AGENDA

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

Matheson Courthouse
Conference Room A (1st Floor-Enter through W19)
February 7, 2020
Noon – 2:00 p.m.

12:00-12:10	**Welcome and Approval of Minutes** *(Draft Minutes of January 3, 2020—Tab 1)*	David Fureigh
12:10-12:25	**Legislative Response Teams**	David Fureigh
12:25-12:45	**Rule 9-Detention Hearings; scheduling; hearing procedure** *Continued Discussion of Public Comments to Rule 9* *Draft of Rule 9 dated January 3, 2020 & public comments (Tab—2)*	David Fureigh Judge Lindsley
12:45-1:25	**Rule 27A-Admissibility of Statements Given by Minors** *The Committee will continue its review and discussion of questions from the Supreme Court.* *(October 24, 2019 Memo containing questions from Supreme Court—Tab 3)* *(Memo re: History of Rule 27A--Tab 4)* *(Memo re: Survey of State Laws Concerning Juvenile Miranda Waivers--Tab 5)* *(Email Chris Yannelli re: Survey of State Statutes—Tab 6)*	David Fureigh
1:25-1:55	**Proposed Rule Re: Tribal Participation in Juvenile Court** *Ms. Koza will present a revised version of the proposed rule on tribal participation in court hearings.* *(Draft Forms Approved on January 3, 2020--Tab 7)* *(Rule 50-Presence at Hearings—Tab 8)*	Bridget Koza
1:55-2:00	**Old or New Business** • Next Meeting March 6, 2020	All
2:00	**Adjourn**	

TAB 1

Utah Rules of Juvenile Procedure Committee- Meeting Minutes

January 3, 2020	Noon to 2:00 p.m.	Conference Room A
MEETING DATE	TIME	LOCATION

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

AGENDA TOPIC

I. Welcome & Approval of Minutes	CHAIR: DAVID FUREIGH

David Fureigh introduced Larissa Lee, Appellate Court Administrator. The committee completed its annual Professional Practice Disclosures as required by Rule 11-101(4) of the Supreme Court Rules of Professional Practice. The committee reviewed and approved the minutes of December 6, 2019.

Motion: To approve the minutes of December 6, 2019	By: Mikelle Ostler	Second: Sophia Moore
Approval	☒ Unanimous	☐ Vote: In Favor_____ Opposed _____

AGENDA TOPIC

II. Rule 9-Detention Hearings; scheduling; hearing procedure	DAVID FUREIGH

Rule 9 was sent out for a fourth public comment period, which closes on January 3, 2020. The Committee reviewed the comments received, including a public comment by Judge Leavitt and an informal comment by Judge Beck. Judge Leavitt requested that the language of Rule 9(c) be revised to read "The court shall hold a detention hearing within 48 hours of the minor's admission to detention, *to determine whether the minor should remain in detention*." The Committee discussed whether the proposed change: 1) removes the ability to argue at the detention hearing that there was no reasonable basis to place the juvenile in detention; and 2) limits hearing discussion to only the issue of whether or not the juvenile should remain in detention. Judge Lindsley will contact Judge Leavitt for more information on his concern and the Committee will table the discussion until its next meeting.

The Committee discussed the informal comment from Judge Beck requesting a technical correction at line 41, which refers to provisions set forth in paragraph "(g)." After previous revisions prompted re-lettering of the paragraphs, the reference to "(g)" is no longer accurate.

The Committee decided to remove reference to the paragraph as unnecessary and voted to delete "as set forth in paragraph (g)" and place a period after the word "hearing" on line 41 of the November 18, 2019 draft of Rule 9.	
Action Item:	Judge Lindsley will obtain additional information from Judge Leavitt. Katie Gregory will let Judge Beck know of the Committee's decision on his comment.
Motion #1: to table consideration of Judge Leavitt's comment to Rule 9 until the February 7, 2020 meeting.	By: Monica Diaz Second: Judge Lindsley
Approval	☒ Unanimous ☐ Vote: In Favor_____ Opposed _____

Motion #2: to revise line 41 of the draft of November 18, 2019 to place a period after the word "hearing" and to delete "as forth in paragraph (g)."	By: Kristin Fadel Second: Sophia Moore
Approval	☒ Unanimous ☐ Vote: In Favor_____ Opposed _____

AGENDA TOPIC

III. Rule 27A-Admissibility of Statements Given by Minors	**DAVID FUREIGH**

Mr. Fureigh reviewed the questions posed by the Supreme Court on Rule 27A and the information gathered by the Committee to date. Discussion took place on how to answer each question for the Supreme Court. The Committee stressed that different perspectives of the members should be expressed, while advancing areas where the group reached consensus on protection during custodial interrogation. No members wish to eliminate an age protection for juveniles under age 14. Consensus was not reached on whether the age at which a juvenile is presumed capable of knowingly and voluntarily waiving rights should be raised above 14 or even raised so that all juveniles are protected.

The Committee will include in its response the memos, information, and documents prepared and reviewed by the Committee in response to the questions posed by the Supreme Court about the age distinction. Ms. Gregory discussed her review of minutes from the Rules of Evidence committee at the time it formulated Rule 616, which requires video tapping of all adult interrogations. Nothing in the history of Rule 616 discussed or mentioned juveniles in any way.

Mr. Fureigh will compose answers to the questions from the Supreme Court on Rule 27A and present them to the Committee at the February meeting for further discussion.

AGENDA TOPIC

IV. Proposed Form/Rule Re: Tribal Participation in Juvenile Court	**BRIDGET KOZA**

Ms Koza led a discussion on the proposed forms for Tribal Participation in Juvenile Court, which she prepared. The Committee agreed to remove the fax number from the forms and add "federally recognized" before the word tribe. Also, the term "child" will be changed to "child/ren" and "General Counsel" will be changed to "Attorney/Authorized Representative."

The language on the Order Granting the Motion to Intervene will be changed to, "The court grants the motion to intervene filed by _____ tribe and pursuant to . . ."
Language on the notice of tribal representative form will be changed to, "I have been designated by the _____ tribe to be the representative."

Discussion took place on the possibility of making the forms available on the Court's website once they are formally approved. Judge Lindsley explained the process for first having the proposed forms approved by the Court's Forms Committee.

Ms. Koza reviewed all of the changes proposed to the forms by the Committee and motions were made as documented below.

The Committee briefly discussed the proposed amendments to Rule 50. Suggestions were made to add "within a reasonable period of time" to subsection (f)(1) and remove the proposed Note from the rule. The committee tabled further discussion of the proposed amendments to Rule 50 until the February meeting.

Action Item:	The Committee will send a formal letter to the Forms Committee requesting consideration of the forms and indicating that currently no forms are available for this purpose. The letter will be addressed to Randy Dyer, Forms Committee Chair, and Brent Johnson, AOC General Counsel.
Motion #1: to approve the revised "Motion to Intervene" form for tribes to advance to the Forms Committee.	By: Judge Lindsley Second: Judge Manley
Approval	× Unanimous ☐ Vote: # In Favor_____ # Opposed _____
Motion #2: to approve the revised "Order Granting Motion to Intervene" form to advance to the Forms Committee.	By: Judge Lindsley Second: Mikelle Ostler
Approval	× Unanimous ☐ Vote: # In Favor_____ # Opposed _____

Motion #3: to approve the "Notice of Tribal Representative" form with the additional changes of removing the "1" from the form and changing the form to read, "I or my department/office has been designated by the _____ tribe . . ."	By: Judge Lindsley Second: Mikelle Ostler
Approval	☐ Unanimous x Vote: # In Favor: 9 # Opposed: 2 (with Judge Manley and Jordan Putnam voting in opposition.)

AGENDA TOPIC	
V. Old or New Business	DAVID FUREIGH
Mr. Fureigh reported that the Committee's letter to the Utah State Bar requesting a rule change to waive the *pro hac vice* fees and requirement to associate local counsel for attorneys representing tribes in ICWA cases was met with cooperation by the Bar. The Bar is very supportive of the change in order to promote access to justice. The Bar will begin to work through its process to consider rule changes and Mr. Fureigh will update the Committee as more information is available.	

TAB 2

Draft: January 3, 2020

Rule 9. Detention hearings; scheduling; hearing procedure.

(a) The officer in charge of the detention facility shall provide to the court a copy of the report required by Section 78A-6-112. ~~At a detention hearing, the court shall order the release of the minor to the parent, guardian or custodian unless there is reason to believe:~~

~~(a)(1) the minor will abscond or be taken from the jurisdiction of the court unless detained;~~

~~(a)(2) the offense alleged to have been committed would be a felony if committed by an adult;~~

~~(a)(3) the minor's parent, guardian or custodian cannot be located;~~

~~(a)(4) the minor's parent, guardian or custodian refuses to accept custody of the minor;~~

~~(a)(5) the minor's parent, guardian or custodian will not produce the minor before the court at an appointed time;~~

~~(a)(6) the minor will undertake witness intimidation;~~

~~(a)(7) the minor's past record indicates the minor may be a threat to the public safety;~~

~~(a)(8) the minor has problems of conduct or behavior so serious or the family relationships are so strained that the minor is likely to be involved in further delinquency; or~~

~~(a)(9) the minor has failed to appear for a court hearing within the past twelve months.~~

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

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

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

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

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

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

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

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

(f)~~(ed)~~ 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 ~~as set forth in paragraph (g)~~. If the minor is to be arraigned at the detention hearing, the provisions of Rules 24 and 26 shall apply.

(g)~~(fe)~~ 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.

(h)~~(gf)~~ 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.

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

(j)~~(i)~~ If the court determines that ~~reasonable cause exists for continued detention,~~ a less restrictive alternative to detention is appropriate it may ~~order continued detention,~~ 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:

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

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

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

(k)~~(jih~~) If the court determines that a reasonable basis 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.

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

(m)~~(lkj~~) 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.

~~Advisory Committee Notes~~

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

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

December 30, 2019

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

M E M O R A N D U M

TO: Advisory Committee on the Rules of Juvenile Procedure

FROM: Katie Gregory

RE: Comments on Rule 9

1. **As of December 30, 2019 the Committee has received the following public comment to Rule 9 from Judge Michael Leavitt:**

November 19, 2019 at 11:07 am
At lines 21-22, in order to differentiate between the analysis the court would undertake within 24 hours of detention regarding whether there is a reasonable basis for admission to detention and the analysis the court would undertake at the detention hearing, I would suggest the following amendment:

"The court shall hold a detention hearing within 48 hours of the minor's admission to detention to determine whether the minor should remain in detention."

2. **In addition, Judge Steven Beck sent the following informal comment to me by email:**

The reference to paragraph (g) in line 41 likely should have been changed to reference paragraphs (i) and (j) based on the language of the prior rule and the renumbering that has occurred in the proposed rule.

Please note that comments may be received through January 3, 2020. Any additional comments will be provided to the Committee at its next meeting.

TAB 3

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

October 24, 2019

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

M E M O R A N D U M

TO: Advisory Committee on the Rules of Juvenile Procedure

FROM: Katie Gregory, Committee Staff

RE: Rule 27A-Request from the Supreme Court for Additional Information

Committee Members:

On October 22, 2019 the Utah Supreme Court sent a request to David Fureigh, as Committee Chair, to request that the Committee consider additional questions pertaining to Rule 27A-Admissibility of Statements Given by Minors. David asked me to send these to you in advance of the November 1, 2019 meeting.

Email Dated October 22, 2019:

David,

Thanks to you and your committee for the time and effort you dedicate to the advisory committee. To a person, we are grateful for the service you and your committee render.

As the court discussed the potential amendment to Rule 27A, the court began to think about the assumptions that underlie Rule 27A and the policy it is meant to promote. We would appreciate it if your committee could consider the following questions and report back to us.

(1) What is the basis for making 14 the age at which we will presume that a minor is sufficiently mature to knowingly and voluntarily waive her rights without a parent, guardian, or legal custodian? Do we know if that decision was based on scientific studies? If so, do we know if that continues to reflect the best thinking on the subject? In either case, what does the current literature addressing that question say?

(2) Is there a reason why that presumption should not apply to all minors?

(3) Conversely, is there a reason that we should have any presumption at all given the ultimate burden on the state to show that the waiver was knowing and voluntary?

(4) How do other states address the issue?

(5) Is there any other background or information that the court should have to better understand the thinking behind the rule.

Thank you very much.

TAB 4

Law Clerk Memorandum

To: The Supreme Court's Advisory Committee on the Rules of Juvenile Procedure

From: Jean Pierce, Juvenile Court Law Clerk

Re: History on Rule 27A of the Utah Rules of Juvenile Procedure

Date: November 28, 2019

Prior to 1995, the rules for juvenile court were known as the Utah Juvenile Court Rules of Practice and Procedure. The Board of Juvenile Court Judges was given rule making authority through statute to establish rules and policies for the juvenile court. Utah Code § 55-10-71(b) (1965) ("The board shall establish general policies for the operation of the juvenile courts and shall formulate uniform rules and forms governing practice and procedure . . ."). During the 1984 Second Special Legislative Session, a joint resolution of the legislature was passed that amended the Utah Constitution and gave the Utah Supreme Court the authority to "adopt rules of procedure and evidence to be used in the courts of the state . . ." S. J. Res. 1, 45th Leg., 2nd Spec. Sess. (Utah 1984). Exercising their constitutional power, the Utah Supreme Court established the Advisory Committee on the Rules of Juvenile Procedure, and, effective January 1, 1995, the Utah Rules of Juvenile Procedure were adopted and the existing Utah Juvenile Court Rules of Practice and Procedure were simultaneously repealed. Utah R. Juv. P. Rule 1- Repeals and Reenactments (1995).

When the Board of Juvenile Court Judges had rule making authority, Rule 32 of Juvenile Court Rules of Practice and Procedure explained a juvenile's right to remain silent and right to counsel. The rule read:

> A child who is the subject of a court proceeding . . . or subject to interrogation by a law enforcement officer, shall be advised as follows:
> 1. That he may remain silent as a matter or right through any or all questions posed during such proceedings or interrogatories;
> 2. That anything he says can and will be used against him in court;

3. That he has the right to be represented by counsel during such proceedings or interrogations;
4. That the court will appoint counsel for him if he cannot afford counsel.

Utah Juv. Ct. R. P. P. Rule 32 (1986).

Rule 20 of the Utah Juvenile Court Rules of Practice and Procedure was titled "Evidence," referenced the rights contained in Rule 32, and addressed the admissibility of statements made by a juvenile after waiving those rights. The rule specified:

> A statement obtained from a juvenile under 14 years of age outside the presence of his parents or guardian is not admissible because said juvenile is presumed not adequately mature and experienced to intelligently waive or understand his rights under Rule 32. A juvenile 14 years of age or older is presumed capable of intelligently comprehending and waiving his rights under Rule 32 and a statement by him not otherwise objectionable is admissible.
>
> The presumption under the above paragraph may be overcome if the evidence is sufficiently persuasive, by a preponderance thereof, showing the ability or inability of a juvenile to comprehend and waive his rights under Rule 32.

Utah Juv. Ct. R. P. P. Rule 20 (1986).

When the Utah Juvenile Court Rules of Practice and Procedure were repealed and the Utah Rules of Juvenile Procedure became effective on January 1, 1995, the rule on the admissibility of a juvenile's statement became Rule 43 and was still titled "Evidence." The rule stated:

> (c) In delinquency cases, a statement obtained from a minor under 14 years of age outside the presence of the minor's parent, guardian, custodian, or attorney is not admissible because said minor is presumed not adequately mature and experienced to intelligently waive or understand the minor's rights. A minor 14 years of age or older is presumed capable of intelligently comprehending and waiving the minor's rights, and a statement by the minor not otherwise objectionable is admissible.
>
> (d) The presumption under paragraph (c) may be overcome if the evidence is sufficiently persuasive, by a preponderance thereof, showing the ability or inability of a minor to comprehend and waive the minor's rights.

Utah R. Juv. P. Rule 43(c-d) (1995).

In May of 1997, the Supreme Court's Advisory Committee on the Rules of Juvenile Procedure was asked to revise Rule 43 when it came to the sections on the admissibility of a minor's statement because, as the rule was then written, the rule could be applied to all statements made by minors rather than only applying to statements made during custodial interrogations. Sup. Ct. Advisory Comm. R. Juv. P., *Minutes*, May 30, 1997 (2). In October of 1997, newly drafted Rule 27A was proposed to the Advisory Committee on the Rules of Juvenile Procedure. Sup. Ct. Advisory Comm. R. Juv. P., *Minutes*, Oct. 21, 1997 (1). Proposed Rule 27A removed the subsections (c) and (d) from Rule 43 on the admissibility of a minor's statement and incorporated those sections into the new Rule 27A. Sup. Ct. Advisory Comm. R. Juv. P., *Minutes*, May 22, 1998 (1). Rule 27A also clarified that the rule only applied to the admissibility of statements made by minors while in the custody of law enforcement. *Id.*

When proposed Rule 27A went out for comment in 1999, comments submitted about the rule questioned whether the fourteen years of age distinction was appropriate. Sup. Ct. Advisory Comm. R. Juv. P., *Minutes*, Dec. 3, 1999(1-2). The Committee discussed at length the reason why the fourteen years of age distinction was used in the rule including the fact that fourteen years of age was used as a threshold in both of the model juvenile court acts from the 1930's and 1960's. *Id.* at 2. The Committee also discussed how, under common law, individuals were considered to be adults after the age of fourteen. William Blackstone, *Commentaries on the Laws of England*, Vol. 4, 23 (Oxford, Clarendon 1776). Children from the ages of seven to fourteen were presumed legally incapable of having the required intent to commit a crime but evidence could be presented to prove differently. *Id.* As Blackstone explained, "Under seven years of age indeed an infant cannot be guilty of a felony; for then a felonious discretion is almost an impossibility in nature; but at eight years old he may be guilty of a felony." *Id.*

Blackstone further clarified that under age fourteen, although by law a youth may be adjudged incapable of discerning right from wrong (*doli incapax*), the youth could be found guilty if it appeared to the court and the jury that he *could* discern between good and evil (*doli capax*). *Id.* (italics in original).

The fourteen year age distinction made in Rule 27A of the Utah Rules of Juvenile Procedure has been present since the rules and policies for the juvenile court were first established by the Board of Juvenile Court Judges. The rule on the admissibility of statements made by a youth with the age division carried over and became part of the Utah Rules of Juvenile Procedure when the Utah Supreme Court was constitutionally granted the power to establish rules and procedures to govern the courts of the state.

TAB 5

MEMORANDUM

TO: Supreme Court Advisory Committee for the Utah Rules of Juvenile Procedure

FROM: Keegan Rank, Juvenile Court Law Clerk, Administrative Office of the Courts

RE: Survey of State Laws Concerning Juvenile *Miranda* Waivers and Standards of Admissibility for Custodial Statements

DATE: November 26, 2019

DISCUSSION

I. Introduction and Background

The United States Supreme Court first established the underlying constitutional standard for juvenile *Miranda* waivers in *Fare v. Michael C.* There, the United States Supreme Court extended the "totality of the circumstances" test to juvenile custodial interrogations to determine whether the juvenile knowingly and voluntarily waived his or her *Miranda* rights.[1] In this test, a court examines the circumstances surrounding an interrogation, including the "juvenile's age, experience, education, background, and intelligence."[2] Based on the analysis of the surrounding circumstances, a court can then make a determination of whether a juvenile knowingly and voluntarily waived his or her rights, deciding whether statements from the interrogation are admissible.[3] Today, this test remains the basis and constitutional floor for juvenile *Miranda* waivers, underlying the standard in each jurisdiction's statute or case law.

While the totality of the circumstances test from *Michael C.* established the minimum standard to determine whether a juvenile *Miranda* waiver was made voluntarily and knowingly, many states have created additional factors to consider in the analysis or other bars to admissibility. In spite of the differences between each state and Washington D.C., every jurisdiction can be organized into three categories based on how they treat juvenile *Miranda* waivers: (1) jurisdictions that use a general totality of the circumstances analysis, either patterned directly after *Michael C.* or with slight alterations depending on state-specific laws; (2) jurisdictions that require the presence or consent of an attorney, parent, or other interested adult, until a certain age, for a juvenile's *Miranda* waiver to be valid; and (3) jurisdictions that require the presence or consent of an attorney, parent, or other interested adult before he or she makes a waiver, until the juvenile reaches the age of majority. This memorandum will discuss each of these three groups, including similarities and trends between the states and Washington D.C.

II. Jurisdictions Exclusively Using the Totality of the Circumstances Test

In this group, each jurisdiction exclusively relies on some form of the totality of the circumstances test developed in *Michael C.* The group consists of 31 states and Washington

[1] *Fare v. Michael C.*, 442 U.S. 707, 724–25 (1979).
[2] *Id.* at 725.
[3] *Id.* at 724–25.

D.C., making it the largest group of jurisdictions in this analysis. Many of these jurisdictions have also developed additional factors for their totality of the circumstances test based on their state-specific jurisprudence.

Points of summary from Table A:

- Common additional factors used in a state's specific totality of the circumstances test include whether parents or an interested adult have the right to be present during an interrogation, whether law enforcement purposefully excluded the parents or interested adult from an interrogation, and if statutory parental notification requirements were met.
- Courts from at least eight states have examined whether to adopt some form of a "per se" rule to bar any statements collected from a juvenile during an interrogation if a parent or attorney was not present. All eight states declined to adopt this rule, agreeing that the constitutional protections in *Michael C.* were sufficient.
- Pennsylvania and Louisiana courts have overturned precedent requiring the presence of an "interested adult" during an interrogation, adopting the totality of the circumstances test instead.
- In many states, not only do courts examine whether a parent was present in a totality of the circumstances test, but also whether that parent had interests that were adverse to the interest of the juvenile.

TABLE A

Alabama	A minor has the right to communicate with a parent, guardian, or custodian, whether or not that person is present. ALA. CODE § 12-15-202(d)(1). At the same time, a parent's presence for a *Miranda* waiver is not necessary. *Id.*
Alaska	Alaskan courts have expressly rejected a "per se rule that juveniles are incapable of waiving their *Miranda* rights without the guidance of an adult, adopting instead a totality of the circumstances rule." *State v. Ridgely*, 732 P.2d 550, 556 (Alaska 1987).
Arizona	The presence of the child's parents or their consent to a minor's waiver of rights is a factor considered by a court to determine whether a confession was involuntary and thereby inadmissible. *In re Andre M.*, 88 P.3d 552, 555 (Ariz. 2004).
Arkansas	A minor has the right to request a parent, guardian, or custodian before being questioned in custody and waiving any rights. ARK. CODE ANN. § 9-27-317(i)(2)(C). The presence of a parent, however, is only a factor in a totality of the circumstances analysis. *Id.*§ 9-27-317(c).
Delaware	Delaware has explicitly rejected an "interested parent" rule, which would require that a parent or guardian be present for a *Miranda* waiver to be effective. *Smith v. State*, 918 A.2d 1144, 1149–50 (Del. 2007).
District of Columbia	A general totality of the circumstances analysis is used without any specific consideration for the presence of parents. *See In re S.W.*, 124 A.3d 89, 98 (D.C. 2015).
Florida	A variety of factors are used to determine whether custodial statements are admissible, including a juvenile's request for a parent to be present and whether the parent was allowed to be present. *J.G. v. State*, 883 So.2d 915, 923 (Fla Ct. App. 2004).
Georgia	The absence of a parent is just one of nine factors a court considers in determining whether a *Miranda* waiver was properly made for statements to be admissible but there is no requirement that a parent must be present. *McKoon v. State*, 465, S.E.2d 272, 274 (Ga. 1996).
Hawaii	A parent does not need to be present or consulted before a minor waives his or her rights but a court may review whether a parent was present in its totality of the circumstances analysis. *In re Doe*, 978 P.2d 684, 689–91 (Haw. 1999).
Idaho	Courts must look at the totality of the circumstance to determine whether the minor properly waived his or her rights in a custodial interrogation before a statement can be admissible. *State v. Doe*, 963 P.2d 392, 395 (Idaho Ct. App. 1998).

Kentucky	Statute mandates that parents must be contacted when a minor is taken into custody. A minor's waiver of his or her *Miranda* rights while in custody, however, is not dependent on a parent's presence. *Taylor v. Commonwealth*, 276 S.W.3d 800, 805 (Ky. 2008).
Louisiana	Louisiana courts overturned precedent that required the minor to consult with an attorney or interested adult before waiving his or her right, having adopted a totality of the circumstances analysis instead. *State v. Fernandez*, 712 So.2d 485, 489–90 (La. 1998).
Maryland	The absence of a parent or guardian during a juvenile's interrogation is an important factor in determining the voluntariness of the statement but their absence does not automatically make the statement inadmissible. *Jones v. State*, 535 A.2d 471, 476 (Md. 1988).
Michigan	In the totality of the circumstances analysis, courts specifically examine factors such as whether police contacted the parents of the juvenile and whether the parent or guardian was present during questioning. *People v. Givans*, 575 N.W.2d 84, 88 (Mich. Ct. App. 1997).
Minnesota	A general totality of the circumstances analysis is used without any specific consideration for the presence of parents. *See State v. Burrell*, 697 N.W. 579, 592–93 (Minn. 2005).
Mississippi	Law enforcement has to contact parents when a minor is taken into custody and the parent has the right to be present during questioning. A parent's presence, however, is not required for a *Miranda* waiver. *Evans v. State*, 109 So. 3d 1056, 1066 (Miss. Ct. App. 2011).
Missouri	A minor taken into custody has the right to have a parent, guardian, or custodian present during questioning. MO. REV. STAT. § 211.059. A parent's presence, however, is just one factor in a totality of the circumstances analysis. *State v. Barnaby*, 950 S.W.2d 1, 3 (Mo. Ct. App. 1997).
Nebraska	A general totality of the circumstances analysis is used without any specific consideration for the presence of parents. *See State v. Goodwin*, 774 N.W.2d 733, 744 (Neb. 2009).
Nevada	Courts use a totality of the circumstances analysis to determine whether admissions or statements by a juvenile are admissible as evidence, using factors such as whether parents were present during the interrogation. *Ford v. State*, 138 P.3d 500, 504–05 (Nev. 2006).
New Hampshire	Statute requires that parents must be notified when the minor is taken into custody and extra weight is given to whether the statute was followed when conducting a totality of the circumstances analysis. *State v. Farrell*, 766 A.2d 1057, 1061–63 (N.H. 2001).
New York	Parents have the statutory right to be present at an interrogation of a juvenile. N.Y. FAM. CT. ACT § 305.2(7). Moreover, they cannot be barred from an interrogation if the juvenile is less than 16 years of age and when they are present at the interrogation. *In re Jimmy D.*, 937 N.E.2d 970, 973 (N.Y. 2010). However, a parent's absence does not make a juvenile's statement inadmissible. *Id.*
Ohio	The state has explicitly chosen to not adopt an interested adult requirement that would require a parent or other adult to be present during a custodial interrogation. *State v. Pablo*, 2017-Ohio-8834, ¶ 15, 100 N.E.3d 1068.
Oregon	A general totality of the circumstances analysis is used without any specific consideration for the presence of parents. *State ex rel. Juv. Dep't of Wash. Cty. v. Deford*, 34 P.3d 673, 684–85 (Or. 2001).
Pennsylvania	Pennsylvania has rejected an "interested parent" rule, which would require that a parent or guardian be present for a *Miranda* waiver to be effective. *Commonwealth v. Williams*, 475 A.2d 1283, 1288 (Pa. 1984). It does, however, consider a parent's presence in a totality of the circumstances analysis. *Id.*
Rhode Island	The totality of the circumstances analysis specifically examines whether a parent, guardian or other interested adult was present during a custodial interrogation. *State v. Monteiro*, 924 A.2d 784, 789–90 (R.I. 2007)
South Carolina	A general totality of the circumstances analysis is used without any specific consideration for the presence of parents. *State v. Pittman*, 746 S.E.2d 144, 569 n.9 (S.C. 2007).
South Dakota	South Dakota has rejected a per se rule that would require the presence of a parent for a valid *Miranda* waiver but the ability of a juvenile to confer with a parent is an explicit factor in the totality of the circumstances analysis. *State v. Diaz*, 2014 S.D. 27, ¶ 23, 847 N.W.2d 144.
Tennessee	Courts look specifically at "the presence of a parent, guardian, or interested adult" as a factor in the totality of the circumstances analysis. *State v. Carroll*, 36 S.W.3d 854, 864 (Tenn. 1999).
Texas	Although the totality of the circumstances analysis is used, Texas is unique because written statements or confessions are only admissible if a juvenile has the opportunity to be appraised of his or her rights before a magistrate or in the presence of an attorney. TEX. FAM. CODE ANN. §§

	51.09 and 51.095.
Virginia	A general totality of the circumstances analysis is used without any specific consideration for the presence of parents. *Rodriguez v. Commonwealth*, 578 S.E.2d 78, 84 (Va. Ct. App. 2003).
Wisconsin	Wisconsin has rejected a per se rule that would require the presence of parent for a valid *Miranda* waiver but the presence of a parent during the interrogation is an explicit factor in the totality of the circumstances analysis. *In re Jerrell C.J.*, 2005 WI 105, ¶¶ 18–20, 43, 699 N.W.2d 110.
Wyoming	A general totality of the circumstances analysis is used without any specific consideration for the presence of parents. *Rubio v. State*, 939 P.2d 238, 241–42 (Wyo. 1997).

III. Jurisdictions Requiring the Presence of a Parent, Attorney, or Other Interested Adult Until a Certain Age for a Juvenile's *Miranda* Waiver to be Valid

States in this group not only follow a totality of the circumstances analysis established in *Michael C.* but they also provide additional protections to juveniles of a certain age, requiring that a parent, guardian, legal custodian, attorney, or another interested adult[4] be involved in an interrogation or before a juvenile waives his or her *Miranda* rights. If a parent or other interested adult is not present or allowed to consult with the juvenile, a juvenile's *Miranda* waiver is invalid and any statement collected by law enforcement could be inadmissible. Once a juvenile reaches a certain age, however, the presence or involvement of a parent or other interested adult is no longer required. At this point, courts then use the totality of the circumstances test to analyze whether a juvenile's waiver was knowingly and voluntarily made. There are 14 states in this group, all having unique state-specific ages at which a parent or interested adult is necessary before a juvenile can waive his or her rights.

Points of summary from Table B:

- 14 and 16 are the most common ages for a juvenile at which a parent or interested adult is no longer required to be present during an interrogation or involved in the *Miranda* waiver process.
- While each state requires the participation of a parent or interested adult, the level of participation varies. Kansas and Massachusetts, for example, require a parent or attorney to consult with the minor before a waiver is made. States such as Utah and Connecticut, however, only require a parent to be present for a waiver to be valid, without any indication of what level of participation is required.
- Out of the 14 states in this group, 11 codify the age distinction for which a parent is required to be present or involved in a custodial interrogation in statute.
- Two states, Massachusetts and New Jersey, have developed their parental presence standard in case law.
- Utah is the only state that has a parental presence requirement in a set of court rules.
- Despite the requirement that a parent be present during an interrogation or *Miranda* waiver, several states, including Montana and Kansas, recognize in statute that parents may not be the best advocates for their children in these circumstances. In those states, if a parent disagrees with the desires of the juvenile, is an alleged victim of the offense, or a co-defendant of the alleged crime, then the juvenile must consult with an attorney before waiving his or her *Miranda* rights.

[4] For the sake of brevity, further references to "interested adult" are meant to include a guardian, legal custodian, or attorney of a juvenile, unless further specified.

- Several states require a parent or interested adult to take a more active role during a juvenile's interrogation. California requires that a juvenile consult with legal counsel. Iowa, on the other hand, requires parents to provide written consent for a juvenile to waive his or her rights. In Kansas, parents or an interested adult must consult with the juvenile before a *Miranda* waiver is made. Similarly, Massachusetts case law requires a parent to be present during an interrogation, understand the *Miranda* warnings, and have the opportunity to explain those rights to the juvenile before a waiver is made.

Table B

California	A minor under the age of 16 must consult with legal counsel before he or she participates in a custodial interrogation. CAL. WELF. INST. § 625.6. The consultation cannot be waived except in limited circumstances, as outlined in the statute. *Id.*
Connecticut	Any admission or statement made by a minor under the age of 16 after a waiver of their *Miranda* rights is inadmissible unless it is made in the presence of a parent or guardian. CONN. GEN. STAT. § 46b-137(a).
Illinois	Juveniles under the age of 15 must be represented by counsel throughout a custodial interrogation, without the ability to waive counsel if they are in custody for allegations related to a sex offense or murder. 705 ILL. COMP. STAT. 405/5-170.
Iowa	A minor under the age of 16 cannot waive the right to counsel without the written consent of a parent, guardian, or custodian if they are taken into custody for an act that constitutes a serious or aggravated misdemeanor or felony under the criminal code. IOWA CODE § 232.11(2).
Kansas	Admissions or confessions from juveniles under the age of 14 years old made during a custodial interrogation are inadmissible unless it was made following consultation between a parent, guardian, or attorney on whether to waive certain *Miranda* rights. KAN. STA. ANN. § 38-2333(a). If a parent is the alleged victim or codefendant of the same crime, then the juvenile must consult with an attorney or a non-involved parent before making a waiver. *Id.* § 38-2333(b). Furthermore, the presence of a parent during a waiver is insufficient if the parent is not acting with the juvenile's interest in mind. *Matter of P.W.G.*, 426 P.3d 501, 513–14 (Kan. 2018).
Massachusetts	If a juvenile is under 14, a parent or interested adult must be present during the interrogation, understand the *Miranda* warnings, and have the opportunity to explain those rights to the juvenile before a waiver is made. *Commonwealth v. Philip S.*, 611 N.E.2d 226, 230–31 (Mass. 1993). Juveniles 14 and older may consult with a parent or adult but the presence of a parent or adult is not required. *Commonwealth v. McCra*, 694 N.E.2d 849, 852 (Mass. 1998).
Montana	A minor under the age of 16 can only waive his or her *Miranda* rights if a parent or guardian agrees with the waiver. MONT. CODE ANN. § 41-5-331(2)(b). If the parent or guardian disagrees, then the minor can only waive those rights with the advice of an attorney. *Id.*
New Jersey	Minors under the age of 14 can only waive their *Miranda* rights if a parent or guardian is present during the interrogation. *State ex rel. Q.N.*, 843 A.2d 1140, 1144 (N.J. 2004).
New Mexico	Statements made by a minor under the age of 13 collected during an interrogation are inadmissible. N.M. STAT. ANN. § 32A-2-14(F). There is a rebuttable presumption that statements made by a 13 or 14 year old to a "person in a position of authority" are inadmissible. *Id.*
North Carolina	If minor is under the age of 16, no in-custody admissions or confessions during an interrogation are admissible unless they were made in the presence of a parent, guardian, or attorney." N.C. GEN. STAT. § 7B-2101(b). If an attorney is not present, the parent or guardian must also be advised of the minor's rights. *Id.* A parent or guardian cannot make a waiver of rights on behalf of the minor. *Id.*
Oklahoma	If the minor is under the age of 16, evidence collected during a custodial interrogation cannot be admitted unless the interrogation is conducted in the presence of "the parents, guardian, attorney, adult relative, adult caretaker, or legal custodian. OKLA. STAT. tit. 10A § 2-2-301(A). The interested adult must also be advised of the minor's rights before questioning. *Id.*
Utah	For juveniles under the age of 14, a parent, guardian, or legal custodian must be present before the minor can waive his or her *Miranda* rights. Utah R. of Juv. P. 27A.
Washington	For minors under the age of 12, only a parent can waive the minor's rights or offer any objection

	to an interrogation. WASH. REV. CODE § 13.40.140(11).
West Virginia	Minors under the age of 14 cannot make statements to law enforcement or while in custody unless counsel is present. W. VA. CODE § 49-4-701(l). Statements made to law enforcement by minors who are 14 or 15 years of age are inadmissible unless they are made in the presence of an attorney or the presence of the minor's parent or custodian. *Id.* The parent or custodian must also be fully informed of the minor's rights and consent to the waiver as well. *Id.*

IV. Jurisdictions Requiring the Presence of a Parent, Attorney, or Other Interested Adult Until a the Juvenile Reaches the Age of Majority

Before a totality of the circumstances test is used to determine whether a *Miranda* waiver is knowing and voluntary, these states require that a parent or other interested adult, including an attorney in some instances, be present or consult with the juvenile first. Unlike the second group, these requirements apply to juveniles until they reach the age of 18.

Points of summary from Table C:

- Two states, Indiana and Vermont, both recognize that a parent's interest may be adverse to the alleged juvenile defendant. In Indiana, a parent cannot consent to a juvenile's *Miranda* waiver if they have an adverse interest. In Vermont, the adult must be interested in the welfare of the child and independent of the prosecution.
- In Indiana and Vermont, a parent or interested adult must consult with the juvenile in custody before a *Miranda* waiver is made, unlike the other states in this group where the presence of a parent or interested adult is sufficient.

TABLE C

Colorado	For statements made by a minor to be admissible, a parent, guardian, or attorney of a juvenile must be present during a custodial interrogation and be advised of the minor's *Miranda* rights. COLO. REV. STAT. § 19-2-511(1). The presence of a parent or guardian during an interrogation may be waived by both the minor and the parent or guardian in writing. *Id.* § 19-2-511(5).
Indiana	Constitutional rights of a minor may be waived only (1) by counsel if the child knowingly and voluntarily agrees to the waiver; (2) by the child's parent, guardian, or guardian ad litem if that person knowingly and voluntarily waives the child's rights, has no interest adverse to the child, meaningfully consults with the child, and the child knowingly and voluntarily waives his or her rights; or (3) by the child, without the presence of a custodial parent, guardian or guardian ad litem if the child has been emancipated. IND. CODE § 31-32-5-1.
Maine	When a juvenile is arrested, law enforcement officers cannot question a juvenile until: (1) A legal custodian of the juvenile is notified and present during the questioning; (2) A legal custodian of the juvenile is notified of the arrest and gives consent for the questioning to proceed without the custodian's presence; or (3) Law enforcement has made reasonable efforts to make contact but has failed to reach the legal custodian and seeks to question the juvenile about continuing or imminent criminal activity. ME. REV. STAT. ANN. tit. 15, § 3203-A(2-A).
North Dakota	A minor has a right to counsel when taken into custody. N.D. CENT. CODE § 27-20-26(1). This right to an attorney cannot be waived unless the minor is "represented by a parent, guardian, or custodian." *In re Z.C.B.*, 2003 ND 151, ¶ 13, 669 N.W.2d 478. Any statement obtained during an interrogation without an attorney present or a waiver made by a parent cannot be used against a child in a subsequent delinquency proceeding. N.D. CENT. CODE § 27-20-26(2).
Vermont	For a statement made by a minor in custody to be admissible and for a *Miranda* waiver to be valid: (1) the minor must have an opportunity to consult with an interested adult; (2) the adult must be interested in the welfare of the child but independent of the prosecution, and (3) the adult is also advised of the minor's rights. *In re E.T.C.*, 449 A.2d 937, 940 (Vt. 1982).

V. Utah's Rule 27A of the Utah Rules of Juvenile Procedure

While Utah is part of the large minority of states that requires the involvement or presence of a parent during a juvenile's waiver of *Miranda* rights, it is the only state where the rule requiring the presence of a parent or guardian is located in a set of court rules.[5] Not only does the rule impact the admissibility of statements, but it is also the basis for how law enforcement conducts its interrogations of juveniles. It is also the only source in Utah law that describes a parent's level of involvement during a juvenile *Miranda* waiver, only requiring the "presence" of a parent if the child is under the age of 14.[6] While Utah is not alone in only requiring a parent to be present during an interrogation, other states have adopted laws that contemplate a more active role for parents or other interested adults.[7]

It is also worth noting other states with similar juvenile *Miranda* waiver standards contemplate the possibility that a parent, guardian, or legal custodian's presence is not necessarily beneficial to a juvenile in custody. In Kansas, if a parent is the alleged victim or codefendant of the same crime, then the juvenile must consult with an attorney or a non-involved parent before making a waiver.[8] Additionally, the presence of a parent during a waiver is insufficient if the parent is not acting with the juvenile's interest in mind.[9] Likewise, in Indiana, a parent cannot have an "interest adverse to the child" before making a *Miranda* waiver on behalf of a juvenile.[10] While these are only several examples, it highlights how other states have addressed the issue of parents with an interest contrary to that of a juvenile in custody.

Utah may be part of a minority of states and jurisdiction requiring the presence of a parent or interested adult during an interrogation, the standard outlined in Rule 27A of the Utah Rules of Juvenile Procedure does not vary greatly from states with similar laws or rules. However, some of these states have addressed additional issues in statute or case law that have remained, for the most part, unmentioned in Utah statutes or case law. The most unique aspect of Utah's Rule 27A, as mentioned earlier, is that it is the only basis for the requirement that a parent must be present during a custodial interrogation, not a statute or court decision like other jurisdictions.

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[5] Utah R. Juv. P. 27A(a)(1).

[6] This is to not say that appellate courts in Utah have not already discussed the general role of parents in a totality of the circumstances test when analyzing a juvenile's *Miranda* waiver. The Utah Supreme Court in *R.G. v. State* specifically applied factors developed in Utah case law, including "[w]hether a parent, adult friend, or attorney was present," to determine if a juvenile above the age of 13 knowingly and voluntarily waived his or her *Miranda* rights. *R.G. v. State*, 2017 UT 79, ¶ 18, 416 P.3d 478. The participation of a parent in a totality of the circumstances test goes back at least to 1980 when the Utah Supreme Court first declined to adopt a standard requiring the presence of a parent or interested adult during a juvenile interrogation. *State v. Hunt*, 607 P.2d 297, 300–01 (Utah 1980).

[7] For example, in Massachusetts, a waiver made by a juvenile under the age of 14 requires that a parent or interested adult to be present during the interrogation, understand the *Miranda* warnings, and have the opportunity to explain those rights to the juvenile. *Commonwealth v. Philip S.*, 611 N.E.2d 226, 230–31 (Mass. 1993).

[8] KAN. STA. ANN. § 38-2333(b).

[9] *Matter of P.W.G.*, 426 P.3d 501, 513–14 (Kan. 2018).

[10] IND. CODE § 31-32-5-1.

TAB 6

UTAH STATE COURTS

Katie Gregory <katieg@utcourts.gov>

Statutes

1 message

Chris Yannelli <chrisy@utahcounty.gov> Mon, Dec 23, 2019 at 10:42 AM
To: Katie Gregory <katieg@utcourts.gov>

Katie, the following statutes are examples of our state's statutory scheme that provide additional protections for children under the age of 14. They may also provide enhanced penalties for violations of the law committed against children under the age of 14. It was clear the our laws treat a child under the age 14 differently than a child 14 years of age or older. Here are some laws that reference a child under the age of 14.

I supposed I should premise this by saying this relates to Rule 27A. I believe it is also relevant to question #1 in the memo you sent us on 10/22/19. The question was from The Supreme Court. For the most part the question states, "What is the basis for making 14 the age at which we will presume that a minor is sufficiently mature to knowingly and voluntarily waive her rights without a parent, guardian, or legal custodian?"

Statutes:

77-27-21.8- Sex Offender in the presence of a child. This law makes it a crime for a registered sex offender if the offender requests, invites, or solicits a child to accompany the sex offender. The statute defines a child as an individual younger that 14 years of age. It is also interesting to note that it is not a defense under this section if the defendant mistakenly believed the individual to be 14 years of age or older at the time of the offense.

76-5-404.1- Sexual abuse of a child—Aggravated sexual abuse of a child. This law makes it a crime to touch the buttocks, genitalia, breast, or to take indecent liberties with a child. Child is defined as an individual under the age of 14. Aggravated sexual abuse of a child has minimum mandatories (Prison terms are on the line Here).

76-5-402.1- Rape of a child. This law makes it a crime when a person has sexual intercourse with a child who is under the age of 14. Enough said. Again minimum mandatories apply.

76-2-301- Person under 14 years old not criminally responsible. This law states, "A person is not criminally responsible for conduct performed before he reaches the age of 14 years." This statute relates to the Serious Youth Offender Statute and the Certification Statute. For example, if a person younger than 14 commits homicide (Or something else egregious), the person can not be tried as an adult and the juvenile court will always retain jurisdiction.

76-3-203.9- Violent offense committed in the presence of a child—Aggravating factor. If a violent crime is committed in the physical presence of a child younger than 14, or that the child under 14 may see or hear a violent criminal offense is a factor that the sentencing judge or the Board of Pardons and Parole shall consider as an aggravating factor.

76-5-403.1- Sodomy on a child. A person commits sodomy upon a child if the actor engages in any sexual act (anal or oral sex) upon or with a child who is under the age of 14. Again there are minimum mandatories here.

76-9-702.5- Lewdness involving a child. This law makes it a crime to perform an act of sexual intercourse, or sodomy; or exposes his or her genitals, female breast, buttocks, anus or pubic area; or masturbates; or performs any other act of

lewdness in the presence of a child who is under 14 years of age.

76-5-406- Sexual offense against the victim without the consent of the victim—Circumstances. See (2)(i)- Any sexual contact with a person younger than 14 is without consent.

30-3-10- Custody of a child—Custody factors. See (5)(b)(ii)- In determining any form of custody and parent-time the court shall consider the best interest of the child and may consider other factors including the desires of a child 14 years of age or older. A child of 14 or older shall be given added weight.

76-5-409- Corroboration of admission by a child's statement. This law states, "A child's statement indicating in any manner the occurrence of the sexual offense involving the child is sufficient corroboration of the admission or the confession regardless of whether or not the child is available to testify regarding the offense" For purposes of this section a child is a person under the age of 14.

53G-6-202- Compulsory Education. Parents of a school aged minor under the age of 14 shall enroll and send the school aged minor to a public or regularly established private school. If you are 14 or over you better get there yourself…..the law doesn't say this, I just threw it in there…….

Thanks.

-Chris

TAB 7

Name

Address

City, State, Zip

Phone

Email

In the Juvenile Court of Utah

_____ Judicial District _____ County

Court Address _____

State of Utah, in the interest of: Name(s) and Date(s) of Birth A child(ren) under the age of 18 years.	**Indian Child Welfare Act – Motion to Intervene** _____ Case Number _____ Judge

Pursuant to Indian Child Welfare Act, 25 U.S.C. § 1911, the _____ federally recognized tribe motions to intervene in this proceeding as the Indian Tribe of the child(ren) named above.

_____
Attorney/Authorized Representative
Name
[Bar No.]
Address
Telephone Number
[E-mail Address]

Draft: January 3, 2020

I declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signed at _____ (city, and state or country).

_____ Signature ► _____

Date Printed Name _____

Certificate of Service

I certify that I filed with the court and am serving a copy of this Motion on the following people.

Person's Name	Service Method	Service Address	Service Date
	[ ] Mail [ ] Hand Delivery [ ] Email [ ] Left at business (With person in charge or in receptacle for deliveries.) [ ] Left at home (With person of suitable age and discretion residing there.)		

Certificate of Service

I certify that I filed with the court and am serving a copy of this Motion on the following people.

Person's Name	Service Method	Service Address	Service Date
	[ ] Mail [ ] Hand Delivery [ ] Email [ ] Left at business (With person in charge or in receptacle for deliveries.) [ ] Left at home (With person of suitable age and discretion residing there.)		
	[ ] Mail [ ] Hand Delivery [ ] Email [ ] Left at business (With person in charge or in receptacle for deliveries.) [ ] Left at home (With person of suitable age and discretion residing there.)		
	[ ] Mail [ ] Hand Delivery [ ] Email [ ] Left at business (With person in charge or in receptacle for deliveries.) [ ] Left at home (With person of suitable age and discretion residing there.)		
	[ ] Mail [ ] Hand Delivery [ ] Email [ ] Left at business (With person in charge or in receptacle for deliveries.) [ ] Left at home (With person of suitable age and discretion residing there.)		

______________________________ Signature ► ______________________________

Date

Printed Name ______________________________

Name

Address

City, State, Zip

Phone

Email

In the Juvenile Court of Utah

_____ Judicial District _____ County

Court Address _____

State of Utah, in the interest of: Name(s) and Date(s) of Birth A child(ren) under the age of 18 years.	**Indian Child Welfare Act – Order Granting Motion to Intervene** _____ Case Number _____ Judge

The court grants the Motion to Intervene filed by _____ tribe pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1911.

_____ Signature ► _____

Date

Judge _____

Certificate of Service

I certify that I filed with the court and am serving a copy of this Order on Motion to Intervene on the following people.

Draft: January 3, 2020

Person's Name	Service Method	Service Address	Service Date
	[ ] Mail [ ] Hand Delivery [ ] Email [ ] Left at business (With person in charge or in receptacle for deliveries.) [ ] Left at home (With person of suitable age and discretion residing there.)		
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	[ ] Mail [ ] Hand Delivery [ ] Email [ ] Left at business (With person in charge or in receptacle for deliveries.) [ ] Left at home (With person of suitable age and discretion residing there.)		

_______________________ Signature ► _______________________

Date

Printed Name _______________________

Name

Address

City, State, Zip

Phone

Email

In the Juvenile Court of Utah

_____ Judicial District _____ County

Court Address _____

State of Utah, in the interest of: Name(s) and Date of Birth A child(ren) under the age of 18 years.	**Notice of Designated Tribal Representative in a Court Proceeding Involving an Indian Child** _____ Case Number(s) _____ Judge

I have or my department/office,_____, has been designated by the (*name of the tribe*): _____, which is a federally recognized Indian tribe. And here is the contact information:

Name:	
Title:	
Address:	
City, State & Zip Code	
Telephone:	Email:

I declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signed at _____ (city, and state or country).

_____ Signature ► _____

Date

Printed Name _____

Draft: January 3, 2020

Certificate of Service

I certify that I filed with the court and am serving a copy of this Notice of Designated Tribal Representative in a Court Proceeding Involving an Indian Child on the following people.

Person's Name	Service Method	Service Address	Service Date
	[ ] Mail [ ] Hand Delivery [ ] Email [ ] Left at business (With person in charge or in receptacle for deliveries.) [ ] Left at home (With person of suitable age and discretion residing there.)		
	[ ] Mail [ ] Hand Delivery [ ] Email [ ] Left at business (With person in charge or in receptacle for deliveries.) [ ] Left at home (With person of suitable age and discretion residing there.)		
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	[ ] Mail [ ] Hand Delivery [ ] Email [ ] Left at business (With person in charge or in receptacle for deliveries.) [ ] Left at home (With person of suitable age and discretion residing there.)		

_______________________________ Signature ► _______________________________

Date

Printed Name _______________________________

TAB 8

Rule 50. Presence at hearings.

(a) In abuse, neglect, and dependency cases the court shall admit persons as provided by Utah Code Section 78A-6-114. If a motion is made to deny any person access to any part of a hearing, the parties to the hearing, including the person challenged, may address the issue by proffer, but are not entitled to an evidentiary hearing. A person denied access to a proceeding may petition the Utah Court of Appeals under Utah Rule of Appellate Procedure 19. Proceedings shall not be stayed pending appeal. As provided for by Utah Code Section 78A-6-115, a person may file a petition requesting a copy of a record of the proceedings, setting forth the reasons for the request. Upon a finding of good cause by the Court and payment of a fee, the person shall receive an audio recording of a proceeding. The Court may place under seal information received in an open proceeding.

(b) In delinquency cases the court shall admit all persons who have a direct interest in the case and may admit persons requested by the parent or legal guardian to be present.

(c) In delinquency cases in which the minor charged is 14 years of age or older, the court shall admit any person unless the hearing is closed by the court upon findings on the record for good cause if:

(c)(1) the minor has been charged with an offense which would be a felony if committed by an adult; or

(c)(2) the minor is charged with an offense that would be a class A or B misdemeanor if committed by an adult and the minor has been previously charged with an offense which would be a misdemeanor or felony if committed by an adult.

(d) If any person, after having been warned, engages in conduct which disrupts the court, the person may be excluded from the courtroom. Any exclusion of a person who has the right to attend a hearing shall be noted on the record and the reasons for the exclusion given. Counsel for the excluded person has the right to remain and participate in the hearing.

(e) Videotaping, photographing or recording court proceedings shall be as authorized by the Code of Judicial Administration.

(f) In proceedings subject to the Indian Child Welfare Act of 1978, United State Code, title 25, sections 1901 to 1963:

(f)(1) Official tribal representatives from the Indian child's tribe have the right to participate in any court proceeding. The designated representative should provide his or her contact information either in writing or via email to the court.

(f)(2) The Indian child's tribe is not required to formally intervene in the proceeding unless the tribe seeks affirmative relief from the court.

NOTE – other states require the tribe to file written authorization of their designated attorney after they intervene. Here is language if that should be included, too.

> *"An Indian tribe that has intervened may be represented by a non-attorney designated by the Indian tribe. The tribe must file a written authorization for representation by the designated non-attorney before the non-attorney may represent the tribe. If the tribe changes its designated representative or if the representative withdraws, the tribe must file a written substitution of representation or withdrawal."*