

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=m60614e94398c691ccac151892d1f861d>

Date: May 7, 2021

Time: 12:00 pm – 2:00 pm

Action: Welcome and approval of April 2, 2021 Meeting minutes	Tab 1	David Fureigh
Action: Supreme Court Conference Update: <ul style="list-style-type: none"> • Rule 8: Rights of minors while in detention (SC sent back to Committee) • Rule 27A: Admissibility of statements given by minors. (SC sent back to Committee) • Rule 55: Transfer of minors who present a danger in detention. (SC sent back to Committee) 	Tab 2	David Fureigh
Action: Rule 26: Rights of minors in delinquency proceedings.	Tab 3	Bridget Koza
Action: Rules 16: Transfer of delinquency case, 16A: Transfer of a non-delinquency proceeding, and 17: The petition. <i>Back from public comment; no comments</i>	Tab 4	Bridget Koza
Action: Rule 44: Findings and conclusions	Tab 5	David Fureigh
Discussion & Action: Rule 29A: Visual Recording of Statement or Testimony of Child Victim or Witness or Sexual or Physical Abuse – Conditions of Admissibility	Tab 6	Kristin Fadel
Rule 35: Pre-Trial Procedures		Kristin Fadel
Rule 7: Warrants		Michelle Jeffs

Rule 23A: Hearing on Factors of Utah Code Section 78A-6-703.3; Bind over to District Court		Michelle Jeffs
Rule 37: Child protective orders		Judge Mary Manley
Rule 21. Warrant of Arrest or Summons in Cases Under Utah Code Section 78A-6-703.3		Sophia Moore
Rule 29B: Hearings with Remote Conferencing from a Different Location		Sophia Moore
Rule 5: Definitions		Mikelle Ostler
Rule 30: Citations; Applicable Offenses and Procedures; Bail		Mikelle Ostler
Rule 9: Detention Hearings; Scheduling; Hearing Procedure		Chris Yanelli
Rule 22: Initial Appearance and Preliminary Examination in Cases Under Utah Code Section 78A-6-703.3		Chris Yanelli
Rule 47: Reviews and modifications of orders		Bridget Koza
Discussion & Action: Rule 45: Pre-disposition reports and social studies.	Tab 7	Sophia Moore Matthew Johnson
Discussion: Old business/new business		All

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

Meeting Schedule:

June 4, 2021

October 1, 2021

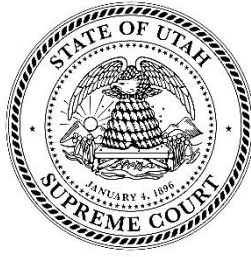
August 6, 2021

November 5, 2021

September 3, 2021

December 3, 2021

TAB 1



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

Draft Meeting Minutes

David W. Fureigh, Chair

Location: Webex Meeting:
<https://utcourts.webex.com/utcourts/j.php?MTID=m60614e94398c691ccac151892d1f861d>

Date: April 2, 2021

Time: 12:00 pm – 2:00 pm

<u>Attendees:</u> David Fureigh, Chair Arek Butler Monica Diaz Kristin Fadel Judge Elizabeth Lindsley Judge Mary Manley Sophia Moore Mikelle Ostler Jordan Putnam Janette White Carol Verdoia, Emeritus Member	<u>Excused Members:</u> Michelle Jeffs Matthew Johnson Chris Yannelli
<u>Staff:</u> Bridget Koza Meg Sternitzky, Juvenile Court Law Clerk Xen Fedison, Juvenile Court Law Clerk Nick Stiles, Appellate Court Administrator	<u>Guests:</u> Christopher Williams, Office of Legislative Research and General Counsel

1. Welcome and approval of the March 5, 2021 Meeting minutes: (David Fureigh)

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

Monica Diaz moved to approve the March 5, 2021 meeting minutes. Judge Mary Manley seconded the motion. The minutes were approved unanimously.

2. Discussion & Action – Rule 13: Shelter hearings: (Jordan Putnam)

Jordan Putnam discussed with the committee impacts to Rule 13 from the 2021 Legislative Session and the proposed changes. Jordan noted a few statutory code changes due to the recodification but did not see any substantive changes.

Bridget Koza also noted that rule changes that only have changes to statutory references can be taken to Supreme Court for approval without comment period and approved on an expedited basis so they can go into effect on September 1st with the recodification.

Jordan Putnam moved to present the revised Rule 13 (Draft March 26, 2021) to the Supreme Court for approval on expedited basis to go into effect September 1, 2021. Sophia Moore seconded the motion, and it passed unanimously.

3. Discussion & Action – Rule 34: Pre-trial hearing in non-delinquency cases: (Jordan Putnam)

Jordan Putnam discussed with the committee impacts to Rule 34 from the 2021 Legislative Session and the proposed changes. Jordan noted one statutory code change due to the recodification: § 78A-6-309 is changed to § 80-3-401.

Jordan Putnam moved to present the revised Rule 34 (Draft March 26, 2021) to the Supreme Court for approval on expedited basis to go into effect September 1, 2021. Sophia Moore seconded the motion, and it passed unanimously. Jordan left the meeting.

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

Bridget Koza discussed with the committee that they had previously approved amendments to Rule 26 to make it consistent with the Indigent Defense Act. Bridget noted that no comments were made during the comment period, and that the next step is to present the rule to the Supreme Court.

Bridget remarked that she reviewed the rule for changes due to the recodification and asked the committee for further input. Monica Diaz commented that the recodification moves reference to minors subject to a criminal information to § 78A-6-103.5. Monica then suggested to include a reference to § 78A-6-103.5 in the rule. Judge Lindsley proposed adding the language “or information filed pursuant to Section 78A-6-103.5” following “a delinquency petition filed pursuant to Section 78A-6-103” in paragraph (a) of the rule.

The committee agreed to include a reference to § 78A-6-103.5 and review the proposed language at the May 7 meeting.

5. Discussion & Action – Rule 8: Rights of minors while in detention: (Monica Diaz)

Monica Diaz discussed with the committee impacts to Rule 8 from the 2021 Legislative Session and the proposed changes. Monica noted that the changes were a result of H.B. 158 Juvenile Interrogation Amendments. The existing language was struck in paragraphs (c)-(e), and language from the statute was added to paragraph (c) to conform the rule and the statute.

The committee discussed the changes, and Arek Butler noted a style error – the letter denoting a paragraph should not be next the number. Bridget Koza agreed to correct the style error.

Monica Diaz moved to present the revised Rule 8 (Draft March 23, 2021) to the Supreme Court to obtain approval to publish it for public comment. Janette White seconded the motion, and it passed unanimously with the condition that Bridget Koza corrects the style error.

6. Discussion & Action – Rule 11: Time limits on detention orders: (Monica Diaz)

Monica Diaz discussed with the committee impacts to Rule 11 from the 2021 Legislative Session and the proposed changes. Monica noted one statutory code change due to the recodification in paragraph (a)(3): § 78A-6-113 is changed to § 80-6-207.

Monica Diaz moved to present the revised Rule 11 (Draft March 23, 2021) to the Supreme Court for approval on expedited basis to go into effect September 1, 2021. Judge Lindsley seconded the motion, and it passed unanimously.

7. Discussion & Action – Rule 27: Fingerprinting, photographing, and regulating discovery; HIV testing: (Monica Diaz)

Monica Diaz discussed with the committee impacts to Rule 27 from the 2021 Legislative Session and the proposed changes. Monica noted two statutory code changes due to the recodification: § 78A-6-1104 and § 78A-6-105 is changed to § 80-6-608; § 78A-6-1104 is changed to § 80-6-608.

The committee also briefly discussed and reconciled the rule’s distinction of fingerprinting “a child under the age of 14” and the statute’s requirement that “all minors 14 years of age or older” get fingerprinted.

Monica Diaz moved to present the revised Rule 27 (Draft March 23, 2021) to the Supreme Court for approval on expedited basis to go into effect September 1, 2021. Judge Lindsley seconded the motion, and it passed unanimously.

8. Discussion & Action – Rule 27A: Admissibility of statements given by minors: (Monica Diaz)

Monica Diaz discussed with the committee impacts to Rule 27A from the 2021 Legislative Session and the proposed changes. The existing language in paragraphs (b) and (c) was struck and language was added in paragraph (a) to conform the rule and

H.B. 158 Juvenile Interrogation Amendments. Two statutory code references were also made to bring the rule in line with the recodification.

Bridget Koza noted that she removed subsection references. David Fureigh suggested to add “an” before “interrogation” in line 5, but Arek Butler commented that the language was correct.

Monica Diaz moved to present the revised Rule 27A (Draft March 23, 2021) to the Supreme Court to obtain approval to publish it for public comment. Judge Lindsley seconded the motion, and it passed unanimously.

9. Discussion & Action – Rule 51: Violation of probation and contempt by a minor:
(Judge Elizabeth Lindsley)

Judge Elizabeth Lindsley discussed with the committee impacts to Rule 51 from the 2021 Legislative Session and the proposed changes. Judge Lindsley noted one statutory code change due to the recodification: § 78A-6-1101 is changed to § 78A-6-353. Bridget noted the style error in denoting the paragraph letters and numbers and agreed to fix it.

Judge Lindsley moved to present the revised Rule 51 (Draft March 26, 2021) to the Supreme Court for approval on expedited basis to go into effect September 1, 2021. Sophia Moore seconded the motion, and it passed unanimously with the condition that Bridget Koza corrects the style error.

10. Discussion & Action – Rule 55: Transfer of minors who present a danger in detention: (Judge Mary Manley)

Judge Mary Manley discussed with the committee impacts to Rule 55 from the 2021 Legislative Session and the proposed changes. Judge Manley noted that there were some substantive changes, because the recodification added a section about transfer of minors from correctional facilities. Judge Manley changed the title of the rule to reflect this and added a section from the code (directed towards law enforcement’s role in transferring minors from correctional facilities) and suggested alternative language, at line 21, for the juvenile court.

The committee agreed the alternative language directed towards the juvenile court was better. The committee struck the language at lines 14-20 and adopted the alternative language in lines 21-25.

Judge Manley moved to present the revised Rule 55 (Draft March 25, 2021 as amended above) to the Supreme Court to obtain approval to publish it for public comment. Judge Lindsley seconded the motion, and it passed unanimously.

11. Discussion & Action – Rule 44: Findings and conclusions: (Carol Verdoia)

Carol Verdoia discussed with the committee impacts to Rule 44 from the 2021 Legislative Session and the proposed changes. Carol noted a few statutory code changes due to the recodification.

The committee also discussed stylistic issue – whether sections should be broken up by an em dash or listed completely and whether the statutory code changes should be listed chronologically, at lines 27. The committee agreed the statutes should be listed chronologically.

The committee also noted potential language changes due to the recodification. It was noted that the language “permanent deprivation” is not used anymore. Sophia Moore suggested making the necessary language changes and reviewing the changes at the May 7 meeting. Janette White also suggested moving paragraph (e) above paragraph (d).

The committee agreed to make necessary language changes to the rule and review the changes at the May 7 meeting.

12. Discussion & Action – Rule 12: Admission to shelter care: (Janette White)

Janette White discussed with the committee impacts to Rule 12 from the 2021 Legislative Session and the proposed changes. “Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings” is changed to “Title 80, Chapter 3, Part 1, Abuse, Neglect, and Dependency Proceedings”

Arek Butler also commented that “Annotated” should be removed, since it has been removed in other references to the code in the rules.

Janette White moved to present the revised Rule 12 (Draft March 26, 2021 as amended above) to the Supreme Court for approval on expedited basis to go into effect September 1, 2021. Kristin Fadel seconded the motion, and it passed unanimously.

13. Discussion & Action – Rule 3: Style of pleadings and forms: (Bridget Koza)

Bridget Koza discussed with the committee proposed changes to Rule 3 – to change “Plaintiff v. Defendant” to “Petitioner vs. Respondent” in cases requesting protective orders and custody, child support, and parent time cases in district court. Bridget noted that this change brings the rule in line with how the statute discusses these cases as well as approved court forms.

Judge Manley brought up the related issue of criminal protective orders and whether the orders should be title “State of Utah vs. Respondent” or “In the Interest of.” Judge Lindsley suggested that the committee should wait on this issue until the forms have been finalized.

The committee also discussed at length whether private petitions should be titled to exclude “State of Utah.” Judge Manley suggested the committee could add the language “in cases requesting protective orders or private petitions,” at lines 13-14. Judge Lindsley suggested adding a separate subsection stating “in a private petition for abuse, neglect or dependency or request for termination of parental rights . . .” After further discussion, the committee decided to keep the current language regarding private petitions since it conforms with court forms and current programming in the juvenile court’s case management system.

Judge Lindsley moved to present the revised Rule 3 (Draft March 24, 2021) to the Supreme Court to obtain approval to publish it for public comment. Kristin Fadel seconded the motion, and it passed unanimously.

14. Old business/new business: (all)

The committee noted they will be going through more rules impacted by the 2021 Legislative Session at the next meeting.

The meeting adjourned at 1:33 p.m. The next meeting will be held May 7, 2021 at 12:00 pm via WebEx.

TAB 2

1 **Draft April 2, 2021**

2 **Rule 8. Rights of minor while in detention.**

3 (a) A minor shall be advised of the right to telephone the minor's parent, guardian or custodian and
4 an attorney immediately after being admitted to a detention facility.

5 (b) A minor has a right to confer in private at any time with an attorney, cleric, parent, guardian or
6 custodian. After the initial visit, the minor may visit such persons at reasonably established visiting
7 hours, or at other times when special circumstances so warrant.

8 (c) No person other than a probation officer or a staff member of a detention facility, unless the
9 juvenile probation officer or the staff member is interrogating the minor on behalf of a peace officer
10 or a law enforcement agency, shall be permitted to interview a minor ~~child under 14 years of age~~
11 ~~held in the facility regarding an offense chargeable against the child without the child's parent,~~
12 ~~guardian or custodian present,~~ unless:

13 (1) the minor has had a meaningful opportunity to consult with the minor's appointed or
14 retained attorney;

15 (2) the minor waives the minor's constitutional rights after consultation with the minor's
16 appointed or retained attorney; and

17 (3) the minor's appointed or retained attorney is present for the interrogation.

18 ~~(1) the parent, guardian or custodian has given written permission for the interview to be~~
19 ~~held outside the presence of the child's parent, guardian, or custodian;~~

20 ~~(2) the parent, guardian or custodian had been advised of the child's constitutional rights~~
21 ~~as provided in Rule 26(a) and has knowingly and voluntarily waived such rights; and~~

22 ~~(3) the child had been advised of the child's constitutional rights as provided in Rule 26(a)~~
23 ~~and has knowingly and voluntarily waived such rights.~~

24 ~~(d) No person other than a probation officer or a staff member of a detention facility shall be~~
25 ~~permitted to interview a child 14 years of age or older in a detention facility regarding an offense~~

26 ~~chargeable against the child without the consent of the child and the child's parent, guardian or~~
27 ~~custodian after first advising said child of constitutional rights as described in Rule 26 and such~~
28 ~~rights having been knowingly and voluntarily waived by the child.~~

29 ~~(e) If the child's parent, guardian or custodian is not available, the consent of the court shall be~~
30 ~~obtained before interviewing a child in a detention facility.~~

Draft April 2, 2021

Rule 27A. Admissibility of statements given by minors.

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

(1) the child is advised of the child's constitutional rights;

(2) the child is advised of the child's right to have a parent, guardian, or friendly adult if applicable under Utah Code section 80-6-206, present during interrogation;

(3) the child has knowingly, intelligently, and voluntarily waived the child's constitutional rights;

(4) the child's parent, guardian, or friendly adult if applicable under Utah Code section 80-6-206, was present during the child's waiver of rights;

(5) the child's parent, guardian, or friendly adult if applicable under Utah Code section 80-6-206, has given permission for the child to be interrogated; and

(6) if the child is in the custody of the Division of Child and Family Services and a guardian ad litem has been appointed for the child, the child's guardian ad litem has given consent to an interview of the child as described in Utah Code section 62A-4a-415.

(b) a child's parent, guardian, or friendly adult if applicable under Utah Code section 80-6-206, is not required to be present during a child's waiver of rights or to give permission to the interrogation of a child if any of the exceptions listed in Utah Code section 80-6-206 have been met.

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

27 ~~(c) The presumption outlined in paragraph (b) may be overcome by a preponderance of~~
28 ~~the evidence showing the ability of a child to comprehend and waive the child's rights.~~
29 ~~(c)~~ The state shall retain the burden of proving that the waiver of the minor's rights was
30 knowing and voluntary regardless of the age of the child or minor.

1 Draft April 2, 2021

2 Rule 55. Transfer of minors ~~who present a danger in detention.~~ between detention
3 and correction facilities.

4 (a) The court may order the transfer of any minor age 16 years or older held in any
5 detention center for minors to another place of confinement, including a jail or adult
6 confinement facility which is certified pursuant to Utah Code ~~Ann. §section 62A-7-201~~
7 80-6-204, upon a showing that the minor's conduct or condition endangers the safety or
8 welfare of others in the detention center. Prior to the transfer, notice shall be given to
9 the minor's counsel or the minor's parent, guardian or custodian in the absence of
10 counsel, and a hearing shall be held concerning the proposed transfer. The minor shall
11 be present at the hearing except when the transfer is held under exigent circumstances
12 or during the non-working hours of the court. Under those circumstances, a hearing on
13 the transfer shall be held within 48 hours after the transfer.

14 (b) Upon notification to the juvenile court by a sheriff, warden, or other official in
15 charge of a correctional facility that an individual who is, or appears to be, under 18
16 years of age has been received at the correctional facility, arrangements shall be made
17 for the transfer of the individual to a detention facility, unless otherwise ordered by the
18 juvenile court.

TAB 3

Rule 26. Rights of minors in delinquency proceedings.

(a) A minor who is the subject of a delinquency petition filed pursuant to ~~Section-Utah~~
~~Code section~~ 78A-6-103 or a criminal information filed pursuant to Utah Code section
78A-6-103.5 shall be advised of the following rights:

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

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

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

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

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

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

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

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

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

~~(c) If the parent, guardian or custodian of a minor is found not to be indigent, but does~~
~~not or will not retain counsel for the minor and the minor has no means to retain counsel,~~
~~the court may appoint counsel at public expense. However, the court may order, after~~
~~giving the parent, guardian or custodian reasonable opportunity to be heard, that the~~

~~parent, guardian or custodian reimburse the county for the cost of appointed counsel, in whole or in part, depending on ability to pay.~~

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

~~(e) A minor 14 years of age and older is presumed capable of intelligently comprehending and waiving the minor's right to counsel as above and may do so where the court finds such waiver to be knowing and voluntary, whether the minor's parent, guardian or custodian is present. A child under 14 years of age may not waive such rights outside of the presence of the child's parent, guardian or custodian.~~

(c) 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 4

1 **Rule 16 Transfer of delinquency case ~~for preliminary inquiry.~~**

2 **(a) Transfer of delinquency case for preliminary inquiry.**

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

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

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

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

18 ~~(a)(1)(D)~~ (D) there are circumstances in the case that require adjudication in the
19 county of occurrence in the interest of justice; or

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

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

24 (c) After the filing of a petition alleging a delinquency or criminal action, the court may
25 transfer the case to the district where the minor resides or the district where the violation of
26 law or ordinance is alleged to have occurred. The court may, in its discretion, after

27 adjudication certify the case for disposition to the court of the district in which the minor
28 resides.

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

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

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 thereof, 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 refiling within the same district or another district where there is venue of the case.

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.

(4) A petition for termination of parental rights shall also include, to the best information or belief of the petitioner: the name and residence of the petitioner; the sex and place of birth of the minor; the relationship of the petitioner to the

minor; the dates of the birth of the minor's parents; and the name and address of the person having legal custody or guardianship, or acting in loco parentis to the minor, or the organization or agency having legal custody or providing care for the minor.

(c) **Other cases.**

~~(e)~~(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.

~~(e)~~(2) Petitions for adjudication expungements must meet all of the criteria of Utah Code section ~~78A-6-150~~380-6-1004 and petitioner. 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.

~~(e)~~(3) Petitions for expungement of nonjudicial adjustments must meet all of the criteria of Utah Code section ~~78A-6-150~~480-6-1005 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.

~~(e)~~(4) Petitions for vacatur must meet all of the criteria of Utah Code section ~~78A-6-111~~480-6-1002 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.

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

UTAH COURT RULES – PUBLISHED FOR COMMENT

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Posted: March 11, 2021

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Rules of Juvenile Procedure – Comment Period Closed April 25, 2021

URJP016. Transfer of delinquency case. Amended. Makes revisions to transferring delinquency cases between judicial districts to reflect statutory changes made by H.B. 285 Juvenile Recodification.

URJP016A. Transfer of a non-delinquency proceeding. New. A new rule establishing procedures for transferring non-delinquency cases between judicial districts in response to statutory changes contained in H.B. 285 Juvenile Recodification.

URJP017. The petition. Amended. Updates statutory references and makes revisions to the contents to be included in a petition for termination of parental rights to reflect statutory changes contained in H.B. 285 Juvenile Recodification.

This entry was posted in [-Rules of Juvenile Procedure, URJP016, URJP017, URJP16A.](#)

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TAB 5

1 Draft March 26, 2021

2 Rule 44. Findings and conclusions.

3 (a) If, upon the conclusion of an adjudicatory hearing, the court determines that the
4 material allegations of the petition are established, it shall announce its ruling. The
5 findings of fact upon which it bases its determination may also be announced or reserved
6 for entry by the court in an order as provided in these Rules. In cases concerning any
7 minor who has violated any federal, state, or local law or municipal ordinance, or any
8 person under 21 years of age who has violated any such law or ordinance before
9 becoming 18 years of age, findings of fact shall not be necessary. If, after such a
10 determination, the dispositional hearing is not held immediately and the minor is in
11 detention or shelter care, the court shall determine whether the minor shall be released
12 or continued in detention, shelter care or the least restrictive alternative available.

13 (b) In proceedings under Utah Code sections ~~78A-6-703.3~~ 80-6-503 and ~~703.5-80-6-504~~ and
14 permanent deprivation cases, the court shall enter findings of fact and conclusions of law
15 with specific reference to each statutory requirement considered, setting forth the
16 complete basis for its determination. Such findings and conclusions may be prepared by
17 counsel at the direction of the court, but shall be reviewed and modified as deemed
18 appropriate by the court prior to the court's acceptance and signing of the documents
19 submitted by counsel.

20 (c) The court may at any time during or at the conclusion of any hearing, dismiss a
21 petition and terminate the proceedings relating to the minor if such action is in
22 the interest of justice and the welfare of the minor. The court shall dismiss any petition
23 which has not been proven.

24 (d) After the dispositional hearing, the court shall enter an appropriate order or decree of
25 disposition.

Commented [BK1]: Concern that the language suggests that finds of fact could be oral for adjudication orders. Compare to Civil Rule 52 (just note that Civil Rule 52(b) has a 28-day timeframe for motions for amended findings. Juvenile Rule 48 requires those motions under Civil Rule 52 to be made within 14 days. Just to keep in mind if we copy some provisions from Civil Rule 52 to Juvenile Rule 44).

Also 78A-6-117(1) (a&b) – (a) Except as provided in Subsection (1)(b), when a minor is found to come within Section 78A-6-103, the court shall adjudicate the case and make findings of fact upon which the court bases the court's jurisdiction over the case.

(b) For a case described in Subsection 78A-6-103(1), findings of fact are not necessary – which was applicable to both delinquency and child welfare cases is now in 80-6-701/delinquency provisions.

Does Rule 44 include enough for child welfare cases? Do we need to modify Rule 44? In child welfare cases, adjudication/disposition orders are appealable and if findings of fact are insufficient for appellate review then the case can be remanded.

26 (e) Adjudication of a petition alleging abuse, neglect, or dependency of a child shall be
27 conducted also in accordance with Utah Code sections ~~78A-6-309~~80-3-401 and section
28 ~~78A-6-310~~80-3-201.

29 (f) Adjudication of a petition to review the removal of a child from foster care shall be
30 conducted also in accordance with Utah Code section ~~78A-6-318~~80-3-502.

TAB 6

Draft April 1, 2021

Rule 29A. Visual Recording of Statement or Testimony of Child Victim or Witness or Sexual or Physical Abuse--Conditions of Admissibility

(a) In any delinquency proceeding or proceeding under ~~Section 78A-6-702 or Section 78A-6-703~~ Title 80, Chapter 6, Part 5, Transfer to District Court concerning a charge of child abuse or of a sexual offense against a child, the oral statement of a victim or other witness younger than 14 years of age that was recorded prior to the filing of a petition is, upon motion and for good cause shown, admissible as evidence in any court proceeding regarding the offense if all of the following conditions are met:

(1) the child is available to testify and to be cross-examined at trial, either in person or as provided by law, or the child is unavailable to testify at trial, but the minor had a previous opportunity to cross-examine the child concerning the recorded statement, such that the minor's rights of confrontation are not violated;

(2) no attorney for either party is in the child's presence when the statement is recorded;

(3) the recording is visual and aural and is recorded on film or videotape or by other electronic means;

(4) the recording is accurate and has not been altered;

(5) each voice in the recording is identified;

(6) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify and be cross-examined by either party;

(7) the minor and the minor's attorney are provided an opportunity to view the recording before it is shown to the court; and

(8) the court views the recording and determines that it is sufficiently reliable and trustworthy and that the interest of justice will best be served by admission of the statement into evidence.

(b) In any delinquency proceeding or proceeding under ~~Section 78A-6-702 or Section 78A-6-703~~ Title 80, Chapter 6, Part 5, Transfer to District Court concerning a charge of child abuse or of a sexual offense against a child, the court upon motion of a party and for good cause shown, may order that the testimony of any victim or other witness younger than 14 years of age be taken in a room other than the courtroom. All of the following conditions shall be observed:

(1) Only the judge, attorneys for each party, the testifying child (if any), persons necessary to operate equipment, and a counselor or therapist whose presence contributes to the welfare and emotional well-being of the child may be in the room during the child's testimony. The minor who consents to be hidden from the child's view may also be present unless, the court determines that the child will suffer serious emotional or mental strain if required to testify in the minor's presence, or that the child's testimony will be inherently unreliable if required to testify in the minor's presence. If the court makes that determination, or if the minor consents:

(A) the minor may not be present during the child's testimony;

(B) the court shall ensure that the child cannot hear or see the minor;

(C) the court shall advise the child prior to testifying that the minor is present at the trial and may listen to the child's testimony;

(D) the minor shall be permitted to observe and hear the child's testimony, and the court shall ensure that the minor has a means of two-way telephonic communication with defense counsel during the child's testimony; and

(E) the conditions of a normal court proceeding shall be approximated as nearly as possible.

(2) Only the judge and attorneys may question the child.

(3) As much as possible, persons operating equipment shall be confined to an adjacent room or behind a screen or mirror so the child cannot see or hear them.

(4) If the minor is present with the child during the child's testimony, the court may order that persons operating the closed circuit equipment film both the child and the minor during the child's testimony, so that the court may view both the child and the minor, if that may be arranged without violating other requirements of Subsection (b)(1).

(c) In any delinquency proceeding or proceeding under ~~Section 78A-6-702 or 78A-6-703~~ Title 80, Chapter 6, Part 5, Transfer of Jurisdiction concerning a charge of child abuse or of a sexual offense against a child, the court may order, upon motion of a party and for good cause shown, that the testimony of any victim or other witness younger than 14 years of age be taken outside the courtroom and be recorded. That testimony is admissible as evidence, for viewing in any court proceeding regarding the charges if the provisions of Subsection (b) are observed, in addition to the following provisions:

(1) the recording is both visual and aural and recorded on film or videotape or by other electronic means;

(2) the recording is accurate and is not altered;

(3) each voice on the recording is identified; and

(4) each party is given an opportunity to view the recording before it is shown in the courtroom.

(d) If the court orders that the testimony of a child be taken under Subsection (b) or (c), the child may not be required to testify in court at any proceeding where the recorded testimony is used.

1 **Draft April 1, 2021**

2 **Rule 35. Pre-trial procedures.**

3 (a) At the commencement of the initial pre-trial hearing, if the parent, guardian or
4 custodian appears pro se, the court shall advise the parent, guardian or custodian of the
5 right to the assistance of counsel at all stages of the proceeding including the right to
6 apply to the court for the appointment of counsel if indigent. If appointment of counsel
7 is requested, the court may proceed to examine the parent, guardian or custodian
8 concerning eligibility for appointed counsel or the court may continue the pre-trial
9 hearing and require the parent, guardian or custodian to file an affidavit or other
10 evidence as deemed appropriate by the court for a determination as to eligibility for
11 appointed counsel.

12 (b) If the parent, guardian or custodian waives the right to counsel and elects
13 to proceed pro se, the court shall explain the nature of the action sought by the petitioner.

14 (c) Pursuant to Utah Code Section 78A-6-902~~78A-2-803~~, the court shall appoint a
15 guardian ad litem to represent any child named in a petition alleging child abuse, child
16 sexual abuse, neglect, or dependency which results in a judicial proceeding.

17 (d) The court in its discretion or upon motion of a party may schedule further pre-trial
18 hearings or conferences as may be necessary to expedite adjudication or disposition,
19 consider discovery issues, formulate or simplify trial issues or facilitate possible
20 settlement negotiations.

1 Draft March 29, 2021

2 Rule 7. Warrants.

3 (a) The issuance and execution of a warrant is governed by Title 77, Chapter 7, Arrest,
4 Utah Code sections Section 78A-6-106, 78A-6-102, Section 78A-6-106.5, 80-6-201, Section
5 78A-6-111, 80-6-202, and Section 78A-6-112, 78A-6-352, and Utah Rule of Criminal
6 Procedure 40.

Commented [J1]: Doesn't address warrants, only taking custody w/o warrant, so I'm not sure we should include this one.

7 (b) After a petition is filed, a warrant for immediate temporary custody of a minor may
8 be issued if the court finds from the facts set forth in an affidavit filed with the court or
9 in the petition that there is probable cause to believe that:

10 ~~(b)~~(1) the minor has committed an act which would be a felony if committed by
11 an adult;

12 ~~(b)~~(2) the minor has failed to appear after the minor or the parent, guardian or
13 custodian has been legally served with a summons;

14 ~~(b)~~(3) there is a substantial likelihood the minor will not respond to a summons;

15 ~~(b)~~(4) the summons cannot be served and the minor's present whereabouts are
16 unknown;

17 ~~(b)~~(5) the minor seriously endangers others and immediate removal appears to be
18 necessary for the protection of others or the public; or

19 ~~(b)~~(6) ~~there are reasonable grounds to believe that the minor has run away or~~
20 ~~escaped from the minor's parent, guardian or custodian~~ the minor is a runaway or
21 has escaped from the minor's parent, guardian, or custodian.

22 (c) A warrant for immediate temporary custody of a minor may be issued if the court
23 finds from the affidavit that the minor is under the continuing jurisdiction of the court
24 and probable cause to believe that the minor:

25 ~~(c)~~(1) has left the custody of the person or agency vested by the court with legal
26 custody and guardianship without permission; or

~~(e)~~(2) has violated a court order.

(d) A warrant for immediate custody shall be signed by a court and shall contain or be supported by the following:

~~(d)~~(1) an order that the minor be returned home, taken to the court, taken to a juvenile detention, shelter facility, other nonsecure facility or an adult detention facility, if appropriate, designated by the court at the address specified pending a hearing or further order of the court;

~~(d)~~(2) the name, date of birth and last known address of the minor;

~~(d)~~(3) the reasons why the minor is being taken into custody;

~~(d)~~(4) a time limitation on the execution of the warrant;

~~(d)~~(5) the name and title of the person requesting the warrant unless ordered by the court on its own initiative pursuant to these rules; and

~~(d)~~(6) the date, county and court location where the warrant is being issued.

(e) A peace officer who brings a minor to a detention facility pursuant to a court order for immediate custody shall so inform the person in charge of the facility and the existence of such order shall require the minor's immediate admission. A minor so admitted may not be released without court order.

(f) This rule shall not limit the statutory authority of a probation officer to take a minor who has violated a condition of probation into custody under Utah Code section 80-6-201.

(g) Return of service on a warrant shall be executed within 72 hours unless otherwise ordered by the Court.

(h) The juvenile court to retain and file copies - Documents sealed for twenty days - Forwarding of record to court with jurisdiction.

~~(h)~~(1) At the time of issuance, the juvenile court shall retain and seal a copy of the search warrant, the application and all affidavits or other recorded testimony on

Commented [J2]: (d) A warrant may not be issued for a minor to be taken into temporary custody for a status offense or infraction, but a juvenile court may issue a warrant that directs a minor to be returned home, to the juvenile court, or to a shelter or other non-secure facility.

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53 which the warrant is based and shall, within a reasonable time, file those sealed
54 documents in court files which are secured against access by the public. Those
55 documents shall remain sealed until twenty days following the issuance of the
56 warrant unless that time is extended or reduced. Unsealed search warrant
57 documents shall be filed in the court record.

58 ~~(h)~~(2) Sealing and retention of the file may be accomplished by:

59 ~~(h)~~(2)(A) placing paper documents or storage media in a sealed envelope
60 and filing the sealed envelope in a court file not available to the public;

61 ~~(h)~~(2)(B) storing the documents by electronic or other means under the
62 control of the court in a manner reasonably designed to preserve the
63 integrity of the documents and protect them against disclosure to the public
64 during the period in which they are sealed; or

65 ~~(h)~~(2)(C) filing through the use of an electronic filing system operated by
66 the State of Utah which system is designed to transmit accurate copies of
67 the documents to the court file without allowing alteration to the
68 documents after issuance of the warrant by the juvenile court.

69

Draft March 29, 2021

Rule 23A. Hearing on factors of Utah Code section ~~78A-6-703.3~~ 80-6-503; bind over to district court.

(a) If a criminal indictment under Utah Code section ~~78A-6-703.3~~ 80-6-503 alleges the commission of a felony, the court shall, hear evidence and consider the factors in paragraph (b).

(b) If a criminal information under Utah Code section ~~78A-6-703.3~~ 80-6-503 alleges the commission of a felony, after a finding of probable cause in accordance with Rule 22, the court shall hear evidence and consider the factors and make findings on:

(b)(1) the seriousness of the qualifying offense and whether the protection of the community requires that the minor be detained beyond the amount of time allowed under Utah Code section ~~78A-6-117~~ 80-6-601, or beyond the age of continuing jurisdiction that the court may exercise under Utah Code section ~~78A-6-703.4~~ 80-6-605;

(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 relate 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 preliminary examination the minor may testify under oath, call witnesses, cross examine witnesses, and present evidence.

(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. 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 Utah Code section ~~78A-6-703.5~~ 80-6-504.

(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, 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.

Draft April 26, 2021

Rule 37. Child protective orders.

(a) Child protective order proceedings are governed by ~~Section~~ Utah Code section 78B-7-201 et seq. Protective order proceedings may be commenced as an independent action by filing a petition. Any interested person may file a petition for a protective order on behalf of a child as provided by statute. The petitioner shall first make a referral to the division. If an immediate ex parte protective order is requested pending a hearing, the petition or an accompanying affidavit shall set forth the facts constituting good cause for issuance of the ex parte order.

(b) If the petitioner is the agent of a public or private agency, including a law enforcement agency, the petition shall set forth the agent's title and the name of the agency that the petitioner represents.

(c) Petitions for protective orders by a public agency shall not be accepted by the clerk unless reviewed and approved by the attorney for the public agency, whose office shall represent the petitioner in such cases.

(d) The petitioner, if a private person or agency, and the respondent may be represented by retained counsel. Subject to the limitations ~~in Section 78A-6-1111~~ under the law, the Court may appoint counsel for an indigent respondent who is a parent, guardian or custodian of the child alleged to be abused or threatened with abuse. If the court finds in the hearing that the allegations of the petition have been established, the court may assess petitioner's costs and attorney fees against the respondent. If the court finds that the petition is without merit, the respondent's costs and attorney fees may be assessed against petitioner.

(e) If an ex parte order has been issued, the hearing must be held within 201 days ~~excluding Saturdays, Sundays and legal holidays~~.

1 Draft April 29, 2021

2 Rule 21. Warrant of arrest or summons in cases under Utah Code section ~~78A-6-703.380-~~
3 ~~6-503.~~

4 (a) Upon the return of an indictment alleging the commission of a felony governed by
5 Utah Code section ~~78A-6-703.380-6-503~~, the court shall ~~cause to~~ issue either a warrant for
6 the arrest or a summons for the appearance of the minor.

7 (b) Upon the filing of an information alleging the commission of a felony governed by
8 Utah Code section ~~78A-6-703.380-6-503~~, if it appears from the information, or from any
9 affidavit filed with the information, that there is probable cause to believe that an offense
10 governed by this section has been committed and that the minor has committed it, the
11 court shall ~~cause to~~ issue either a warrant for the arrest or a summons for the appearance
12 of the minor.

13 (c) If it appears to the court that the minor will appear on a summons and there is no
14 substantial danger of a breach of the peace, or injury to persons or property, or danger to
15 the community, a summons may issue in lieu of a warrant of arrest to require the
16 appearance of the minor. A warrant of arrest may issue in cases where the minor has
17 failed to appear in response to a summons or citation or thereafter when required by the
18 court. If a warrant of arrest is issued, the court shall state on the warrant:

19 ~~(e)~~(1) the name of the law enforcement agency in the county or municipality with
20 jurisdiction over the offense charged; and

21 ~~(e)~~(2) whether the minor is to be taken to court, ~~jail~~, or a ~~juvenile~~ detention facility.

Commented [BK1]: Do we need to remove this per 80-6-204?

22 (d)(1) The warrant shall be executed by a peace officer. The summons may be served by
23 a peace officer or any person authorized to serve a summons in a civil action.

24 (d)(2) The warrant may be executed or the summons may be served at any place within
25 the state.

26 (d)(3) The warrant shall be executed by the arrest of the minor. The officer need not
27 possess the warrant at the time of the arrest, but upon request shall show the warrant to
28 the minor as soon as practicable. If the officer does not possess the warrant at the time of
29 the arrest, the officer shall inform the minor of the offense charged and of the fact that the
30 warrant has been issued. The summons shall be served as in civil actions, or by mailing
31 it to the minor's last known address.

32 (d)(4) The person executing a warrant or serving a summons shall make return thereof to
33 the juvenile court as soon as practicable. At the request of the prosecuting attorney, any
34 unexecuted warrant shall be returned to the court for cancellation.

Draft April 29, 2021

Rule 29B. Hearings with Remote Conferencing from a Different Location

(a) In any delinquency proceeding or proceeding under Title 80, Chapter 6, Part 5, Transfer to District Court~~Section 78A-6-702 or Section 78A-6-703~~, the court, on its own initiative or on motion, may conduct the following hearings with the minor or the minor's parent, guardian, or custodian attending by remote conferencing from a different location:

- (1) contempt;
- (2) detention;
- (3) motion;
- (4) review; and
- (5) warrant.

(b) In any delinquency hearing or hearing under Title 80, Chapter 6, Part 5, Transfer to District Court~~Section 78A-6-702 or Section 78A-6-703~~ other than those in paragraph (a), the court, for good cause and on its own initiative or on motion, may permit a party or a minor's parent, guardian, or custodian to attend a hearing by remote conferencing from a different location.

(c) For good cause, the court may permit testimony in open court by remote conferencing from a different location if the party not calling the witness waives confrontation of the witness in person.

(d) The remote conference must enable:

- (1) a party and the party's counsel to communicate confidentially;
- (2) documents, photos and other things that are delivered in the courtroom to be delivered previously or simultaneously to the remote participants;
- (3) interpretation for a person of limited English proficiency; and

26 (4) a verbatim record of the hearing.

27 (e) If the court permits remote conferencing, the court may require a party to make the
28 arrangements for the remote conferencing.

1 **Draft April 30, 2021**

2 **Rule 5. Definitions.**

3 Terms in these rules have the same definitions as provided in ~~Utah Code section 62A-7-~~
4 ~~401 and~~ Utah Code section ~~78A-6-105~~ 80-1-102 and ~~Utah Code section 78A-6-301~~ 80-3-
5 102 unless a different definition is given here. As used in these rules:

6 (a) "Abuse, neglect, and dependency" refers to proceedings under Utah Code sections
7 ~~78A-6-302~~ 80-3-301 et seq. and ~~78A-6-501~~ 80-4-101 et seq.

8 (b) "Adjudication" means a finding by the court, incorporated in a judgment or decree,
9 that the facts alleged in the petition have been proved.

10 (c) "Adult" means an individual who is 18 years old or older. "Adult" does not include
11 an individual who is 18 years old or older and whose case is under the continuing
12 jurisdiction of the juvenile court in accordance with Utah Code section 78A-6-120(d)

13 (d) "Arraignment" means the hearing at which a minor is informed of the allegations and
14 the minor's rights, and is given an opportunity to admit or deny the allegations.

15 (e) "Court records" means all juvenile court legal records, all juvenile court social and
16 probation records, and all other juvenile court records prepared, owned, received, or
17 maintained by the court.

18 (f) "Disposition" means any order of the court, after adjudication, pursuant to Utah Code
19 sections ~~78A-6-117~~ 80-3-405 and 80-4-305.

20 (g) "Minor" means:

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

24 (g)(2) For all other purposes in these rules: a child, or an individual who is at least
25 18 years old and younger than 21 years old and whose case is under the
26 jurisdiction of the juvenile court.

Commented [BK1]: Do we also need a reference to 80-6-503 for those youth who commit serious crimes?

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

29 (i) "Preliminary inquiry" means an investigation and study conducted by the probation
30 department upon the receipt of a referral to determine whether the interests of the public
31 or of the minor require that further action be taken.

32 (j) "Substantiation proceedings" means juvenile court proceedings in which an individual
33 or the Division of Child and Family Services seeks a judicial finding of a claim of
34 substantiated, unsubstantiated or without merit with regards to a DCFS finding of severe
35 child abuse or neglect for purposes of the Division's Licensing Information System.

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

Commented [BK2]: The recodification separates out ungovernability and runaway. This is definition of a runaway child, not an ungovernable child.

1 **Draft April 30, 2021**

2 **Rule 30. Citations; Applicable Offenses and Procedures; Bail**

3 (a) A citation issued pursuant to ~~Section-Utah Code section 78A-6-603~~ 80-6-302 shall be
4 sufficient to invoke the jurisdiction of the juvenile court in any offense listed in that
5 section.

6 (b) Procedure. Whenever a citation is issued pursuant to ~~SUtah Code section 78A-6-603~~
7 80-6-302, a copy of the citation filed with the juvenile court may be used in lieu of a
8 petition upon which the minor may appear and admit the offense, upon which the court
9 may make a disposition, or upon which the court may accept bail in lieu of appearance.
10 If the minor fails to appear on a citation or fails to tender the fine as bail in cases where
11 bail is permitted in lieu of appearance, a petition or order to show cause may be filed and
12 further proceedings held as provided in these rules.

13 (c) Where a citation has been filed with the juvenile court for an offense, the minor cited
14 shall be allowed to post bail without further court appearance except as provided in ~~this~~
15 ~~rule~~ Utah Code section 77-20-1.

16 (d) The bail amount for each such offense shall be included in a written notice ofailable
17 offenses in accordance with the bail/fine schedule approved by the Judicial Council. The
18 bail amount may immediately be forfeited as a fine and shall be deemed a conviction of
19 the offense charged if the notice has been given to the cited minor and the notice advises
20 the minor and the minor's parent, guardian or custodian that payment of the fine
21 constitutes an admission of guilt.

22 (e) A juvenile court district may, or where required by statute shall, designate repeat
23 offenses for which an appearance or additional bail is required.

Commented [BK1]: Does this change make sense? The recodification clarified things about bail:

80-6-207 (11) Notwithstanding Title 77, Chapter 20, Bail, a minor in a detention facility does not have a right to bail, except that bail is allowed if:

- (a) a minor is cited under Section 80-6-302;
- (b) a minor is charged in accordance with Section 80-6-502;
- (c) a minor is bound over to the district court in accordance with Section 80-6-504;
- (d) a minor, who need not be detained, lives outside this state; and
- (e) a minor, who need not be detained, is held in contempt under Section 78A-6-353.

1 **Draft April 13, 2021**

2 **Rule 9. Detention hearings; scheduling; hearing procedure.**

3 (a) The officer in charge of the detention facility shall provide to the court a copy of the
4 report required by ~~Section~~ Utah Code section 78A-6-11280-6-201.

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

8 (c) The court shall hold a detention hearing within 48 hours of the minor's admission to
9 detention. A minor may not be held in a detention facility longer than 48 hours before a
10 detention hearing, excluding weekends and holidays, unless the court has entered an
11 order for continued detention. The officer in charge of the detention facility shall notify
12 the minor, parent, guardian or custodian and attorney of the date, time, place and
13 manner of such hearing.

14 (d) The court may at any time order the release of a minor whether a detention hearing
15 is held or not.

16 (e) A probable cause determination and detention hearing may occur concurrently so
17 long as the probable cause determination and the detention hearing occur pursuant to
18 the time frames in paragraphs (b) and (c).

19 (f) The court may order a minor to be held in the detention facility or placed in another
20 appropriate facility, subject to further order of the court, only if the court finds at the
21 detention hearing that:

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

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

~~(f)~~(3) the minor is eligible for detention under the division guidelines for detention admission established by the Division of Juvenile Justice Services, under Utah Code Sections 62A-7-20280-5-501 and ~~under Section 78A-6-11280-6-201.~~

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

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

(i) A detention hearing may be held without the presence of the minor's parent, guardian or custodian if they fail to appear after receiving notice. The court may delay the hearing for up to 48 hours to permit the parent, guardian or custodian to be present or may proceed subject to the rights of the parent, guardian or custodian. The court may appoint counsel for the minor with or without the minor's request.

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

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

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

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

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

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

(m) If the court determines that the offense is one governed by Utah Code ~~§sections 78A-6-703.280-6-502, §78A-6-703.380-6-503, §78A-6-703.580-6-504, or §78A-6-703.680-6-505~~, the court may by issuance of a warrant of arrest order the minor committed to the county jail in accordance with Utah Code ~~§section 62A-7-20180-6-204~~.

(n) Any predisposition order to detention shall be reviewed by the court once every seven days, unless the minor is ordered to home detention or an alternative detention program. Predisposition orders to home detention or an alternative detention program shall be reviewed by the court once every 15 days. The court may, on its own motion or on the motion of any party, schedule a detention review hearing at any time.

1 Draft March 29, 2021

2 Rule 22. Initial appearance and preliminary examination in cases under Utah Code
3 section ~~78A-6-703.3~~ 80-6-503

4 (a) When a summons is issued in lieu of a warrant of arrest, the minor shall appear before
5 the court as directed in the summons.

6 (b) When any peace officer or other person makes an arrest of a minor without a warrant,
7 the minor shall be taken to a juvenile detention facility pending a detention hearing,
8 which shall be held as provided by these rules. When any peace officer makes an arrest
9 of a minor with a warrant, the minor shall be taken to the place designated on the warrant.
10 If an information has not been filed, one shall be filed without delay in the court with
11 jurisdiction over the offense.

12 (c) If a minor is arrested in a county other than where the offense was committed the
13 minor shall without unnecessary delay be returned to the county where the crime was
14 committed and shall be taken before a judge of the juvenile court.

15 (d) The court shall, upon the minor's first appearance, inform the minor:

16 (d)(1) of the charge in the information or indictment and furnish the minor with a
17 copy;

18 (d)(2) of any affidavit or recorded testimony given in support of the information
19 and how to obtain them;

20 (d)(3) of the right to retain counsel or have counsel appointed by the court;

21 (d)(4) of rights concerning detention, pretrial release, and bail in the event the
22 minor is bound over to stand trial in district court; and

23 (d)(5) that the minor is not required to make any statement, and that any
24 statements made may be used against the minor in a court of law.

25 (e) The court shall, after providing the information under paragraph (d) and before
26 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. 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 section ~~78A-6-703.5~~.

~~80-6-504.~~

(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 Utah Code section ~~78A-6-703.3~~.

~~80-6-503.~~ 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 Utah Code section ~~78A-6-703.3~~ ~~80-6-503~~; 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 Utah Code section ~~78A-6-703.3~~ ~~80-6-503~~, the court shall proceed in accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code section ~~78A-6-703.5~~ ~~80-6-504~~.

(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, that the minor has committed it, and the information is filed under Utah Code section ~~78A-6-703.3~~ 80-6-503, the court shall proceed in accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code section ~~78A-6-703.5~~ 80-6-504.

(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.

(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.

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

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

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

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

1 Draft April 29, 2021

2 Rule 47. Reviews and modification of orders.

3 (a) **Reviews.**

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4 ~~(a)~~(1) At the time of disposition in any case wherein a minor is placed on
5 probation, under protective supervision or in the legal custody of an individual
6 or agency, the court shall also order that the individual supervising the minor or
7 the placement, submit a written report to the court at a future date and appear
8 personally, if directed by the court, for the purpose of a court review of the case.
9 If a date certain is not scheduled at the time of disposition, notice by mail of such
10 review shall be given by the petitioner, if the review is a mandatory review, or by
11 the party requesting the review to the supervising agency not less than 5 days
12 prior to the review. Such notice shall also be given to the guardian ad litem, if
13 one was appointed.

14 ~~(a)~~(2) No modification of a prior dispositional order shall be made at a paper
15 review that would have the effect of further restricting the rights of the parent,
16 guardian, custodian or minor, unless the affected parent, guardian custodian or
17 minor waives the right to a hearing and stipulates to the modification. If a
18 guardian ad litem is representing the minor, the court shall give a copy of the
19 submitted documents to the guardian ad litem prior to the paper review.

20 (b) **Review hearings.**

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21 ~~(b)~~(1) Any party in a case subject to review may request a review hearing. The
22 request must be in writing and the request shall set forth the facts believed by the
23 requesting party to warrant a review by the court. If the court determines that
24 the alleged facts, if true, would justify a modification of the dispositional order, a
25 review hearing shall be scheduled with notice, including a copy of the request, to
26 all other parties. The court may schedule a review hearing on its own motion.

27

(b)(2) The court may modify a prior dispositional order in a review hearing upon the stipulation of all parties and upon a finding by the court that such modification would not be contrary to the best interest of the minor and the public.

(b)(3) The court shall not modify a prior order in a review hearing that would further restrict the rights of the parent, guardian, custodian or minor if any party objects to the modification. Upon objection, the court shall schedule the matter for a motion hearing and require that a motion be filed with notice to all parties. A party requesting an evidentiary hearing shall state the request in the motion to modify the prior order or the response to the motion.

(b)(4) All cases which require periodic review hearings under ~~Title 78A Chapter 6~~ Title 80 Chapter 3 shall be scheduled for court review not less than once every six months from the date of disposition.

(c) **Disposition reviews.** Upon the written request of any agency, individual or institution vested with legal custody or guardianship by prior court order, the court shall conduct a review hearing to determine if the prior order should remain in effect. Notice of the hearing, along with a copy of the written request, must be provided to all parties not less than 5 days prior to the hearing, unless the hearing is expedited.

(d) Review of a case involving abuse, neglect, or dependency of a minor shall be conducted also in accordance with ~~Section Utah Code sections 78A-6-117~~ 80-3-407, ~~Section 78A-6-314~~ 80-3-409, and ~~Section 78A-6-315~~ 80-3-408.

(e) Intervention plans.

Intervention plans are plans prepared by the probation department or agencies assuming custody of the minor designed to assist the minor and/or the parent, guardian or custodian to address or correct issues that caused the court to be involved with the minor and his or her family.

Commented [CV1]: I did not find any references to 6-month periodic review hearings required for delinquency proceedings. I did find references to scheduling a review hearing (and presumptive termination of jurisdiction) for probation, post-adjudication and secure care in the juvenile justice section in 80-6-702(4), -703(5), and -804.

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Commented [CV2]: 80-3-409 is the permanency hearing statute. I believe that was added as a reference in this section because (1) permanency hearings used to be called "dispositional review hearings" (2) these hearings must be held every 12 months while the child is in state custody pursuant to federal law, and (3) they are technically a review of many issues.

Commented [CV3]: I could not find anything in 78A-6-117 or the re-enacted recodification sections of 78A-6-117 that referenced review hearings. I added 80-3-407 because that is a 6-month review hearing for abuse/neglect/dependency cases. There is also a reference to consider adding: 80-3-107(1)(e) which provides that no court report is required for "frequent, periodic review hearings held in a dependency drug court case...." However, I was unable to find any other statutory reference to periodic review hearings for dependency drug court.

Commented [CV4]: The phrase "intervention plan" used throughout this section is not used for child welfare cases, and hasn't been in the 30+ years I've been here. The statutes, and probably CARE, refer to these as "child and family plans."

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(e)(1) In all cases where the disposition order places temporary legal custody or guardianship of the minor with an individual, agency, or institution, a proposed intervention plan shall be submitted by the probation department when probation has been ordered; by the agency having custody or guardianship; or by the agency providing protective supervision, within 30 days following the date of disposition. This intervention plan shall be updated whenever a substantial change in conditions or circumstances arises.

(e)(2) In cases where both parents have been permanently deprived of parental rights have been terminated, the intervention plan shall identify efforts made by the child placing agency to secure the adoption of the minor and subsequent review hearings shall be held until the minor has been adopted or permanently placed.

Commented [CV5]: There are probably several ways to write this phrase – I just chose what seemed simplest.

(f) **Progress reports.**

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(f)(1) A written progress report relating to the intervention plan shall be submitted to the court and all parties by the agency, which prepared the intervention plan at least two working days prior to the review hearing date.

Commented [CV6]: This may be old terminology, although I don't know how probation or JJS characterizes their reports. In child welfare, these are now called "court reports" in the statute.

(f)(2) The progress report shall contain the following:

(f)(2)(i) A review of the original conditions, which invoked the court's jurisdiction.

(f)(2)(ii) Any significant changes in these conditions.

(f)(2)(iii) The number and types of contacts made with each family member or other person related to the case.

(f)(2)(iv) A statement of progress toward resolving the problems identified in the intervention plan.

(f)(2)(v) A report on the family's cooperation in resolving the problems.

(f)(2)(vi) A recommendation for further order by the court.

80 (g) In substantiation proceedings, a party may file a motion to set aside a default
81 judgment or dismissal of a substantiation petition for failure to appear, within thirty
82 days after the entry of the default judgment or dismissal. On motion and upon such
83 terms as are just, the court may in the furtherance of justice relieve a party from a
84 default judgment or dismissal if the court finds good cause for the party's failure to
85 appear. The filing of a motion under this Subdivision does not affect the finality of a
86 judgment or suspend its operation.

TAB 7

Draft April 21, 2021

Rule 45. ~~Pre-disposition reports and social studies~~ Dispositional Reports.

(a) Delinquency cases.

(a~~1~~) Unless waived by the court, a ~~pre-dispositional~~ report shall be prepared in all proceedings which result in the filing of a petition. The ~~pre-dispositional~~ 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~~2~~) ~~In delinquency cases, i~~Investigation of the minor and family for the purpose of preparing the ~~pre-dispositional~~ report shall not be commenced before the allegations have been proven without the consent of the parties.

(c~~3~~) The ~~pre-dispositional~~ 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-dispositional~~ 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.

(4) The dispositional report shall be provided to the minor's counsel, the prosecuting attorney, the guardian ad litem, if applicable, and counsel for the parent, guardian, or custodian of the minor, if applicable, at least two business 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.

(b) Neglect, abuse, and dependency cases.

(d~~1~~) 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

28 other material relating to the minor's mental, physical, and social history and
29 condition may be received in evidence and may be considered by the court along
30 with other evidence. The court may require that the person who wrote the report
31 or prepared the material appear as a witness if the person is reasonably available.

32 (2) The juvenile court shall review and receive each dispositional report submitted
33 by the Division of Child and Family Services in the same manner as the juvenile
34 court receives and receives a report described in Utah Code section 80-6-307.

35 (3) If the dispositional report is determined to be an ex part communication with
36 a judge, the report is considered a communication authorized by law.

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