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

Meeting Agenda

David W. Fureigh, Chair

Location: Webex Meeting

Date: June 3, 2022

Time: 12:00 pm – 2:00 pm

Action: Welcome and approval of May 6, 2022, meeting minutes	Tab 1	David Fureigh
Discussion & Action: Rule 17. The petition. • *Comment period closed May 7, 2022* ○ *5 comments received*	Tab 2	All
Discussion: S.B. 161 - Child Welfare Appeals Amendments (2022) • *Consider if changes to Juvenile Rules 52 and 53 need to be made with regards to the appointment of qualified appellate counsel during a child welfare appeal.*	Tab 3	All
Discussion: Update regarding 2022 Legislative Bills Possibly Requiring Rule Changes • SB 85: Protective Order and Stalking Injunction Expungements – Jordan Putnam • HB 299: Juvenile Justice Changes & Juvenile Rules 10 and 30 – Chris Yanelli. *Mr. Yannelli has responded and notes amendments are not needed.* • HB 277: Juvenile Competency Amendments – Sophia Moore. *Ms. Moore has responded and notes amendments are not needed.* • Juvenile Rules 27A and 51 – Bill Russell reviewing to see if any changes need to be made.		All

Discussion: Rule 22. Initial appearance and preliminary examination in cases under Utah Code section 80-6-503. • *Discussion regarding possibly conflicting language in paragraph g.* • *Attached previous versions of Rule 22 and memo from Meg Sternitzky, Juvenile Court Law Clerk, explaining issues and providing proposed language.* • *Rule 22 amended in 2020 due to HB 384 Juvenile Justice Amendments and previous Utah Code sections 78A-6-702 and 78A-6-703 merged into Utah Code section 78A-6-703.3. Subsequently, Utah Code section 78A-6-703.3 was renumbered to 80-6-503 in 2021 due to first juvenile code recodification.*	Tab 4	Meg Sternitzky
Discussion & Action: Rule 6. Admission to detention without court order. • *Petition from Judge Steven Beck to amend Rule 6.*	Tab 5	All
Discussion: Future meetings: In-person, Webex, or Hybrid		All
Discussion: Old business or new business		All

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

Meeting Schedule:

August 5, 2022	September 2, 2022	October 7, 2022
November 4, 2022	December 2, 2022	

TAB 1

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

Draft Meeting Minutes

David W. Fureigh, Chair

Location: Webex Meeting

Date: May 6, 2022

Time: 12:00 p.m. – 2:00 p.m.

Attendees: David Fureigh, Chair Arek Butler Janette White Judge Paul Dame Judge Debra Jensen Michelle Jeffs Matthew Johnson Mikelle Ostler William Russell Sophia Moore	**Excused Members**: Chris Yanelli Kristin Fadel Jordan Putnam Carol Verdoia, Emeritus Member **Guests:** Jacqueline Carlton, Office of Legislative Research and General Counsel Judge Steven Beck
Staff: Raymundo Gallardo Kiley Tilby, Recording Secretary Meg Sternitzky, Juvenile Court Law Clerk Savannah Schoon, Juvenile Court Law Clerk	

1. **Welcome and approval of the April 1, 2022 Meeting Minutes:** (David Fureigh)

   David Fureigh welcomed everyone to the meeting and asked for approval of the April 1, 2022 Minutes. William Russell indicates on page three of the minutes, it should state "implementation" instead of "implantation." Mr. Russell moves to approve the April 1, 2022 Minutes with that amendment. Judge Dame seconded the motion, and it passed unanimously.

2. **Discussion – Staff Change and Appointing Vice Chair for the Committee:** (David Fureigh & Raymundo Gallardo)

   David Fureigh indicates Raymundo Gallardo is taking Bridget's place and is now assigned to the committee and welcomes him. Mr. Gallardo introduced himself to the committee. Mr. Gallardo indicated the juvenile court law clerks have agreed to continue to be part of the committee and provide support to research any legal issues or matters that are raised and bring information to the committee.

   David Fureigh states the committee is very busy and the workload has increased. Mr. Fureigh has been informed most of the other committees have a Vice Chair and Mr. Fureigh believes the Vice Chair will retain their ability to vote. The Vice Chair will assist in Mr. Fureigh's absence, writing letters, and learn the responsibilities of the Chair. The Vice Chair will also likely be the next Chair when Mr. Fureigh's term is over.

   Mr. Fureigh explains to the committee that the Vice Chair would be appointed by the Supreme Court and he would submit recommendations to the Supreme Court for the Vice Chair. If any of the committee members are interested, or would like to recommend someone for Vice Chair, the member should send Mr. Fureigh and Mr. Gallardo a message. Mr. Fureigh will send an e-mail to all committee members letting them know about the opportunity.

   The committee discussed the time commitment that would be required of the Vice Chair, and whether a member who was close to the end of their term would be prohibited from the position. Mr. Fureigh believes the Vice Chair appointment would extend the member's term.

3. **Discussion & Action— Rule 7: Warrants; and Rule 60: Judicial Bypass Procedure to Authorize Minor Consent to an Abortion:** (David Fureigh)

   Mr. Fureigh indicates there were four rules that went out for comment that need to be discussed. Judge Beck submitted a comment regarding Rule 25 and Rule 25A and he expressed a desire to be here again. The committee is going to wait until he is able to join.

   In regard to Rule 7: Warrants, the rule was amended to include a provision that would allow DCFS to file an ex parte motion to ask the court to vacate a warrant

they had submitted for a runaway youth in state custody prior to the warrant being executed. After Rule 7 went out for the comment period, there was a second recodification made as the legislature recodified all the DCFS statutes. The only proposed changes made were to the citations and Mr. Fureigh states he does not believe it will need to go out for public comment again. Mr. Fureigh indicates if everyone agrees to the citations, we need a motion to submit it to the Supreme Court for final publication.

Judge Dame inquires regarding the time frame that Rule 7 would go into effect to ensure it is consistent with the recodification bill that does not go into effect until September 2022. Mr. Fureigh responds and indicates the committee can ask the Supreme Court to make it effective as of September 2022. Judge Dame also indicates ex parte is italicized and it is not italicized in other rules and suggests it be changed. Mr. Fureigh does not believe that change would need to be sent for public comment again. Judge Dame then makes a motion to submit Rule 7 to the Supreme Court for final publication. Sophia Moore seconded the motion and it passed unanimously.

As it relates to Rule 60: Judicial Bypass Procedure to Authorize Minor Consent to an Abortion, Rule 60 was amended to change the time frame when the Court holds the Petition. The committee had representatives from the ACLU and Planned Parenthood attend a meeting a few months ago and they expressed their concern regarding the proposed amendment to the rule. The committee came up with a compromise and further amended the rule. The Supreme Court approved the proposed amendment. Mr. Fureigh represents there was one dissenting vote, but it was passed by majority and Rule 60 went out for public comment. The Supreme Court asked Mr. Fureigh to reach out to the representatives of ACLU and Planned Parenthood and invite them to make comments to the final amendments to the rule. Mr. Fureigh received a response from Valentina De Fex from the ACLU who submitted a letter stating they were not going to take a position on the current amended rule.

Mr. Fureigh indicates there needs to be a motion to submit Rule 60 to the Supreme Court to approve and publish. Matthew Johnson makes the motion and William Russell seconded the motion and it passed unanimously.

4. **Discussion & Action—Rule 25: Pleas; 25A: Withdrawal of Plea:** (All)

Mr. Fureigh indicates Rule 25 and Rule 25A went out for public comment at different times. Judge Beck submitted a comment on both rules and appeared at the last committee meeting to discuss his comment and opposed the repeal of Rule 25A.

Mr. Fureigh states he is not a voting member but can express his opinion on the issues. Mr. Fureigh has reviewed both comments, the rules, and the proposed amendments and indicates he believes the controversy is what is considered procedure and what is considered substantive. When Mr. Fureigh is determining what is procedure versus substantive, he will look at who the rule or statute is directed towards. If it is directed towards individuals, Mr. Fureigh labels it as substantive. If it is directed towards the Court, it is labeled as procedural. Mr. Fureigh indicates there is often a need to blend both procedure and statute to clarify and give understanding to the statute or rule. Mr. Fureigh indicates the committee needs to decide what their role is with regard to this issue and believes the committee's role should be to maintain the rules that address procedure, even though statute contains procedure and agrees with Judge Beck in this regard. Mr. Fureigh states it is important to maintain procedure in rules even though the legislature will put procedure in statute.

In regard to Rule 25 and Rule 25A, Mr. Fureigh believes what pleas an individual has a right to enter is substantive and belongs in the statute. Mr. Fureigh also believes how and when the court handles those pleas is procedural and belongs in the rule. Mr. Fureigh indicates he supports the proposed amendments in Rule 25. Mr. Fureigh also states he agrees with Judge Beck, in part, with regard to Rule 25A and does not believe section (b)(2) should be removed even though it is included in the statute by the legislature.

The committee then heard from Judge Beck. Judge Beck stated he made his comments to Rule 25 and Rule 25A to bring the issue to the attention of the committee and agrees with Mr. Fureigh's analysis. Judge Dame also agrees with Mr. Fureigh's analysis.

William Russell states he was persuaded by Judge Beck's initial comments and by the discussion in the last committee meeting. Mr. Russell indicates he feels strongly that Rule 25A should be kept largely as-is. Mr. Russell indicates Rule 25A is a blend of substantive and procedural matter because it allows an accused child to withdraw the plea. It also acknowledges rights to a minor to withdraw a plea, but then describes the process as well. Mr. Russell proposes to keep Rule 25A as a Supreme Court promulgated rule and to have the language of Rule 25A parrot the statute in Utah Code 80-6-306. Mr. Russell also proposes language be added to Rule 25 to include "as provided by these rules or by statute."

Mr. Russell makes a motion regarding Rule 25 to amend the rule to state, "A minor may tender a denial, an admission, or a plea of no contest pursuant to Utah Code Section 80-6-306 and as provided by these rules." Judge Dame expressed concern about the broad language and would like it to reference "this rule" instead of the rules broadly. Matthew Johnson agrees.

Mr. Russell motions the committee to adopt the amendment and submit it for approval and publication to the Supreme Court, unless the Supreme Court believes it needs to go back out for public comment. Sophia Moore seconded the motion and it passed unanimously.

The committee then discussed Rule 25A and Mr. Russell's proposal that instead of repealing Rule 25A altogether, Rule 25A would be changed to mirror the statute in Utah Code 80-6-306. Matthew Johnson agrees. Judge Dame stated his main concern was that the committee was not removing procedural items from the rules, even if it was included in the statute.

The committee discussed leaving Rule 25A(b)(2) and change it to mirror the language in the statute. There was some discussion whether the committee needed to make any additions to the statutory language regarding a delayed admission. Mr. Fureigh also suggested using the word "unless" instead of "until" as a change from the statutory language. Judge Dame agrees.

The committee proposed removing the language "including a plea held in abeyance" from Rule 25A(b)(2), and Rule 25A(a) and 25A(b)(1) would remain repealed. Sophia Moore proposed including a reference to Utah Code 80-6-306 in Rule 25A as well so practitioners can reference the statute. Other committee members agree.

Rule 25A would read as follows, "A request to withdraw an admission or a plea of no contest made pursuant to Utah Code Section 80-6-306, shall be made within 30 days after entering an admission or a plea of no contest, even if the court has imposed disposition. If the Court has not imposed dispositional orders then such order shall not be announced unless the motion to withdraw is denied."

Mr. Russell motions the committee to approve the further amendments as discussed and to seek permission from the Supreme Court to be sent out for another comment period. Judge Dame seconded the motion and it passed unanimously.

5. **Discussion & Action – Rule 12: Admission to Shelter Care; Rule 13: Shelter Hearings; and Rule 14: Reception of Referral; Preliminary Determination:** (Matthew Johnson & Janette White)

Mr. Fureigh indicates the only changes that are being proposed to Rule 12, Rule 13 and Rule 14 are the changes to reflect the new recodification of the statute. Janette White indicates Rule 12 was discussed during the last committee meeting whether it was necessary if it merely referenced the statute. Judge Dame indicates Rule 12 is a courtesy to those practitioners who are not very familiar with practice in juvenile court.

Judge Dame states Utah Code was stricken in Rule 14 and should stay in. Mr. Fureigh agrees. Matthew Johnson motions to send all three rules to the Supreme Court, to be effective September 1, 2022. Janette White seconded the motion and it passed unanimously.

6. **Old business/new business:** (All)

The items on the agenda that were not able to be addressed will be added to the agenda for June. The Petition regarding Rule 6 will also be added to the agenda.

Matthew Johnson indicates he will not be present at the next committee meeting. Judge Jensen asks if the committee meeting in June will continue to be held virtually. Mr. Fureigh indicates it will be and the committee discussed doing a hybrid version. This discussion will be added to the agenda next month to discuss how meetings will be handled in the future.

The meeting adjourned at 2:00 PM. The next meeting will be held on June 3, 2022 at 12:00 PM via Webex.

TAB 2

Rule 17. The petition.

(a) **Delinquency cases**.

(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.

(2) For all non-felony-level offenses, the petition shall state the specific condition that allows the filing of the petition pursuant to Utah Code section 80-6-304.

(3) The petition shall be verified and filed by the prosecuting attorney upon information and belief.

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

(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.

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

(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**.

(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.

(2) Petitions for adjudication expungements must meet all of the criteria of Utah Code section 80-6-1004 and shall state: the name, age, and residence of the 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.

(3) Petitions for expungement of nonjudicial adjustments must meet all of the criteria of Utah Code section 80-6-1005 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.

(4) Petitions for vacatur must meet all of the criteria of Utah Code section 80-6-1002 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.

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

Rule 17. The petition.

(a) **Delinquency cases**.

(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.

(2) For all non-felony-level offenses, the petition shall state the specific condition that allows the filing of the petition pursuant to Utah Code section 80-6-304.

(3) The petition shall be verified and filed by the prosecuting attorney upon information and belief.

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

(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.

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

(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**.

(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.

(2) Petitions for adjudication expungements must meet all of the criteria of Utah Code section 80-6-1004 and shall state: the name, age, and residence of the 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.

(3) Petitions for expungement of nonjudicial adjustments must meet all of the criteria of Utah Code section 80-6-1005 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.

(4) Petitions for vacatur must meet all of the criteria of Utah Code section 80-6-1002 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.

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

UTAH COURT RULES – PUBLISHED FOR COMMENT

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

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

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

Posted: March 23, 2022

Utah Courts

Rules of Juvenile Procedure – Comment Period Closes – May 7, 2022

URJP017. The petition. Amends. Adds requirement for delinquency petitions regarding non-felony-level offenses to include the specific condition or conditions that allows the prosecuting attorney to file pursuant to Utah Code section 80-6-304(11).

This entry was posted in -Rules of Juvenile Procedure, URJP017.

« Rules Governing the Utah State Bar – Comment Period Closes May 7, 2022

Rules of Civil Procedure – Comment Period Closed April 30, 2022 »

UTAH COURTS

View more posts from this author

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

CATEGORIES

5 thoughts on "Rules of Juvenile Procedure – Comment Period Closes – May 7, 2022"

Paul Wake
March 23, 2022 at 12:04 pm

Bloody hell. Could we maybe add some more to this, like requiring an official copy of the minor's birth certificate to be attached to the petition, and a certified copy of all relevant juvenile court records, and a video of the PO making efforts to NJ the case (along with a notarized copy of the videographer attesting to the accuracy of the video)?

Reply

Stephen Starr
March 23, 2022 at 1:11 pm

My understanding of why this amendment is proposed is so that a judge can know why the juvenile's charges are in court and not being handled non-judicially. First, this can be answered simply by the judge asking the probation officer at the start of the hearing why these charges are before the court. It happens all the time and it only take a second. Second, this would require a lot of extra work on the prosecutor's part, at least here in Weber County. In Weber County, the prosecutor screens EVERY juvenile case for charges. We then draft a petition and a petition approval. The case is then sent to the probation officer who reviews it. If the case goes NJ, the prosecutor does not hear about it again. If the case is to be petitioned, the PO lets the prosecutor know and we file the petition. This new change would require the prosecutor to spend additional time changing the petition to include the new information. This would be an immense waste of time on our part. The system works well the way it is. There is no need to complicate the process by adding this superfluous requirement.

Reply

Angela Adams
March 24, 2022 at 9:47 pm

- -Rules of Appellate Procedure
- -Rules of Civil Procedure
- -Rules of Criminal Procedure
- -Rules of Evidence
- -Rules of Juvenile Procedure
- -Rules of Professional Conduct
- -Rules of Professional Practice
- -Rules of Small Claims Procedure
- ADR101
- ADR103
- Appendix B
- Appendix F
- CJA Appendix F
- CJA01-0201
- CJA01-0204
- CJA01-0205
- CJA01-0205
- CJA01-0303
- CJA01-0304
- CJA01-0305
- CJA010-01-0404
- CJA010-1-020
- CJA02-0101
- CJA02-0103
- CJA02-0104
- CJA02-0106.01
- CJA02-0106.02
- CJA02-0106.03
- CJA02-0106.04
- CJA02-0106.05
- CJA02-0204
- CJA02-0206
- CJA02-0208
- CJA02-0208
- CJA02-0211
- CJA02-0212
- CJA03-0101
- CJA03-0102
- CJA03-0103
- CJA03-0103
- CJA03-0104
- CJA03-0105
- CJA03-0106
- CJA03-0106
- CJA03-0107
- CJA03-0108
- CJA03-0109
- CJA03-0111
- CJA03-0111.01
- CJA03-0111.02

My thought was that it is a good idea because I often have defense attorneys, while resolving cases, asking why the case was petitioned. I often don't remember off the top of my head so have had to create a place in my file where we note the reason for the petition, i.e. failed NJ, declined NJ, inability to conduct the PI, etc. Also, judges ask about it. My initial reaction to this proposal was that it would be good to just include one line at the bottom of the petition to address that, early on, at the time when it's being petitioned, and is in my fresh in my mind. The defense attorney knows and we don't waste time with emails and questions and them not getting the straight answer from their client about it.

Unlike Stephen's method, in Washington County, I don't screen every case but even as we move toward ultimately doing that, we will not be drafting a petition for a charges unless we are actually going to file it. So, we would not have to go back and change the petition as we would only be doing it once.
Also, because the petitions are created in CARE with templates, and then tweaked as necessary by prosectors, I would think that the AOC could add this to the template of a petition and just create a drop down box to choose the condition that applies, just like other choices that are made when drafting a petiton in CARE.

I think this could be a check and balance on petitions not being filed illegally when a condition is not present, not because anyone means to do that, but because human error could occur.

Reply

Stephen Starr
March 28, 2022 at 12:01 pm

If this amendment passes, perhaps it can be an optional requirement where if this new information is not included on the petition, it won't make the petition defective. Again, it is my opinion that it will require more work on someone's part for very little benefit.

Reply

Steven Beck
March 29, 2022 at 3:45 pm

"Because the juvenile courts are creatures of statute, they are courts of limited jurisdiction" (In re B.B., 2004 UT 39, ¶19). "'It is axiomatic that a party wishing to bring a matter before a tribunal with limited subject matter jurisdiction must present sufficient facts to invoke the limited jurisdiction of that tribunal'" (Olson v. Utah Dept. of Health, 2009 UT App 303, ¶13

- CJA03-0111.03
- CJA03-0111.04
- CJA03-0111.05
- CJA03-0111.06
- CJA03-0112
- CJA03-0113
- CJA03-0114
- CJA03-0115
- CJA03-0116
- CJA03-0117
- CJA03-0201
- CJA03-0201.02
- CJA03-0202
- CJA03-0301
- CJA03-0301.01
- CJA03-0302
- CJA03-0303
- CJA03-0304
- CJA03-0304.01
- CJA03-0305
- CJA03-0306
- CJA03-0306.01
- CJA03-0306.02
- CJA03-0306.03
- CJA03-0306.04
- CJA03-0306.05
- CJA03-0401
- CJA03-0402
- CJA03-0403
- CJA03-0404
- CJA03-0406
- CJA03-0407
- CJA03-0408
- CJA03-0410
- CJA03-0411
- CJA03-0412
- CJA03-0413
- CJA03-0414
- CJA03-0415
- CJA03-0418
- CJA03-0419
- CJA03-0420
- CJA03-0421
- CJA03-0501
- CJA03-0501
- CJA04-0103
- CJA04-0106
- CJA04-0110
- CJA04-0201
- CJA04-0202
- CJA04-0202.01
- CJA04-0202.02
- CJA04-0202.03
- CJA04-0202.04
- CJA04-0202.05
- CJA04-0202.06
- CJA04-0202.07

quoting Lopez v. Career Serv. Review Bd., 834 P.2d 568, 573 (Utah App. 1992).

Utah Code Ann. §80-6-304(11) further restricts the jurisdiction of the juvenile court. The proposed amendment to Rule 17 of the Utah Rules of Juvenile Procedure does not impose an additional burden upon the State. Rather, it merely requires the State to "present sufficient facts to invoke the limited jurisdiction" of the juvenile court – a burden it's already required to meet. As such, I strongly support the proposed amendment.

Reply

Leave a Reply

Your email address will not be published. Required fields are marked *

Comment *

Name *

Email *

Website

POST COMMENT

- CJA04-0202.08
- CJA04-0202.09
- CJA04-0202.10
- CJA04-0202.12
- CJA04-0203
- CJA04-0205
- CJA04-0206
- CJA04-0208
- CJA04-0302
- CJA04-0401
- CJA04-0401.01
- CJA04-0401.02
- CJA04-0401.03
- CJA04-0402
- CJA04-0403
- CJA04-0404
- CJA04-0405
- CJA04-0408
- CJA04-0408.01
- CJA04-0409
- CJA04-0410
- CJA04-0411
- CJA04-0501
- CJA04-0502
- CJA04-0503
- CJA04-0508
- CJA04-0509
- CJA04-0510
- CJA04-0510.01
- CJA04-0510.02
- CJA04-0510.03
- CJA04-0510.04
- CJA04-0510.05
- CJA04-0510.06
- CJA04-0601
- CJA04-0602
- CJA04-0603
- CJA04-0609
- CJA04-0610
- CJA04-0613
- CJA04-0701
- CJA04-0702
- CJA04-0704
- CJA04-0801
- CJA04-0901
- CJA04-0902
- CJA04-0903
- CJA04-0904
- CJA04-0905
- CJA04-0906
- CJA04-0907
- CJA05-0101
- CJA05-201
- CJA06-0101
- CJA06-0102
- CJA06-0104
- CJA06-0303

TAB 3

CHILD WELFARE APPEALS AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Jefferson S. Burton

LONG TITLE

General Description:

This bill addresses an appeal from a juvenile court order related to adoption or child welfare.

Highlighted Provisions:

This bill:

- removes provisions requiring a party in an adoption or child welfare-related case to keep other parties and the appellate court informed of the party's whereabouts;
- requires a party to an adoption or child welfare-related case to keep the party's counsel informed of the party's whereabouts after a juvenile court disposition;
- removes the requirement that certain claims be made in an adoption or child welfare-related appeal;
- modifies the appeals information a juvenile court is required to provide a party at the conclusion of an adoption or child welfare-related case; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78A-6-359, as renumbered and amended by Laws of Utah 2021, Chapter 261

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

Section 1. Section **78A-6-359** is amended to read:

78A-6-359. Appeals.

(1) An appeal to the Court of Appeals may be taken from any order, decree, or judgment of the juvenile court.

(2) (a) An appeal of right from an order, decree, or judgment by a juvenile court related to a proceeding under Title 78B, Chapter 6, Part 1, Utah Adoption Act, Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, and Title 80, Chapter 4, Termination and Restoration of Parental Rights, shall be filed within 15 days after the day on which the juvenile court enters the order, decree, or judgment.

(b) A notice of appeal must be signed by appellant's counsel, if any, and by appellant, unless the appellant is a child or state agency.

(c) If an appellant fails to timely sign a notice of appeal, the appeal shall be dismissed.

(3) An order for a disposition from the juvenile court shall include the following information:

(a) notice that the right to appeal described in Subsection (2)(a) is time sensitive and must be taken within 15 days after the day on which the juvenile court enters the order, decree, or judgment appealed from;

(b) the right to appeal within the specified time limits;

(c) the need for the signature of the parties on a notice of appeal in an appeal described in Subsection (2)(a); and

(d) the need for [~~parties~~] each party to maintain regular contact with the [~~parties'~~] the party's counsel and to keep [~~all other parties and the appellate court~~] the party's counsel informed of the [~~parties'~~] party's whereabouts.

(4) If [~~the parties are~~] a party is not present in the courtroom, the juvenile court shall provide a statement containing the information provided in Subsection (3) to the [~~parties~~] party at the [~~parties'~~] party's last known address.

(5) [~~(a)~~] The juvenile court shall inform [~~the parties' counsel~~] each party's counsel at

the conclusion of the proceedings that, if an appeal is filed, [~~the parties' counsel~~] appellate counsel must represent the [~~parties~~] party throughout the appellate process [~~unless relieved of that obligation by the juvenile court upon a showing of extraordinary circumstances~~] unless appellate counsel is not appointed under the Utah Rules of Appellate Procedure, Rule 55.

[~~(b) (i) Until the petition on appeal is filed, claims of ineffective assistance of counsel do not constitute extraordinary circumstances.~~]

[~~(ii) If a claim is raised by trial counsel or a party, the claim must be included in the petition on appeal.~~]

(6) During the pendency of an appeal under Subsection (2)(a), [~~parties~~] a party shall maintain regular contact with the [~~parties'~~] party's appellate counsel, if any, and keep [~~all other parties and the appellate court~~] the party's appellate counsel informed of the [~~parties'~~] party's whereabouts.

(7) (a) In all other appeals of right, the appeal shall be taken within 30 days after the day on which the juvenile court enters the order, decree, or judgment.

(b) A notice of appeal under Subsection (7)(a) must be signed by appellant's counsel, if any, or by appellant.

(8) The attorney general shall represent the state in all appeals under this chapter and Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, Title 80, Chapter 4, Termination and Restoration of Parental Rights, and Title 80, Chapter 6, Juvenile Justice.

(9) Unless the juvenile court stays the juvenile court's order, the pendency of an appeal does not stay the order or decree appealed from in a minor's case, unless otherwise ordered by the Court of Appeals, if suitable provision for the care and custody of the minor involved is made pending the appeal.

(10) Access to the record on appeal is governed by Title 63G, Chapter 2, Government Records Access and Management Act.

Rule 52. Appeals.

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

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

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

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

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

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

Rule 53. Appearance and withdrawal of counsel.

(a) Appearance. An attorney shall appear in proceedings by filing a written notice of appearance with the court or by appearing personally at a court hearing and advising the court that the attorney is representing a party. Once an attorney has entered an appearance in a proceeding, the attorney shall receive copies of all notices served on the parties.

(b) Withdrawal.

(1) Retained Counsel. Consistent with the Rules of Professional Conduct, a retained attorney may withdraw as counsel of record unless: 1) withdrawal will result in a delay of trial; or 2) a final appealable order has been entered and the time period for a notice of appeal or post-judgment motion on such order has not expired. In such circumstances, a retained attorney may not withdraw except upon motion and order of the court. Retained counsel shall file a notice of withdrawal including the address of the counsel's client.

(2) Court-appointed counsel. Court-appointed counsel may not withdraw as counsel of record except upon motion and order of the court. If the court grants appointed counsel's motion to withdraw, the court shall consider the appointment of new counsel.

(c) Motions to Withdraw.

(1) A motion to withdraw shall be made either in writing or orally before the court at a hearing. The motion shall include the following:

(i) A certification from counsel that the represented party has been informed of the motion to withdraw and their right to counsel; and

(ii) A certification from counsel that the represented party has been informed of their rights to appeal, and the availability of post judgment motions and motion to stay pending appeal; or

(iii) The efforts counsel has made to inform the represented party of subsections (c)(1)(i) and (c)(1)(ii).

(2) Whenever possible, the court shall inquire of the represented party's knowledge and understanding of the motion to withdraw, right to counsel, right to appeal, availability of post judgment motions and motion to stay pending appeal.

(3) A guardian ad litem may not withdraw except upon order of the court.

(d) Parties must submit a notice of substitution of counsel at least seven days prior to the next scheduled hearing date unless otherwise allowed by the court.

TAB 4

LAW CLERK MEMORANDUM

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

FROM: Meg Sternitzky, Juvenile Law Clerk & Daniel Meza Rincón, Assistant Juvenile Court Administrator

RE: Utah Rule of Juvenile Procedure 22(g)

DATE: April 25, 2022

ISSUE:

There is a conflict in Utah Rule of Juvenile Procedure 22(g) on when the court must hold a preliminary examination. Yet, based on a prior version of this rule, the different preliminary examination timelines are meant to distinguish between 16–17-year-olds and 14–15-year-olds. The rule should be amended to reestablish this distinction.

ANALYSIS:

Until October 31, 2020, Utah Rule of Juvenile Procedure 22(g) (previously Utah Rule of Juvenile Procedure 22(f)) distinguished between 16–17-year-olds and 14–15-year-olds in the scheduling of a preliminary examination. *See* Utah R. Juv. P. 22(f)(1),(2) (West 2020). Under the prior version of the rule, the 10-day timeline for preliminary examinations applied to an information filed under section 78A-6-702.[1] This was the serious youth offender statute, which applied to minors 16 years of age or older charged with one of the listed felony offenses in that section. The 30-day timeline applied to an information filed under section 78A-6-703, which were certification cases involving minors 14 years of age or older for a felony offense. The rule lost this distinction when sections 78A-6-702 and 78A-6-703 merged into Utah Code section 78A-6-703.3 and Rule 22(f) was revised in June 2020.[2] The current version of the rule should be amended to reestablish this distinction because there

[1] SUPREME CT.'S ADVISORY COMM. ON THE RULES OF JUV. P., *Agenda: Tab 4* (June 5, 2020), https://www.utcourts.gov/utc/juvenile-procedure/wp-content/uploads/sites/44/2020/06/Agenda-Packet-06.05.2020.pdf.

[2] *See id.*

is a conflict in the rule on when the court must hold the preliminary examination without it.

Currently, the second sentence of Utah Rule of Juvenile Procedure 22(g) states that "[t]he 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 80-6-503." Yet, Utah Rule of Juvenile Procedure 22(g)(1) states that "[t]he preliminary examination shall be held within a reasonable time, but **not later than 30 days** after the initial appearance if the minor is in custody for the offense charged and the information is filed under Utah Code section 80-6-503." This allows the court to schedule a preliminary hearing not later than 10 days **or** not later than 30 days after the initial appearance under the same conditions – when the minor is in custody for the offense charged and the information is filed under Utah Code section 80-6-503. Subsections 80-6-503(1)(a),(b) distinguish between 16–17-year-olds and 14–15-year-olds charged with certain felonies. The current rule, however, does not make this distinction so the 10 day and 30-day timeline apply to both 16–17-year-olds and 14–15-year-olds.

Yet, based on a prior version of the rule, these different timelines are meant to apply to 16–17-year-olds and 14–15-year-olds, respectively. *See supra*. Accordingly, based on the current statute, the rule should probably state that a preliminary examination should be held within at least 10 days for a minor 16 or 17 charged with a felony violation under Utah Code section 80-6-503(1)(a), and a preliminary examination should be held within at least 30 days for a minor 14 or 15 charged with a felony violation under Utah Code section 80-6-503(1)(b).

CONCLUSION:

Utah Rule of Juvenile Procedure 22(g) should be amended to reestablish the distinction between 16–17-year-olds and 14–15-year-olds in the scheduling of a preliminary examination.

Rule 22. Initial appearance and preliminary examination in cases under Utah Code section 80-6-503

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

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

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

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

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

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

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

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

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

(e) The court shall, after providing the information under paragraph (d) and before proceeding further, allow the minor reasonable time and opportunity to consult counsel

and shall allow the minor to contact any attorney by any reasonable means, without delay and without fee.

(f) 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 80-6-504.

(g) 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 80-6-503. The preliminary examination shall be held within a reasonable time, but not later than 30 days after the initial appearance if:

(1) the minor is in custody for the offense charged and the information is filed under Utah Code section 80-6-503; or

(2) the minor is not in custody.

(h) A preliminary examination may not be held if the minor is indicted. If the indictment is filed under Utah Code section 80-6-503, the court shall proceed in accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code section 80-6-503.

(i) 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.

(j) 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 80-6-503, the court shall proceed in accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code section 80-6-504.

(k) 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.

(l) 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.

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

(1) exclude witnesses from the courtroom;

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

(3) exclude spectators from the courtroom.

Rule 22. Initial appearance and preliminary examination in cases under Utah Code section 78A-6-703.3

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

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

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

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

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

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

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

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

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

(e) The court shall, after providing the information under paragraph (d) and before proceeding further, allow the minor reasonable time and opportunity to consult counsel

and shall allow the minor to contact any attorney by any reasonable means, without delay and without fee.

(f)(1) The minor may not be called on to enter a plea. During the initial appearance, the minor shall be advised of the right to a preliminary examination. 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.

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

(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, the court shall proceed in accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code section 78A-6-703.5.

(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.

Effective November 1, 2020.

Draft:_____

Rule 22. Initial appearance and preliminary examination in cases under Section 78A-6-702 and Section 78A-6-703.

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

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

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

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

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

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

(d)(3) of the right to retain counsel or have counsel appointed by the court without expense if the minor is unable to obtain counsel;

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

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

(e) The court shall, after providing the information under paragraph (d) and before proceeding further, allow the minor reasonable time and opportunity to consult counsel and shall allow the minor to contact any attorney by any reasonable means, without delay and without fee.

(f)(1) The minor may not be called on to enter a plea. During the initial appearance, the minor shall be advised of the right to a preliminary examination and, as applicable, to a certification hearing pursuant to Section 78A-6-703 or to the right to present evidence regarding the conditions established by Section 78A-6-702. If the minor waives the right to a preliminary examination and, if applicable, a certification hearing, and if the prosecuting attorney consents, the court shall order the minor bound over to answer in the district court.

(f)(2) If the minor does not waive a preliminary examination, the court shall schedule the preliminary examination. The time periods of this rule may be extended by the court for good cause shown. The preliminary examination shall be held within a reasonable time, but not later than ten days after the initial appearance if the minor is in custody for the offense charged and the information is filed under Section 78A-6-702. 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 Section78A-6-703; or

(f)(2)(B) the minor is not in custody.

(f)(3) A preliminary examination may not be held if the minor is indicted. If the indictment is filed under 78A-6-703, the court shall proceed in accordance with Rule 23 to hear evidence presented by the prosecutor regarding the factors of Section 78A-6-703 for waiver of jurisdiction and certification, unless the hearing is waived. If the indictment is filed under Section 78A-6-702, the court shall proceed in accordance with Rule 23A to hear evidence presented by the minor regarding the conditions of Section 78A-6-702, if requested.

(g) A preliminary examination shall be held under the rules and laws applicable to criminal cases tried before a court. The state has the burden of proof and shall proceed first with its case. At the conclusion of the state's case, the minor may testify under oath, call witnesses, and present evidence. The minor may cross-examine adverse witnesses.

(h) If from the evidence the court finds probable cause to believe that the crime charged has been committed and that the minor has committed it, and if the information is filed under Section 78A-6-703, the court shall proceed in accordance with Rule 23 to hear evidence presented by the prosecutor regarding the factors of Section 78A-6-703 for waiver of jurisdiction and certification.

(i) If from the evidence the court finds probable cause to believe that the crime charged has been committed and that the minor has committed it, and if the information is filed under Section78A-6-702, the court shall proceed in accordance with Rule 23A to hear evidence presented by the minor regarding the conditions of Section 78A-6-702.

(j) The finding of probable cause may be based on hearsay in whole or in part. Objections to evidence on the ground that it was acquired by unlawful means are not properly raised at the preliminary examination.

(k) If the court does not find probable cause to believe that the crime charged has been committed or that the minor committed it, the court shall dismiss the information and discharge the minor. The court may enter findings of fact, conclusions of law, and an order of dismissal. The dismissal and discharge do not preclude the state from instituting a subsequent prosecution for the same offense.

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

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

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

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

JUVENILE JUSTICE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill addresses provisions related to juvenile justice.

Highlighted Provisions:

This bill:

- adds and modifies definitions;
- amends provisions regarding offenses committed by minors on school property, including requiring a referral to the Division of Juvenile Justice Services if a minor refuses to participate in an evidence-based intervention;
- amends a sunset date related to offenses committed by minors on school property;
- clarifies a reporting requirement for the Division of Juvenile Justice Services;
- defines the term "defendant" in Title 77, Chapter 38a, Crime Victims Restitution Act, to exclude a minor who is adjudicated, or enters into a nonjudicial adjustment, for any offense under Title 78A, Chapter 6, Juvenile Court Act;
- amends and clarifies the jurisdiction of the juvenile court, district court, and justice court regarding offenses committed by minors;
- requires a peace officer to have probable cause in order to take a minor into custody;
- requires a probable cause determination and detention hearing within 24 hours of a minor being held for detention;
- allows a court to order secure confinement for a minor if a minor's conduct resulted in death;
- requires a prosecutor or the court's probation department to notify a victim of the

restitution process;

- requires a victim to provide the prosecutor with certain information for restitution;
- amends the amount of time that restitution may be requested;
- exempts certain offenses committed by a minor from the presumptive timeframes for custody and supervision;
- modifies the continuing jurisdiction of the juvenile court;
- amends the exclusive jurisdiction of the district court over minors who committed certain offenses;
- amends requirements for minors who are charged in the district court for certain offenses;
- repeals the certification and transfer of minors who committed certain offenses to the district court;
- allows that a criminal information may be filed for minors who are 14 years old or older and are alleged to have committed certain offenses;
- requires a preliminary hearing before a juvenile court to determine whether a minor, for which a criminal information or indictment has been filed, will be bound over to the district court to be held for trial;
- provides the requirements for binding a minor over to the district court;
- provides the detention requirements for a minor who has been bound over to the district court;
- allows a juvenile court to extend continuing jurisdiction over a minor to the age of 25 years old if a minor is not bound over to the district court; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides coordination clauses.

Utah Code Sections Affected:

AMENDS:

17-18a-404, as last amended by Laws of Utah 2017, Chapter 330

53-10-403, as last amended by Laws of Utah 2017, Chapter 289

53G-8-211, as last amended by Laws of Utah 2019, Chapter 293

62A-4a-201, as last amended by Laws of Utah 2019, Chapters 136, 335, and 388

62A-7-101, as last amended by Laws of Utah 2019, Chapters 162 and 246

62A-7-104, as last amended by Laws of Utah 2019, Chapter 246

62A-7-105.5, as renumbered and amended by Laws of Utah 2005, Chapter 13

62A-7-107.5, as last amended by Laws of Utah 2017, Chapter 330

62A-7-108.5, as renumbered and amended by Laws of Utah 2005, Chapter 13

62A-7-109.5, as last amended by Laws of Utah 2017, Chapter 330

62A-7-111.5, as last amended by Laws of Utah 2007, Chapter 308

62A-7-113, as enacted by Laws of Utah 2019, Chapter 162

62A-7-201, as last amended by Laws of Utah 2019, Chapter 246

62A-7-401.5, as last amended by Laws of Utah 2019, Chapter 246

62A-7-402, as renumbered and amended by Laws of Utah 2005, Chapter 13

62A-7-403, as renumbered and amended by Laws of Utah 2005, Chapter 13

62A-7-501, as last amended by Laws of Utah 2019, Chapter 246

62A-7-502, as last amended by Laws of Utah 2019, Chapter 246

62A-7-504, as last amended by Laws of Utah 2017, Chapter 330

62A-7-505, as renumbered and amended by Laws of Utah 2005, Chapter 13

62A-7-506, as last amended by Laws of Utah 2019, Chapter 246

62A-7-507, as renumbered and amended by Laws of Utah 2005, Chapter 13

62A-7-701, as last amended by Laws of Utah 2019, Chapter 246

62A-7-702, as renumbered and amended by Laws of Utah 2005, Chapter 13

63I-1-253, as last amended by Laws of Utah 2019, Chapters 90, 136, 166, 173, 246, 325, 344 and last amended by Coordination Clause, Laws of Utah 2019, Chapter 246

76-3-406, as last amended by Laws of Utah 2019, Chapter 189

76-5-401.3, as enacted by Laws of Utah 2017, Chapter 397

76-10-105 **(Superseded 07/01/20)**, as last amended by Laws of Utah 2018, Chapter 415

76-10-105 **(Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232

76-10-1302, as last amended by Laws of Utah 2019, Chapters 26, 189, and 200

77-2-9, as last amended by Laws of Utah 2017, Chapter 397

77-38a-102, as last amended by Laws of Utah 2017, Chapter 304

77-38a-302, as last amended by Laws of Utah 2019, Chapter 171

77-38a-404, as last amended by Laws of Utah 2017, Chapter 304

78A-5-102, as last amended by Laws of Utah 2010, Chapter 34

78A-6-103, as last amended by Laws of Utah 2019, Chapter 300

78A-6-104, as last amended by Laws of Utah 2019, Chapter 188

78A-6-105, as last amended by Laws of Utah 2019, Chapters 335 and 388

78A-6-108, as renumbered and amended by Laws of Utah 2008, Chapter 3

78A-6-112, as last amended by Laws of Utah 2018, Chapter 415

78A-6-113, as last amended by Laws of Utah 2018, Chapter 285

78A-6-116, as last amended by Laws of Utah 2010, Chapter 38

78A-6-117, as last amended by Laws of Utah 2019, Chapters 162 and 335

78A-6-118, as last amended by Laws of Utah 2017, Chapter 330

78A-6-120, as last amended by Laws of Utah 2017, Chapter 330

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

78A-6-312, as last amended by Laws of Utah 2019, Chapters 136, 335, and 388

78A-6-601, as last amended by Laws of Utah 2010, Chapter 38

78A-6-602, as last amended by Laws of Utah 2018, Chapters 117 and 415

78A-6-603, as last amended by Laws of Utah 2018, Chapters 117 and 415
78A-6-704, as renumbered and amended by Laws of Utah 2008, Chapter 3
78A-6-705, as enacted by Laws of Utah 2015, Chapter 338
78A-6-1107, as renumbered and amended by Laws of Utah 2008, Chapter 3
78A-6-1108, as last amended by Laws of Utah 2011, Chapter 208
78A-7-106, as last amended by Laws of Utah 2019, Chapter 136
78B-6-105, as last amended by Laws of Utah 2013, Chapter 458

ENACTS:

62A-7-404.5, Utah Code Annotated 1953
78A-6-703.1, Utah Code Annotated 1953
78A-6-703.2, Utah Code Annotated 1953
78A-6-703.3, Utah Code Annotated 1953
78A-6-703.4, Utah Code Annotated 1953
78A-6-703.5, Utah Code Annotated 1953
78A-6-703.6, Utah Code Annotated 1953

REPEALS AND REENACTS:

62A-7-404, as last amended by Laws of Utah 2017, Chapter 330

REPEALS:

78A-6-701, as last amended by Laws of Utah 2017, Chapter 330
78A-6-702, as last amended by Laws of Utah 2015, Chapter 338
78A-6-703, as last amended by Laws of Utah 2019, Chapter 326

Utah Code Sections Affected by Coordination Clause:

76-10-105, as last amended by Laws of Utah 2019, Chapter 232
76-10-1302, as last amended by Laws of Utah 2019, Chapters 26, 189, and 200
78A-6-105, as last amended by Laws of Utah 2019, Chapters 335 and 388
78A-6-116, as last amended by Laws of Utah 2010, Chapter 38
78A-6-117, as last amended by Laws of Utah 2019, Chapters 162 and 335

78A-6-601, as last amended by Laws of Utah 2010, Chapter 38

78A-6-602, as last amended by Laws of Utah 2018, Chapters 117 and 415

78A-6-602.5, Utah Code Annotated 1953

78A-6-603, as last amended by Laws of Utah 2018, Chapters 117 and 415

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

Section 1. Section **17-18a-404** is amended to read:

17-18a-404. Juvenile proceedings.

For a proceeding involving [~~a charge of juvenile delinquency, infraction, or a status offense~~] an offense committed by a minor as defined in Section 78A-6-105, a prosecutor shall:

(1) review cases pursuant to Section 78A-6-602; and

(2) appear and prosecute for the state in the juvenile court of the county.

Section 2. Section **53-10-403** is amended to read:

53-10-403. DNA specimen analysis -- Application to offenders, including minors.

(1) Sections 53-10-404, 53-10-404.5, 53-10-405, and 53-10-406 apply to any person who:

(a) has pled guilty to or has been convicted of any of the offenses under Subsection (2)(a) or (b) on or after July 1, 2002;

(b) has pled guilty to or has been convicted by any other state or by the United States government of an offense which if committed in this state would be punishable as one or more of the offenses listed in Subsection (2)(a) or (b) on or after July 1, 2003;

(c) has been booked on or after January 1, 2011, through December 31, 2014, for any offense under Subsection (2)(c);

(d) has been booked:

(i) by a law enforcement agency that is obtaining a DNA specimen on or after May 13, 2014, through December 31, 2014, under Subsection 53-10-404(4)(b) for any felony offense; or

(ii) on or after January 1, 2015, for any felony offense; or

juvenile court designated in the citation on the time and date specified in the citation or when notified by the juvenile court.

(b) A citation may not require a minor to appear sooner than five days following [~~its~~] the citation's issuance.

[~~(11)~~] (10) A minor who receives a citation and willfully fails to appear before the juvenile court pursuant to a citation may be found in contempt of court. The court may proceed against the minor as provided in Section 78A-6-1101.

[~~(12)~~] (11) When a citation is issued under this section, bail may be posted and forfeited under Section 78A-6-113 with the consent of:

(a) the court; and

(b) if the minor is a child, the parent or legal guardian of the child cited.

Section 53. Section **78A-6-703.1** is enacted to read:

78A-6-703.1. Definitions.

As used in this part:

(1) "Qualifying offense" means an offense described in Subsection 78A-6-703.3(1) or (2)(b).

(2) "Separate offense" means any offense that is not a qualifying offense.

Section 54. Section **78A-6-703.2** is enacted to read:

78A-6-703.2. Criminal information for a minor in district court.

(1) If a prosecuting attorney charges a minor with aggravated murder under Section 76-5-202 or murder under Section 76-5-203, the prosecuting attorney shall file a criminal information in the district court if the minor was the principal actor in an offense and the information alleges:

(a) the minor was 16 or 17 years old at the time of the offense; and

(b) the offense for which the minor is being charged is:

(i) Section 76-5-202, aggravated murder; or

(ii) Section 76-5-203, murder.

(2) If the prosecuting attorney files a criminal information in the district court in accordance with Subsection (1), the district court shall try the minor as an adult, except:

(a) the minor is not subject to a sentence of death in accordance with Subsection 76-3-206(2)(b); and

(b) the minor is not subject to a sentence of life without parole in accordance with Subsection 76-3-206(2)(b) or 76-3-207.5(3) or Section 76-3-209.

(3) Except for a minor who is subject to the authority of the Board of Pardons and Parole, a minor shall be held in a juvenile detention facility until the district court determines where the minor will be held until the time of trial if:

(a) the minor is 16 or 17 years old; and

(b) the minor is arrested for aggravated murder or murder.

(4) In considering where a minor will be detained until the time of trial, the district court shall consider:

(a) the age of the minor;

(b) the nature, seriousness, and circumstances of the alleged offense;

(c) the minor's history of prior criminal acts;

(d) whether detention in a juvenile detention facility will adequately serve the need for community protection pending the outcome of any criminal proceedings;

(e) the relative ability of the facility to meet the needs of the minor and protect the public;

(f) the physical maturity of the minor;

(g) the current mental state of the minor as evidenced by relevant mental health or a psychological assessment or screening that is made available to the court; and

(h) any other factors that the court considers relevant.

(5) A minor ordered to a juvenile detention facility under Subsection (4) shall remain in the facility:

(a) until released by the district court; or

(b) if convicted, until sentencing.

(6) If a minor is held in a juvenile detention facility under Subsection (4), the court shall:

(a) advise the minor of the right to bail; and

(b) set initial bail in accordance with Title 77, Chapter 20, Bail.

(7) If the minor ordered to a juvenile detention facility under Subsection (4) attains the age of 18 years, the minor shall be transferred within 30 days to an adult jail until:

(a) released by the district court judge; or

(b) if convicted, sentencing.

(8) If a minor is ordered to a juvenile detention facility under Subsection (4) and the minor's conduct or condition endangers the safety or welfare of others in the juvenile detention facility, the court may find that the minor shall be detained in another place of confinement considered appropriate by the court, including a jail or an adult facility for pretrial confinement.

(9) If a minor is charged for aggravated murder or murder in the district court under this section, and all charges for aggravated murder or murder result in an acquittal, a finding of not guilty, or a dismissal:

(a) the juvenile court gains jurisdiction over all other offenses committed by the minor; and

(b) the Division of Juvenile Justice Services gains jurisdiction over the minor.

Section 55. Section **78A-6-703.3** is enacted to read:

78A-6-703.3. Criminal information for a minor in juvenile court.

Notwithstanding Section 78A-6-602.5, if a prosecuting attorney charges a minor with a felony, the prosecuting attorney may file a criminal information in the court if the minor was a principal actor in an offense and the information alleges:

(1) (a) the minor was 16 or 17 years old at the time of the offense; and

(b) the offense for which the minor is being charged is a felony violation of:

(i) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;

(ii) Section 76-5-202, attempted aggravated murder;

(iii) Section 76-5-203, attempted murder;

(iv) Section 76-5-302, aggravated kidnapping;

(v) Section 76-5-405, aggravated sexual assault;

(vi) Section 76-6-103, aggravated arson;

(vii) Section 76-6-203, aggravated burglary;

(viii) Section 76-6-302, aggravated robbery;

(ix) Section 76-10-508.1, felony discharge of a firearm; or

(x) an offense other than an offense listed in Subsections (1)(b)(i) through (ix) involving the use of a dangerous weapon:

(A) if the offense would be a felony had an adult committed the offense; and

(B) the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon that would have been a felony if committed by an adult; or

(2) (a) the minor was 14 or 15 years old at the time of the offense; and

(b) the offense for which the minor is being charged is a felony violation of:

(i) Section 76-5-202, aggravated murder or attempted aggravated murder; or

(ii) Section 76-5-203, murder or attempted murder.

Section 56. Section **78A-6-703.4** is enacted to read:

78A-6-703.4. Extension of juvenile court jurisdiction -- Procedure.

(1) At the time that a prosecuting attorney charges a minor who is 14 years old or older with a felony, either party may file a motion to extend the juvenile court's continuing jurisdiction over the minor's case until the minor is 25 years old if:

(a) the minor was the principal actor in the offense; and

(b) the petition or criminal information alleges a felony violation of:

(i) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;

(ii) Section 76-5-202, aggravated murder or attempted aggravated murder;

(iii) Section 76-5-203, murder or attempted murder;

(iv) Section 76-5-302, aggravated kidnapping;

(v) Section 76-5-405, aggravated sexual assault;

(vi) Section 76-6-103, aggravated arson;

(vii) Section 76-6-203, aggravated burglary;

(viii) Section 76-6-302, aggravated robbery;

(ix) Section 76-10-508.1, felony discharge of a firearm; or

(x) (A) an offense other than the offenses listed in Subsections (1)(b)(i) through (ix) involving the use of a dangerous weapon that would be a felony if committed by an adult; and

(B) the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon that would have been a felony if committed by an adult.

(2) (a) Notwithstanding Subsection (1), either party may file a motion to extend the court's continuing jurisdiction after a determination by the court that the minor will not be bound over to the district court under Section 78A-6-703.5.

(3) The court shall make a determination on a motion under Subsection (1) or (2) at the time of disposition.

(4) The court shall extend the continuing jurisdiction over the minor's case until the minor is 25 years old if the court finds, by a preponderance of the evidence, that extending continuing jurisdiction is in the best interest of the minor and the public.

(5) In considering whether it is in the best interest of the minor and the public for the court to extend jurisdiction over the minor's case until the minor is 25 years old, the court shall consider and base the court's decision on:

(a) whether the protection of the community requires an extension of jurisdiction beyond the age of 21;

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

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

(d) the criminal record and previous history of the minor.

(6) The amount of weight that each factor in Subsection (5) is given is in the court's discretion.

(7) (a) The court may consider written reports and other materials relating to the minor's mental, physical, educational, trauma, and social history.

(b) 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 both direct and cross-examination.

(8) A minor may testify under oath, call witnesses, cross-examine witnesses, and present evidence on the factors described in Subsection (5).

Section 57. Section **78A-6-703.5** is enacted to read:

78A-6-703.5. Preliminary hearing.

(1) If a prosecuting attorney files a criminal information in accordance with Section 78A-6-703.3, the court shall conduct a preliminary hearing to determine whether a minor should be bound over to the district court for a qualifying offense.

(2) At the preliminary hearing under Subsection (1), the prosecuting attorney shall have the burden of establishing:

(a) probable cause to believe that a qualifying offense was committed and the minor committed that offense; and

(b) by a preponderance of the evidence, that it is contrary to the best interests of the minor and the public for the juvenile court to retain jurisdiction over the offense.

(3) In making a determination under Subsection (2)(b), the court shall consider and make findings on:

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

(b) the extent to which the minor's actions in the qualifying offense were committed in

an aggressive, violent, premeditated, or willful manner;

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

(d) the criminal record or history of the minor; and

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

(4) The amount of weight that each factor in Subsection (3) is given is in the court's discretion.

(5) (a) The court may consider any written report or other material that relates to the minor's mental, physical, educational, trauma, and social history.

(b) 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, under Subsection (5)(a) to appear and be subject to direct and cross-examination.

(6) At the preliminary hearing under Subsection (1), a minor may testify under oath, call witnesses, cross-examine witnesses, and present evidence on the factors described in Subsection (3).

(7) (a) A proceeding before the court related to a charge filed under this part shall be conducted in conformity with the Utah Rules of Juvenile Procedure.

(b) Title 78B, Chapter 22, Indigent Defense Act, and Section 78A-6-115 are applicable to the preliminary hearing under this section.

(8) If the court finds that the prosecuting attorney has met the burden of proof under Subsection (2), the court shall bind the minor over to the district court to be held for trial.

(9) (a) If the court finds that a qualifying offense has been committed by a minor, but the prosecuting attorney has not met the burden of proof under Subsection (2)(b), the court shall:

(i) proceed upon the criminal information as if the information were a petition under Section 78A-6-602.5;

(ii) release or detain the minor in accordance with Section 78A-6-113; and

(iii) proceed with an adjudication for the minor in accordance with this chapter.

(b) If the court finds that the prosecuting attorney has not met the burden under Subsection (2) to bind a minor over to the district court, the prosecuting attorney may file a motion to extend the court's continuing jurisdiction over the minor's case until the minor is 25 years old in accordance with Section 78A-6-703.4.

(10) (a) A prosecuting attorney may charge a minor with a separate offense in the same criminal information as the qualifying offense if the qualifying offense and separate offense arise from a single criminal episode.

(b) If the prosecuting attorney charges a minor with a separate offense as described in Subsection (10)(a):

(i) the prosecuting attorney shall have the burden of establishing probable cause to believe that the separate offense was committed and the minor committed the separate offense; and

(ii) if the prosecuting attorney establishes probable cause for the separate offense under Subsection (10)(b)(i) and the court binds the minor over to the district court for the qualifying offense, the court shall also bind the minor over for the separate offense to the district court.

(11) If a grand jury indicts a minor for a qualifying offense:

(a) the prosecuting attorney does not need to establish probable cause under Subsection (2)(a) for the qualifying offense and any separate offense included in the indictment; and

(b) the court shall proceed with determining whether the minor should be bound over to the district court for the qualifying offense and any separate offense included in the indictment in accordance with Subsections (2)(b) and (3).

(12) If a minor is bound over to the district court, the court shall:

(a) issue a criminal warrant of arrest;

(b) advise the minor of the right to bail; and

(c) set initial bail in accordance with Title 77, Chapter 20, Bail.

(13) (a) At the time that a minor is bound over to the district court, the court shall make

an initial determination on where the minor is held until the time of trial.

(b) In determining where a minor is held until the time of trial, the court shall consider:

(i) the age of the minor;

(ii) the minor's history of prior criminal acts;

(iii) whether detention in a juvenile detention facility will adequately serve the need for community protection pending the outcome of any criminal proceedings;

(iv) the relative ability of the facility to meet the needs of the minor and protect the public;

(v) the physical maturity of the minor;

(vi) the current mental state of the minor as evidenced by relevant mental health or psychological assessments or screenings that are made available to the court; and

(vii) any other factors that the court considers relevant.

(14) If the court orders a minor to be detained in a juvenile detention facility under Subsection (13), the minor shall remain in the facility:

(a) until released by a district court; or

(b) if convicted, until sentencing.

(15) If the court orders the minor to be detained in a juvenile detention facility under Subsection (13) and the minor attains the age of 18 while detained at the facility, the minor shall be transferred within 30 days to an adult jail to remain:

(a) until released by the district court; or

(b) if convicted, until sentencing.

(16) Except as provided in Subsection (17) and Section 78A-6-705, if a minor is bound over to the district court under this section, the jurisdiction of the Division of Juvenile Justice Services and the juvenile court over the minor is terminated for the qualifying offense and any other separate offense for which the minor is bound over.

(17) If a minor is bound over to the district court for a qualifying offense and the qualifying offense results in an acquittal, a finding of not guilty, or a dismissal:

(a) the juvenile court regains jurisdiction over any separate offense committed by the minor; and

(b) the Division of Juvenile Justice Services regains jurisdiction over the minor.

Section 58. Section **78A-6-703.6** is enacted to read:

78A-6-703.6. Criminal proceedings for a minor bound over to district court.

(1) If the juvenile court binds a minor over to the district court in accordance with Section 78A-6-703.5, the prosecuting attorney shall try the minor as if the minor is an adult in the district court except:

(a) the minor is not subject to a sentence of death in accordance with Subsection 76-3-206(2)(b); and

(b) the minor is not subject to a sentence of life without parole in accordance with Subsection 76-3-206(2)(b) or 76-3-207.5(3) or Section 76-3-209.

(2) A minor who is bound over to the district court to answer as an adult is not entitled to a preliminary hearing in the district court.

(3) (a) If a minor is bound over to the district court by the juvenile court, the district court may reconsider the juvenile court's decision under Subsection 78A-6-703.5(13) as to where the minor is being held until trial.

(b) If the district court reconsiders the juvenile court's decision as to where the minor is held, the district court shall consider and make findings on:

(i) the age of the minor;

(ii) the minor's history of prior criminal acts;

(iii) whether detention in a juvenile detention facility will adequately serve the need for community protection pending the outcome of any criminal proceedings;

(iv) the relative ability of the facility to meet the needs of the minor and protect the public;

(v) the physical maturity of the minor;

(vi) the current mental state of the minor as evidenced by relevant mental health or

psychological assessments or screenings that are made available to the court; and

(vii) any other factors the court considers relevant.

(4) A minor who is ordered to a juvenile detention facility under Subsection (3) shall remain in the facility:

(a) until released by a district court; or

(b) if convicted, until sentencing.

(5) If the district court orders the minor to be detained in a juvenile detention facility under Subsection (3) and the minor attains the age of 18 while detained at the facility, the minor shall be transferred within 30 days to an adult jail to remain:

(a) until released by the district court; or

(b) if convicted, until sentencing.

(6) If a minor is bound over to the district court and detained in a juvenile detention facility, the district court may order the minor be detained in another place of confinement that is considered appropriate by the district court, including a jail or other place of pretrial confinement for adults if the minor's conduct or condition endangers the safety and welfare of others in the facility.

(7) If the district court obtains jurisdiction over a minor under Section 78A-6-703.5, the district court is not divested of jurisdiction for a qualifying offense or a separate offense listed in the criminal information when the minor is allowed to enter a plea to, or is found guilty of, another offense in the same criminal information.

Section 59. Section **78A-6-704** is amended to read:

78A-6-704. Appeals from bind over proceedings.

(1) A minor may, as a matter of right, appeal from[~~: (a)~~] an order of the juvenile court binding the minor over to the district court [~~as a serious youth offender pursuant to Section 78A-6-702; or (b) an order of the juvenile court, after certification proceedings pursuant to Section 78A-6-703, directing that the minor be held for criminal proceedings in the district court.~~] under Section 78A-6-703.5.

Effective 5/12/2015
Repealed 5/12/2020
78A-6-702 Serious youth offender -- Procedure.

(1) Any action filed by a county attorney, district attorney, or attorney general charging a minor 16 years of age or older with a felony may be by criminal information and filed in the juvenile court if the minor was a principal actor in the offense and the information charges any of the following offenses:
  (a) any felony violation of:
    (i) Section 76-6-103, aggravated arson;
    (ii) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;
    (iii) Section 76-5-302, aggravated kidnapping;
    (iv) Section 76-6-203, aggravated burglary;
    (v) Section 76-6-302, aggravated robbery;
    (vi) Section 76-5-405, aggravated sexual assault;
    (vii) Section 76-10-508.1, felony discharge of a firearm;
    (viii) Section 76-5-202, attempted aggravated murder; or
    (ix) Section 76-5-203, attempted murder; or
  (b) an offense other than those listed in Subsection (1)(a) involving the use of a dangerous weapon, which would be a felony if committed by an adult, and the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon, which also would have been a felony if committed by an adult.

(2) All proceedings before the juvenile court related to charges filed under Subsection (1) shall be conducted in conformity with the rules established by the Utah Supreme Court.

(3)
  (a) If the information alleges the violation of a felony listed in Subsection (1), the state shall have the burden of going forward with its case and the burden of proof to establish probable cause to believe that one of the crimes listed in Subsection (1) has been committed and that the defendant committed it. If proceeding under Subsection (1)(b), the state shall have the additional burden of proving by a preponderance of the evidence that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon.
  (b) If the juvenile court judge finds the state has met its burden under this Subsection (3), the court shall order that the defendant be bound over and held to answer in the district court in the same manner as an adult unless the juvenile court judge finds that it would be contrary to the best interest of the minor and to the public to bind over the defendant to the jurisdiction of the district court.
  (c) In making the bind over determination in Subsection (3)(b), the judge shall consider only the following:
    (i) whether the minor has been previously adjudicated delinquent for an offense involving the use of a dangerous weapon which would be a felony if committed by an adult;
    (ii) if the offense was committed with one or more other persons, whether the minor appears to have a greater or lesser degree of culpability than the codefendants;
    (iii) the extent to which the minor's role in the offense was committed in a violent, aggressive, or premeditated manner;
    (iv) the number and nature of the minor's prior adjudications in the juvenile court; and
    (v) whether public safety and the interests of the minor are better served by adjudicating the minor in the juvenile court or in the district court, including whether the resources of the

adult system or juvenile system are more likely to assist in rehabilitating the minor and reducing the threat which the minor presents to the public.

(d) Once the state has met its burden under Subsection (3)(a) as to a showing of probable cause, the defendant shall have the burden of going forward and presenting evidence that in light of the considerations listed in Subsection (3)(c), it would be contrary to the best interest of the minor and the best interests of the public to bind the defendant over to the jurisdiction of the district court.

(e) If the juvenile court judge finds 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 defendant over to the jurisdiction of the district court, the court shall so state in its findings and order the minor held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

(4) If the juvenile court judge finds that an offense has been committed, but that the state has not met its burden of proving the other criteria needed to bind the defendant over under Subsection (1), the juvenile court judge shall order the defendant held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

(5) At the time of a bind over to district court a criminal warrant of arrest shall issue. The defendant shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

(6) At the time the minor is bound over to the district court, the juvenile court shall make the initial determination on where the minor shall be held.

(7) The juvenile court shall consider the following when determining where the minor shall be held until the time of trial:

(a) the age of the minor;

(b) the nature, seriousness, and circumstances of the alleged offense;

(c) the minor's history of prior criminal acts;

(d) whether detention in a juvenile detention facility will adequately serve the need for community protection pending the outcome of any criminal proceedings;

(e) whether the minor's placement in a juvenile detention facility will negatively impact the functioning of the facility by compromising the goals of the facility to maintain a safe, positive, and secure environment for all minors within the facility;

(f) the relative ability of the facility to meet the needs of the minor and protect the public;

(g) whether the minor presents an imminent risk of harm to the minor or others within the facility;

(h) the physical maturity of the minor;

(i) the current mental state of the minor as evidenced by relevant mental health or psychological assessments or screenings that are made available to the court; and

(j) any other factors the court considers relevant.

(8) If a minor is ordered to a juvenile detention facility under Subsection (7), the minor shall remain in the facility until released by a district court judge, or if convicted, until sentencing.

(9) A minor held in a juvenile detention facility under this section shall have the same right to bail as any other criminal defendant.

(10) If the minor ordered to a juvenile detention facility under Subsection (7) attains the age of 18 years, the minor shall be transferred within 30 days to an adult jail until released by the district court judge, or if convicted, until sentencing.

(11) A minor 16 years of age or older whose conduct or condition endangers the safety or welfare of others in the juvenile detention facility may, by court order that specifies the reasons, be

detained in another place of pretrial confinement considered appropriate by the court, including jail or other place of confinement for adults.

(12) The district court may reconsider the decision on where the minor will be held pursuant to Subsection (6).

(13) If an indictment is returned by a grand jury charging a violation under this section, the preliminary examination held by the juvenile court judge need not include a finding of probable cause that the crime alleged in the indictment was committed and that the defendant committed it, but the juvenile court shall proceed in accordance with this section regarding the additional considerations listed in Subsection (3)(b).

(14) When a defendant is charged with multiple criminal offenses in the same information or indictment and is bound over to answer in the district court for one or more charges under this section, other offenses arising from the same criminal episode and any subsequent misdemeanors or felonies charged against him shall be considered together with those charges, and where the court finds probable cause to believe that those crimes have been committed and that the defendant committed them, the defendant shall also be bound over to the district court to answer for those charges.

(15) When a minor has been bound over to the district court under this section, the jurisdiction of the Division of Juvenile Justice Services and the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against the minor, except as provided in Subsection (19) or Section 78A-6-705.

(16) A minor who is bound over to answer as an adult in the district court under this section or on whom an indictment has been returned by a grand jury is not entitled to a preliminary examination in the district court.

(17) Allegations contained in the indictment or information that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon, or is 16 years of age or older, are not elements of the criminal offense and do not need to be proven at trial in the district court.

(18) If a minor enters a plea to, or is found guilty of, any of the charges filed or any other offense arising from the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

(19) The juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

Effective 5/14/2019
Repealed 5/12/2020

78A-6-703 Certification hearings -- Juvenile court to hold preliminary hearing -- Factors considered by juvenile court for waiver of jurisdiction to district court.

(1) If a criminal information filed in accordance with Subsection 78A-6-602(3) alleges the commission of an act which would constitute a felony if committed by an adult, the juvenile court shall conduct a preliminary hearing.

(2) At the preliminary hearing the state shall have the burden of going forward with its case and the burden of establishing:

(a) probable cause to believe that a crime was committed and that the defendant committed it; and

(b) by a preponderance of the evidence, that it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction.

(3) In considering whether or not it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction, the juvenile court shall consider, and may base its decision on, the finding of one or more of the following factors:

(a) the seriousness of the offense and whether the protection of the community requires isolation of the minor beyond that afforded by juvenile facilities;

(b) whether the alleged offense was committed by the minor under circumstances which would subject the minor to enhanced penalties under Section 76-3-203.1 if the minor were adult and the offense was committed:

(i) in concert with two or more persons;

(ii) for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802; or

(iii) to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802;

(c) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(d) whether the alleged offense was against persons or property, greater weight being given to offenses against persons, except as provided in Section 76-8-418;

(e) the maturity of the minor as determined by considerations of the minor's home, environment, emotional attitude, and pattern of living;

(f) the record and previous history of the minor;

(g) the likelihood of rehabilitation of the minor by use of facilities available to the juvenile court;

(h) the desirability of trial and disposition of the entire offense in one court when the minor's associates in the alleged offense are adults who will be charged with a crime in the district court;

(i) whether the minor used a firearm in the commission of an offense; and

(j) whether the minor possessed a dangerous weapon on or about school premises as provided in Section 76-10-505.5.

(4) The amount of weight to be given to each of the factors listed in Subsection (3) is discretionary with the court.

(5)

(a) Written reports and other materials relating to the minor's mental, physical, educational, and social history may be considered by the court.

(b) If requested by the minor, the minor's parent, guardian, or other interested party, the court shall require the person or agency preparing the report and other material to appear and be subject to both direct and cross-examination.

(6) At the conclusion of the state's case, the minor may testify under oath, call witnesses, cross-examine adverse witnesses, and present evidence on the factors required by Subsection (3).
(7) At the time the minor is bound over to the district court, the juvenile court shall make the initial determination on where the minor shall be held.
(8) The juvenile court shall consider the following when determining where the minor will be held until the time of trial:
(a) the age of the minor;
(b) the nature, seriousness, and circumstances of the alleged offense;
(c) the minor's history of prior criminal acts;
(d) whether detention in a juvenile detention facility will adequately serve the need for community protection pending the outcome of any criminal proceedings;
(e) whether the minor's placement in a juvenile detention facility will negatively impact the functioning of the facility by compromising the goals of the facility to maintain a safe, positive, and secure environment for all minors within the facility;
(f) the relative ability of the facility to meet the needs of the minor and protect the public;
(g) whether the minor presents an imminent risk of harm to the minor or others within the facility;
(h) the physical maturity of the minor;
(i) the current mental state of the minor as evidenced by relevant mental health or psychological assessments or screenings that are made available to the court; and
(j) any other factors the court considers relevant.
(9) If a minor is ordered to a juvenile detention facility under Subsection (8), the minor shall remain in the facility until released by a district court judge, or if convicted, until sentencing.
(10) A minor held in a juvenile detention facility under this section shall have the same right to bail as any other criminal defendant.
(11) If the minor ordered to a juvenile detention facility under Subsection (8) attains the age of 18 years, the minor shall be transferred within 30 days to an adult jail until released by the district court judge, or if convicted, until sentencing.
(12) A minor 16 years of age or older whose conduct or condition endangers the safety or welfare of others in the juvenile detention facility may, by court order that specifies the reasons, be detained in another place of confinement considered appropriate by the court, including jail or other place of confinement for adults.
(13) The district court may reconsider the decision on where the minor shall be held pursuant to Subsection (7).
(14) If the court finds the state has met its burden under Subsection (2), the court may enter an order:
(a) certifying that finding; and
(b) directing that the minor be held for criminal proceedings in the district court.
(15) If an indictment is returned by a grand jury, the preliminary examination held by the juvenile court need not include a finding of probable cause, but the juvenile court shall proceed in accordance with this section regarding the additional consideration referred to in Subsection (2)(b).
(16)Title 78B, Chapter 22, Indigent Defense Act, Section 78A-6-115, and other provisions relating to proceedings in juvenile cases are applicable to the hearing held under this section to the extent they are pertinent.
(17) A minor who has been directed to be held for criminal proceedings in the district court is not entitled to a preliminary examination in the district court.

(18) A minor who has been certified for trial in the district court shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

(19) When a minor has been certified to the district court under this section, the jurisdiction of the Division of Juvenile Justice Services and the jurisdiction of the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against the minor, except as provided in Subsection (21) or Section 78A-6-705.

(20) If a minor enters a plea to, or is found guilty of any of the charges filed or on any other offense arising out of the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

(21) The juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

TAB 5

Petition to Amend Rule 6 of the Utah Rules of Juvenile Procedure

This petition is submitted pursuant to Rule 11-102(1) of the Utah Judicial Council Code of Judicial Administration

Proposed revisions:

Rule 6. Admission to detention without court order.

(a) Admission to detention without court order is governed by Utah Administrative Rules Title R547, Chapter 13, Guidelines for Admission to Secure Youth Detention Facilities.

(b) The form described in Utah Code section 80-6-203 must contain the following language above the signature line: "Pursuant to Utah Code section 78B-18a-104, I declare under criminal penalty of the State of Utah that the foregoing is true and correct to the best of my belief and knowledge, that alternatives to detention have been considered, and that the reason the minor was not released is free from bias."

Rationale:

It is likely unconstitutional for an individual, including a minor, to be detained without a sworn probable cause statement. (See attached memorandum). Nevertheless, current procedure in Utah juvenile courts does not require a sworn statement. By adding the language in paragraph (b), the probable cause statement becomes a sworn declaration pursuant to Utah Code section 78B-18a-104 (this is the same or similar language that is contained on delinquency petitions generated through CARE).

The addition of the language "…that alternatives to detention have been considered…" relates to the requirement in Utah Code section 80-6-203(3)(c)(iii) that the form state the reason the minor was not released by the peace officer since it encourages reflection about alternatives to detention.

The addition of the language "…and that the reason the minor was not released is free from bias" addresses both Utah Code section 80-6-203(3)(c)(iii) and the problem of disproportionality in the detention rates of youth of color in Utah. Data show that youth of color are detained at a higher rate than white youth. In 2019, youth of color constituted 50.9% of the population in detention in Utah despite only representing 25.8% of the school-aged youth population. *Striving for Equity in Utah's Juvenile Justice System*, p. 26. In other words, youth of color are detained at a rate of approximately twice their proportion of the population. Often, juvenile court professionals lament disproportionality but argue they can only address the cases brought to them. Without conceding that point, and while it certainly will not eliminate the problem of disproportionality in detention rates, the proposed language is a very small step in the right direction to ensure that reasons for detaining youth are free from bias.

This petition received the unanimous endorsement of the Utah Board of Juvenile Court Judges at its meeting on April 8, 2022.

Thank you for your consideration,

Steven Beck (jbeck@utcourts.gov)

LAW CLERK MEMORANDUM

TO: Judge Beck

FROM: Meg Sternitzky, Juvenile Law Clerk

RE: Probable Cause for Warrantless Arrest and Detention

DATE: February 16, 2022

ISSUES:

1. Is there a requirement under Utah Code, Utah Rules, or Utah case law that requires a warrantless arrest probable cause determination to be supported by an oath or affirmation for continued detention of a minor?

2. Is it constitutional for a warrantless arrest probable cause determination to be unsupported by an oath or affirmation?

BRIEF ANSWERS:

1. No, there is no requirement under Utah Code, Utah Rules, or Utah case law that requires a warrantless arrest probable cause determination to be supported by an oath or affirmation for continued detention of a minor. Although the Utah Rules of Criminal Procedure require an arresting officer to present a sworn statement to a magistrate to support probable cause for a warrantless arrest, this rule does not apply in juvenile court and the Utah Rules of Juvenile Procedure do not otherwise address the basis for a warrantless arrest probable cause determination. This issue is also not addressed in the Utah Juvenile Code or Utah case law.

2. No, it is probably unconstitutional for a warrantless arrest probable cause determination to be unsupported by an oath or affirmation. Several courts, including the United States Supreme Court, have held that warrantless arrest probable cause determinations should be at least as stringent as probable cause determinations used as a basis for issuing an arrest warrant.

Accordingly, it is fair to say that warrantless arrest probable cause determinations should be supported by an oath or affirmation to satisfy Fourth Amendment requirements, since an oath or affirmation is required for probable cause determinations for an arrest based on a warrant.

ANALYSIS:

This memorandum seeks to examine the requirements for probable cause following a warrantless arrest for continued detention. The current case law on this issue clearly states that the Fourth Amendment demands a judicial determination of probable cause within 48 hours following a warrantless arrest for continued detention. *See Gerstein v. Pugh*, 420 U.S. 103 (1975); *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991). Yet, the current law is less clear on whether a warrantless arrest probable cause determination must be supported by an oath or affirmation; a requirement for probable cause to issue an arrest warrant. U.S. Const. amend. IV.

This memorandum will first examine whether there is a requirement under Utah Code, Utah Rules, or Utah case law that requires a warrantless arrest probable cause determination to be supported by an oath or affirmation for continued detention of a minor. This memorandum will then examine whether it is constitutional for a warrantless arrest probable cause determination to be unsupported by an oath or affirmation.

I. THERE IS NO REQUIREMENT UNDER UTAH LAW THAT REQUIRES A WARRANTLESS ARREST PROBABLE CAUSE DETERMINATION TO BE SUPPORTED BY AN OATH OR AFFIRMATION.

There is no requirement under Utah Code, Utah Rules, or Utah case law that requires a warrantless arrest probable cause determination be supported by an oath or affirmation for continued detention of a minor. Although Utah Rule of Criminal Procedure 9 requires that an arresting officer "present to a magistrate a sworn statement that contains the facts known to support probable cause" for a warrantless arrest, this rule does not apply in juvenile court because it has not been "specifically adopted" by the Utah Rules of Juvenile Procedure. Utah R. Crim. P. 9(a)(2); Utah R. Juv. P. (2)(b). The Utah Rules of Juvenile Procedure do not otherwise address the basis for a warrantless arrest probable cause determination;

the Rules only address guidelines for admission to detention without a court order. Utah R. Juv. P. 6. This issue is also not addressed in the Utah Juvenile Code or Utah case law. Nonetheless, it is probably unconstitutional for a warrantless arrest probable cause determination to be unsupported by an oath or affirmation. This is examined in the next section of this memorandum.

II. IT IS PROBABLY UNCONSTITUTIONAL FOR A WARRANTLESS ARREST PROBABLE CAUSE DETERMINATION TO BE UNSUPPORTED BY AN OATH OR AFFIRMATION.

A. Few courts have explicitly held that warrantless arrest probable cause determinations must be supported by an oath or affirmation.

The issue of whether a warrantless arrest probable cause determination must be supported by an oath or affirmation has never been explicitly addressed by the United States Supreme Court. An unreported Northern District of Illinois case succinctly summarizes the current status of this issue noting that the "probable cause supported by oath or affirmation" requirement to issue a warrant does not speak to whether probable cause to support an arrest or detention without a warrant likewise must be supported by oath. *Haywood v. City of Chicago*, No. 01 C 3872, 2002 WL 31118325, at *3 (N.D. Ill. 2002). In *Gerstein v. Pugh*, the United States Supreme Court held that the Fourth Amendment entitles a person arrested without a warrant to prompt judicial determination of probable cause "as a prerequisite to extended restraint of liberty following arrest." *Id.* (quoting *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975)). Although "it might be logical to assume that the *Gerstein* determination must be based on oath or affirmation, the Supreme Court did not prescribe any particular procedure for satisfying the Fourth Amendment's requirements." *Id.* (cleaned up).

Some courts, however, have held that the *Gerstein* determination that "the standard [for a warrantless arrest] is the same as that for [an] arrest [based on a warrant]" requires probable cause to be supported by oath or affirmation. *Gerstein v. Pugh*, 420 U.S. at 120. The Ninth Circuit, for instance, has held that "a probable cause determination for purposes of detention pending further proceedings must be supported by an oath or affirmation" according to the holding in *Gerstein*. *U.S. v. Bueno-Vargas*, 383 F.3d 1104, 1109 (9th Cir. 2004). The Wisconsin Court of Appeals has also determined that since "the basis for a warrantless arrest probable cause

determination should be of equal reliability to those used as a basis for issuing an arrest warrant [. . .] any item used as a basis for probable cause in post-warrantless arrest determinations must also be sworn to, either orally or in writing." *State v. Evans*, 187 Wis. 2d 66, 68, 522 N.W.2d 554, 562 (Wis. Ct. App. 1994). Furthermore, several courts have held that warrantless arrest probable cause determinations should be at least as stringent as probable cause determinations for securing an arrest warrant despite the fact that few courts have explicitly held that warrantless arrest probable cause determinations must be supported by an oath or affirmation.

B. Several courts have held that warrantless arrest probable cause determinations should be at least as stringent as those for securing an arrest warrant.

The Seventh Circuit, for instance, noted that judicial review of warrantless arrests have "consistently been interpreted . . . based on standards at least as stringent as those for securing an arrest warrant." *U.S. v. Fernandez-Guzman*, 577 F.2d 1093, 1097 (7th Cir. 1978) (citing *Whiteley v. Warden*, 401 U.S. 560 (1971); *Wong Sun v. United States*, 371 U.S. 471(1963); *Beck v. Ohio*, 379 U.S. 89 (1964); *Wrightson v. United States*, 222 F.2d 556 (D.C. Cir. 1955)). The United States Supreme Court reasoned that "less stringent standards for reviewing [an] officer's discretion in effecting a warrantless arrest and search would discourage resort to procedures for obtaining a warrant." *Whiteley v. Warden*, 401 U.S. 560, 566 (1971). As a result, it is fair to say that to satisfy Fourth Amendment requirements a warrantless arrest probable cause determination must be at least as stringent as a probable cause determination for issuing an arrest warrant.

Accordingly, following this rationale, warrantless arrest probable cause determinations should be supported by an oath or affirmation to be at least as stringent as probable cause determinations for securing an arrest warrant. *See* U.S. Const. amend. IV. This means that, under Utah law, the arresting officer must: (1) knowingly and intentionally make a statement to a neutral and detached magistrate; (2) affirm, swear, or declare that the information in the statement is true and correct; and (3) do so under circumstances that impress upon the affiant to solemnity and importance of his or her words and of the promise to be truthful, in moral, religious, or legal terms to support a warrantless arrest probable cause determination for continued detention of a minor. *State v. Guitierrez-Perez*, 2014 UT 11, ¶ 19, 337 P.3d 205 (outlining requirements for a valid affirmation).

CONCLUSION:

There is no requirement under Utah Code, Utah Rules, or Utah case law that requires a warrantless arrest probable cause determination be supported by an oath or affirmation for continued detention of a minor. Nonetheless, it is probably unconstitutional for a warrantless arrest probable cause determination to be unsupported by an oath or affirmation. Several courts, including the United States Supreme Court, have held that warrantless arrest probable cause determinations should be at least as stringent as probable cause determinations used as a basis for issuing an arrest warrant. Accordingly, it is fair to say that warrantless arrest probable cause determinations should be supported by an oath or affirmation to satisfy Fourth Amendment requirements, since an oath or affirmation is required for probable cause determinations to secure an arrest warrant.

Rule 6. Admission to detention without court order.

(a) Admission to detention without court order is governed by Utah Administrative Rules Title R547, Chapter 13, Guidelines for Admission to Secure Youth Detention Facilities.

(b) The form described in Utah Code section 80-6-203 must contain the following language above the signature line: "Pursuant to Utah Code section 78B-18a-104, I declare under criminal penalty of the State of Utah that the foregoing is true and correct to the best of my belief and knowledge, that alternatives to detention have been considered, and that the reason the minor was not released is free from bias."

Rule 6. Admission to detention without court order.

(a) Admission to detention without court order is governed by Utah Administrative Rules Title R547, Chapter 13, Guidelines for Admission to Secure Youth Detention Facilities.

(b) The form described in Utah Code section 80-6-203 must contain the following language above the signature line: "Pursuant to Utah Code section 78B-18a-104, I declare under criminal penalty of the State of Utah that the foregoing is true and correct to the best of my belief and knowledge, that alternatives to detention have been considered, and that the reason the minor was not released is free from bias."