1953 § 78A-6-108, UT ST § 78A-6-108

Current with laws through the 2020 Sixth Special Session. Some statutes sections may be more current, see credits for details.

West's Utah Code Annotated
Title 78a. Judiciary and Judicial Administration (Refs & Annos)
Chapter 6. Juvenile Court Act (Refs & Annos)
Part 3. Abuse, Neglect, and Dependency Proceedings (Refs & Annos)

U.C.A. 1953 § 78A-6-304
Formerly cited as UT ST § 78-3a-305

§ 78A-6-304. Petition filed

Effective: May 12, 2020
[Currentness](#)

(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).

Credits

[Laws 2008, c. 3, § 402, eff. Feb. 7, 2008](#); [Laws 2020, c. 158, § 2, eff. May 12, 2020](#).

[Notes of Decisions \(18\)](#)

U.C.A. 1953 § 78A-6-304, UT ST § 78A-6-304

Current with laws through the 2020 Sixth Special Session. Some statutes sections may be more current, see credits for details.

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TAB 4

1 Draft December 2020

2 **Rule 26. Rights of minors in delinquency proceedings.**

3 (a) A minor who is the subject of a delinquency petition filed pursuant to Section 78A-6-
4 103 shall be advised of the following rights:

5 (a)(1) to appear in person and to defend in person or by counsel;

6 (a)(2) to receive a copy of the petition which contains the allegations against the
7 minor;

8 (a)(3) to testify in the minor's own behalf;

9 (a)(4) to be confronted by the witnesses against the minor;

10 (a)(5) to have compulsory process to ensure the attendance of witnesses in the
11 minor's behalf;

12 (a)(6) to be represented by appointed counsel at all stages of the proceedings ~~and~~
13 ~~if indigent, to have appointed counsel;~~

14 (a)(7) to remain silent and to be advised that anything the minor says can and will
15 be used against the minor in any court proceedings; and

16 (a)(8) to appeal any adjudication against the minor in the manner provided by law.

17 ~~.(b) If the minor or the minor's parent, guardian or custodian is found to be indigent and~~
18 ~~request counsel, the court shall appoint counsel at public expense in the manner provided~~
19 ~~by law. Where necessary to protect the interest of the minor, the court may appoint~~
20 ~~counsel without the request of the minor or parent, guardian or custodian.~~

21 ~~.(c) If the parent, guardian or custodian of a minor is found not to be indigent, but does~~
22 ~~not or will not retain counsel for the minor and the minor has no means to retain counsel,~~
23 ~~the court may appoint counsel at public expense. However, the court may order, after~~
24 ~~giving the parent, guardian or custodian reasonable opportunity to be heard, that the~~
25 ~~parent, guardian or custodian reimburse the county for the cost of appointed counsel, in~~
26 ~~whole or in part, depending on ability to pay.~~

27 (d) Parties other than the minor have the right to be represented by counsel retained by
28 them and to participate as provided in these rules.

29 (e) A minor 14 years of age and older is presumed capable of intelligently comprehending
30 and waiving the minor's right to counsel as above and may do so where the court finds
31 such waiver to be knowing and voluntary, whether the minor's parent, guardian or

32 custodian is present. A child under 14 years of age may not waive such rights outside of
33 the presence of the child's parent, guardian or custodian.

34

Commented [BK1]: This language seems to conflict with 78B-22-204 – “A minor may not waive the right to counsel before:
(1) the minor has consulted with counsel; and
(2) the court is satisfied that in light of the minor's unique circumstances and attributes:
(a) the minor's waiver is knowing and voluntary; and
(b) the minor understands the consequences of the waiver.”

TAB 5

West's Utah Code Annotated
State Court Rules
Rules of Juvenile Procedure (Refs & Annos)
Section XII. Adjudication and Judgment

Utah R. Juv. P. Rule 45

Rule 45. Pre-Disposition Reports and Social Studies

Currentness

(a) Unless waived by the court, a pre-disposition report shall be prepared in all proceedings which result in the filing of a petition. The pre-disposition report shall be deemed waived, unless otherwise ordered, in all traffic, fish and game and boating cases, and other bailable offenses. The report shall conform to the requirements in the Code of Judicial Administration.

(b) In delinquency cases, investigation of the minor and family for the purpose of preparing the pre-disposition report shall not be commenced before the allegations have been proven without the consent of the parties.

(c) The pre-disposition report shall not be submitted to or considered by the judge before the adjudication of the charges or allegations to which it pertains. If no pre-disposition report has been prepared or completed before the dispositional hearing, or if the judge wishes additional information not contained in the report, the dispositional hearing may be continued for a reasonable time to a date certain.

(d) For the purpose of determining proper disposition of the minor and for the purpose of establishing the fact of neglect or dependency, written reports and other material relating to the minor's mental, physical, and social history and condition may be received in evidence and may be considered by the court along with other evidence. The court may require that the person who wrote the report or prepared the material appear as a witness if the person is reasonably available.

(e) The pre-dispositional report and social studies shall be provided by the author to the minor's counsel, the prosecuting attorney, the guardian ad litem, and counsel for the parent, guardian or custodian of the minor at least two days prior to the dispositional hearing. When the minor or the minor's parent, guardian or custodian are not represented by counsel, the court may limit inspection of reports by the minor or the minor's parent, guardian or custodian if the court determines it is in the best interest of the minor to do so.

Credits

[Adopted effective January 1, 1995. Amended effective November 1, 2003; November 1, 2004; April 1, 2008.]

Utah Rules of Juvenile Procedure Rule 45, UT R JUV Rule 45
Current with amendments received through September 15, 2020

West's Utah Code Annotated
State Court Rules
Rules of Juvenile Procedure (Refs & Annos)
Section XII. Adjudication and Judgment

Utah R. Juv. P. Rule 46

Rule 46. Disposition Hearing

Currentness

(a) Disposition hearings may be separate from the hearing at which the petition is proved or may follow immediately after that portion of the hearing at which the allegations of the petition are proved. Disposition hearings shall be conducted in an informal manner to facilitate the opportunity for all participants to be heard.

(b) The court may receive any information that is relevant to the disposition of the case including reliable hearsay and opinions. Counsel for the parties are entitled to examine under oath the person who prepared the pre-disposition report if such person is reasonably available. The parties are entitled to compulsory process for the appearance of any person, including character witnesses, to testify at the hearing. A minor's parent or guardian may address the court regarding the disposition of the case, and may address other issues with the permission of the court.

(c) After the disposition hearing, the court shall enter an appropriate order. After announcing its order, the court shall advise any party who is present and not represented by counsel of the right to appeal the court's decision.

(d) The disposition order made and entered by the court shall be reduced to writing and a copy mailed or furnished to the minor, and to the parent, guardian or custodian of a child, or counsel for the minor and parent, guardian or custodian, if any, the prosecuting attorney, the guardian ad litem, and any agency or person affected by the court's order. The disposition order may be prepared by counsel at the direction of the court, but shall be reviewed and modified as deemed appropriate by the court prior to the court's acceptance and signing of submission.

(e) Disposition of a petition alleging abuse, neglect, or dependency of a child shall be conducted also in accordance with [Utah Code Section 78A-6-117](#), [Section 78A-6-311](#), and [Section 78A-6-312](#).

Credits

[Adopted effective January 1, 1995. Amended effective April 1, 1996; April 1, 1997; May 10, 1999; November 1, 2003; November 1, 2004; April 1, 2008; January, 2009.]

[Notes of Decisions \(9\)](#)

Utah Rules of Juvenile Procedure Rule 46, UT R JUV Rule 46
Current with amendments received through September 15, 2020

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West's Utah Code Annotated
Title 78a. Judiciary and Judicial Administration (Refs & Annos)
Chapter 6. Juvenile Court Act (Refs & Annos)
Part 1. General Provisions (Refs & Annos)

U.C.A. 1953 § 78A-6-115
Formerly cited as UT ST § 78-3a-116

§ 78A-6-115. Hearings--Record--County attorney or district attorney responsibilities--
Attorney general responsibilities--Disclosure--Admissibility of evidence--Cannabis

Effective: May 12, 2020

[Currentness](#)

(1)(a) A verbatim record of the proceedings shall be taken in all cases that might result in deprivation of custody as defined in this chapter. In all other cases a verbatim record shall also be made unless dispensed with by the court.

(b)(i) For purposes of this Subsection (1)(b):

(A) "Record of a proceeding" does not include documentary materials of any type submitted to the court as part of the proceeding, including items submitted under Subsection (4)(a).

(B) "Subjects of the record" includes the child's guardian ad litem, the child's legal guardian, the Division of Child and Family Services, and any other party to the proceeding.

(ii) Notwithstanding any other provision, including Title 63G, Chapter 2, Government Records Access and Management Act, the court shall release a record of a proceeding made under Subsection (1)(a) to any person upon a finding on the record for good cause.

(iii) Following a petition for a record of a proceeding made under Subsection (1)(a), the court shall:

(A) provide notice to all subjects of the record that a request for release of the record has been made; and

(B) allow sufficient time for the subjects of the record to respond before making a finding on the petition.

(iv) A record of a proceeding may not be released under this Subsection (1)(b) if the court's jurisdiction over the subjects of the proceeding ended more than 12 months before the day on which the request is made.

(2)(a) Except as provided in Subsection (2)(b), the county attorney or, if within a prosecution district, the district attorney shall represent the state in any proceeding in a minor's case.

(b) Subject to the attorney general's prosecutorial discretion in civil enforcement actions, the attorney general shall enforce all provisions of Title 62A, Chapter 4a, Child and Family Services, and this chapter, relating to:

(i) protection or custody of an abused, neglected, or dependent child; and

(ii) petitions for termination of parental rights.

(3) The board may adopt special rules of procedure to govern proceedings involving violations of traffic laws or ordinances, wildlife laws, and boating laws. However, proceedings involving offenses under [Section 78A-6-606](#) are governed by that section regarding suspension of driving privileges.

(4)(a) For the purposes of determining proper disposition of the minor in dispositional hearings and establishing the fact of abuse, neglect, or dependency in adjudication hearings and in hearings upon petitions for termination of parental rights, written reports and other material relating to the minor's mental, physical, and social history and condition may be received in evidence and may be considered by the court along with other evidence. The court may require that the individual who wrote the report or prepared the material appear as a witness if the individual is reasonably available.

(b) For the purpose of determining proper disposition of a minor alleged to be or adjudicated as abused, neglected, or dependent, dispositional reports prepared by the division under [Section 78A-6-315](#) may be received in evidence and may be considered by the court along with other evidence. The court may require any individual who participated in preparing the dispositional report to appear as a witness, if the individual is reasonably available.

(5)(a) Except as provided in Subsections (5)(c) through (e), in an abuse, neglect, or dependency proceeding occurring after the commencement of a shelter hearing under [Section 78A-6-306](#) or the filing of a petition under [Section 78A-6-304](#), each party to the proceeding shall provide in writing to the other parties or their counsel any information which the party:

(i) plans to report to the court at the proceeding; or

(ii) could reasonably expect would be requested of the party by the court at the proceeding.

(b) The disclosure required under Subsection (5)(a) shall be made:

(i) for dispositional hearings under [Sections 78A-6-311](#) and [78A-6-312](#), no less than five days before the day on which the proceeding is held;

(ii) for proceedings under Chapter 6, Part 5, Termination of Parental Rights Act, in accordance with Utah Rules of Civil Procedure; and

(iii) for all other proceedings, no less than five days before the day on which the proceeding is held.

(c) The division is not required to provide a court report or a child and family plan to each party to the proceeding if:

- (i) the information is electronically filed with the court; and
- (ii) each party to the proceeding has access to the electronically filed information.

(d) If a party to a proceeding obtains information after the deadline in Subsection (5)(b), the information is exempt from the disclosure required under Subsection (5)(a) if the party certifies to the court that the information was obtained after the deadline.

(e) Subsection (5)(a) does not apply to:

- (i) pretrial hearings; and
- (ii) the frequent, periodic review hearings held in a dependency drug court case to assess and promote the parent's progress in substance use disorder treatment.

(6) For the purpose of establishing the fact of abuse, neglect, or dependency, the court may, in the court's discretion, consider evidence of statements made by a child under eight years of age to an individual in a trust relationship.

(7)(a) As used in this Subsection (7):

- (i) "Cannabis" means the same as that term is defined in [Section 26-61a-102](#).
- (ii) "Cannabis product" means the same as that term is defined in [Section 26-61a-102](#).
- (iii)(A) "Chronic" means repeated or patterned.
 - (B) "Chronic" does not mean an isolated incident.
- (iv) "Directions of use" means the same as that term is defined in [Section 26-61a-102](#).
- (v) "Dosing guidelines" means the same as that term is defined in [Section 26-61a-102](#).
- (vi) "Medical cannabis" means the same as that term is defined in [Section 26-61a-102](#).

(vii) “Medical cannabis cardholder” means the same as that term is defined in [Section 26-61a-102](#).

(viii) “Qualified medical provider” means the same as that term is defined in [Section 26-61a-102](#).

(b) In any child welfare proceeding in which the court makes a finding, determination, or otherwise considers an individual's possession or use of medical cannabis, a cannabis product, or a medical cannabis device, the court may not consider or treat the individual's possession or use any differently than the lawful possession or use of any prescribed controlled substance if:

(i) the individual's possession or use complies with Title 4, Chapter 41a, Cannabis Production Establishments;

(ii) the individual's possession or use complies with Subsection 58-37-3.7(2) or (3); or

(iii)(A) the individual's possession or use complies with Title 26, Chapter 61a, Utah Medical Cannabis Act; and

(B) the individual reasonably complies with the directions of use and dosing guidelines determined by the individual's qualified medical provider or through a consultation described in Subsection 26-61a-502(4) or (5).

(c) In a child welfare proceeding, a parent's or guardian's use of cannabis or a cannabis product is not abuse or neglect of a child under [Section 78A-6-105](#) unless there is evidence showing that:

(i) the child is harmed because of the child's inhalation or ingestion of cannabis, or because of cannabis being introduced to the child's body in another manner; or

(ii) the child is at an unreasonable risk of harm because of chronic inhalation or ingestion of cannabis or chronic introduction of cannabis to the child's body in another manner.

(d) Unless there is harm or an unreasonable risk of harm to the child as described in Subsection (7)(c), in a child welfare proceeding a parent's or guardian's use of medical cannabis or a cannabis product is not contrary to the best interests of a child if:

(i) for a medical cannabis cardholder after January 1, 2021, the parent's or guardian's possession or use complies with Title 26, Chapter 61a, Utah Medical Cannabis Act, and there is no evidence that the parent's or guardian's use of medical cannabis unreasonably deviates from the directions of use and dosing guidelines determined by the parent's or guardian's qualified medical provider or through a consultation described in Subsection 26-61a-502(4) or (5); or

(ii) before January 1, 2021, the parent's or guardian's possession or use complies with Subsection 58-37-3.7(2) or (3).

(e) Subsection (7)(c) does not prohibit a finding of abuse or neglect of a child under [Section 78A-6-105](#), and Subsection (7) (d) does not prohibit a finding that a parent's or guardian's use of medical cannabis or a cannabis product is contrary to the

best interests of a child, if there is evidence showing a nexus between the parent's or guardian's use of cannabis or a cannabis product and behavior that would separately constitute abuse or neglect of the child.

Credits

Laws 2008, c. 3, § 381, eff. Feb. 7, 2008; Laws 2008, c. 382, § 2217, eff. May 5, 2008; Laws 2009, c. 146, § 5, eff. May 12, 2009; Laws 2009, c. 161, § 5, eff. May 12, 2009; Laws 2010, c. 34, § 10, eff. May 11, 2010; Laws 2017, c. 330, § 52, eff. Aug. 1, 2017; Laws 2018, c. 359, § 2, eff. May 8, 2018; Laws 2019, 1st Sp. Sess., c. 5, § 63, eff. Sept. 23, 2019; Laws 2020, c. 12, § 53, eff. Feb. 28, 2020; Laws 2020, c. 132, § 2, eff. May 12, 2020; Laws 2020, c. 250, § 11, eff. May 12, 2020; Laws 2020, c. 354, § 132, eff. May 12, 2020.

[Notes of Decisions \(21\)](#)

U.C.A. 1953 § 78A-6-115, UT ST § 78A-6-115

Current with laws through the 2020 Sixth Special Session. Some statutes sections may be more current, see credits for details.

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