



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

Meeting Minutes

David W. Fureigh, Chair

Location: Webex Meeting

Date: June 3, 2022

Time: 12:00 p.m. – 2:00 p.m.

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

1. Welcome and approval of the May 6, 2022 Meeting Minutes: (David Fureigh)

David Fureigh welcomed everyone to the meeting and reminds the committee there is not a meeting in July. David Fureigh asked for approval of the May 6, 2022 Minutes. Michelle Jeffs moves to approve the May 6, 2022 Minutes. Mikelle Ostler seconded the motion, and it passed unanimously.

2. Discussion & Action – Rule 6: Admission to Detention Without Court Order: (All)

Judge Beck provided the committee with background as to how the Petition to amend Rule 6 originated. Judge Beck indicates he was involved in a pilot program where attorneys appeared at detention hearing. As part of the pilot program, Judge Beck kept statistics and did a deep dive into the detention process. At the conclusion of the pilot program, he wrote a report and gave recommendations. One of the recommendations he made was to require a sworn statement when a child is booked into a detention facility. In that same report, Judge Beck kept statistics on children that are booked into detention and discovered there was a disproportionate problem, and the statistics matched the nationwide data on the issue.

Judge Beck indicated Utah Code 80-6-203 discusses a form JJS is to provide law enforcement when they book a child into detention and proposed that form should contain language provided for in the statute to make it a sworn statement. Judge Beck further states Utah Code 80-6-203 outlines other requirements that are not sufficiently being addressed in the current procedure. 80-6-203(3)(c) outlines the report should indicate the reason the minor was not released by the peace officer or other person. Judge Beck states in his experience, that is not being provided even though it is required by statute.

Judge Beck believes this requirement would cause reflection on the part of the person requesting booking of an individual to consider whether they thought about possible alternatives to detention or if detention is the only way going forward. Judge Beck proposes the sworn statement includes language that the reason the minor was not released was free from bias. Judge Beck outlined that although he does not believe it will completely resolve the issue, it is a start. If the individual has to affirmatively state the reason for not releasing the minor is free from bias, it will require them to have a moment of reflection to think about whether that was a factor in it.

The committee discussed that the current JJS form does not require a sworn statement. Janette White proposed to put this on the agenda for a future meeting to allow JJS time to respond and for Ms. White to speak to the Attorney General currently assigned to JJS.

David Fureigh indicates he does not have an issue with the proposed change but is concerned the Supreme Court may think the “free from bias” language is not procedural but agrees the form should require a sworn statement.

Jordan Putnam is in favor of the proposed change and does not believe the Supreme Court would have a big issue with the “free from bias” language because that should be a given.

David Fureigh asked Janette White to obtain a copy of the JJS form for the next meeting for the committee to look at. Mikelle Ostler indicated she believes each of the detention centers uses their own form and she does not believe there is a standardized form and thinks it would be beneficial for state-wide form. Judge Dame states law enforcement will likely need some additional training and agrees there should be one uniform form that JJS uses. Janette White will speak to the Attorney General about that issue as well.

This issue will be placed in the agenda for the next meeting for the committee to discuss.

3. Discussion & Action - Rule 17: The Petition: (All)

David Fureigh states the rule went out for comment and five comments were received. Mr. Fureigh states he agrees with Judge Beck’s comment that the juvenile courts are courts of limited jurisdiction, and it should be the petitioner’s responsibility to put in their petition how they have jurisdiction. Janette White agrees. Mikelle Ostler indicates she believes it will be helpful to have an option in CARE for a drop-down option, so it is very clear they have checked all their boxes and there may be some additional things they can do to resolve some of the heartache some may be feeling.

Janette White indicates she spoke to Davis County, and they were not very supportive of the change due to the work it would take. Michelle Jeffs states she can see both sides but will vote against it to represent the prosecutors voice from those who she has discussed it with. Judge Jensen states from a judge’s perspective, she believes the change is very helpful and Judge Dame agreed. Judge Dame also indicated it goes some way to reduce disparity treatment of minors which is another big benefit of the proposal.

Raymundo Gallardo asks when this would be effective. David Fureigh states he believes it should be effective November 1st to give Weber County more time if they need to make changes. No opposition was received.

Janette White made a motion to submit the proposed change to the Supreme Court, Jordan Putnam seconded the motion. Michelle Jeffs opposed the motion. The motion carried and the rule will be submitted to the Supreme Court.

4. Discussion – S.B. 161: Child Welfare Appeals Amendments (2022): (All)

David Fureigh stated there was a question raised with regard to S.B. 161 and whether it was necessary for the committee to review and make changes to Rule 52 and 53 of the Utah Rules of Juvenile Procedure based on that bill.

Carol Verdoia stated she looked at the legislation and the two rules and did not see that the new legislation changed anything from the juvenile rules in terms of those procedures or issues. Ms. Verdoia indicated that it does change some things with regard to the appellate rules, but those have already been aligned with the changes. Ms. Verdoia does not believe any changes are necessary.

Judge Dame agreed with Ms. Verdoia and indicated he did not see anything that conflicts. Judge Dame indicated that as a side note, he believes Rule 52 is confusing, specifically Rule 52(a) and 52(b) and could use some reworking. The committee discussed the reworking the rule and Judge Dame indicated he would make a note to request this issue be added to the agenda at another meeting.

David Fureigh indicated the issue was resolved and no amendments were needed at this time.

5. Discussion – Update Regarding 2022 Legislative Bills Possibly Requiring Rule Changes: S.B. 85, Protective Order and Stalking Injunction Expungements: (Jordan Putnam)

Jordan Putnam stated he reviewed the bill and the applicable statutes. In looking at 78B-7-1001, the way it defines civil protective orders and stalking injunctions, the only agency or group that was not included in the definition of agency is DCFS. Adult protective orders and stalking injunction would not apply to children or the juvenile court. Jordan indicated there is a clearly delineated code section for Child Protective Orders and he does not believe S.B. 85 would apply to Child Protective Orders so he does not believe any changes need to be made to the Utah Rules of Juvenile Procedure.

Carol Verdoia stated it is odd to put an exclusion in a definition and she has concerns people will miss that it does not apply to DCFS records. Ms. Verdoia indicated when she looked at the juvenile courts legislative update and S.B. 85, she did not see anything about it excluding DCFS records so she does not know if it was missed or if it was assumed everyone would carefully read the law. Ms. Verdoia stated she agreed with Mr. Putnam that it does not apply to Child Protective Orders because DCFS records are not implicated in the bill. Ms. Verdoia suggested the legislative counsel could look at it and ask for some clarification in the law.

The committee agreed no amendments need to be made in regard to this issue.

6. Discussion – Update Regarding 2022 Legislative Bills Possibly Requiring Rule Changes: H.B. 299, Juvenile Justice Changes & Juvenile Rules 10 and 30: (David Fureigh/Chris Yannelli)

David Fureigh stated Chris Yannelli was not able to be at the meeting, but he sent an e-mail to Mr. Fureigh that he had reviewed the bill and did not believe any amendments were needed. Mr. Yannelli indicated he used Bridgett's recodification graph to review it, but it was split up and a little bit confusing, but from his review, no amendments were needed. Mr. Yannelli stated someone else may want to look at it and verify. Judge Dame suggested to go with Mr. Yannelli's conclusion and if something comes up, the committee can address it. Mr. Fureigh agreed.

The committee agreed no amendments need to be made in regard to this issue.

7. Discussion – Update Regarding 2022 Legislative Bills Possibly Requiring Rule Changes: H.B. 277, Juvenile Competency Amendments: (Sophia Moore/David Fureigh)

David Fureigh stated Sophia Moore was not able to be at the meeting, but she sent an e-mail stating she did not feel any amendments were needed with this house bill. The committee agreed no changes need to be made in regard to this issue.

8. Discussion – Update Regarding 2022 Legislative Bills Possibly Requiring Rule Changes: Juvenile Rules 27A and 51: (William Russell/Raymundo Gallardo)

Raymundo Gallardo stated William Russell was not able to join the meeting. Mr. Russell sent an e-mail to Mr. Gallardo with his analysis on the legislation impacting Rule 27A and 51. In the e-mail, Mr. Russell outlined in regard to Rule 27A, while the internally cited statute section 80-6-206 was amended to add an additional consideration prior to admitting a youth's statement to law enforcement into evidence, the existing Rule makes reference to the entire statute by number. By incorporation, the Rule now includes this additional statutory consideration. Mr. Russell outlined it is his opinion that Rule 27A does not require any amendments.

In regard to Rule 51, Mr. Russell outlined the statutory provisions incorporated by the existing rule (section 78A-6-353 and Title 78B, Chapter 6, Part 3) were not amended in the 2022 session and the Rule therefore requires no amendments.

The committee agreed no amendments were necessary.

9. Discussion – Rule 22: Initial Appearance and Preliminary Examination in Cases under Utah Code Section 80-6-503: (Meg Sternitzky)

Meg Sternitzky stated one of the juvenile court assistant administrators discovered a potential discrepancy in Rule 22. Ms. Sternitzky indicated pre-June 2020, the version of this rule distinguished the timelines in scheduling of preliminary

examinations based on age. When the Rule was revised in June 2020, it lost the distinction outlined in 78A-6-702 and 78A-6-703 when those statutes were merged into 78A-6-703.3. Due to this, under the current version of Rule 22, the Court can schedule preliminary examinations either in 10 days or 30 days under the same conditions when the minor is in custody and the information is filed under section 80-6-503. Ms. Sternitzky presents to the committee whether Rule 22 should retain the age distinction.

Judge Dame stated he did not understand why there was a distinction based on age and believes the only distinction that should be made is youth in custody versus not in custody, which is similar to adult preliminary hearings under Rule 7 of the Criminal Procedure. Judge Dame proposed the committee distinguish between in custody, with a shorter time frame, and out of custody, with a longer time frame. David Fureigh agreed and indicated he did not recall why the distinction between age was made but believes it was taken out because there was no foundation for it. Mr. Fureigh agreed it needs to be fixed and there should be a distinction between in custody and out of custody. Arek Butler is also in agreement with that proposal.

The committee discussed potential changes to Rule 22, including differentiating between in custody and out of custody time frames, changing "preliminary examination" to "preliminary hearing," and striking the reference to 80-6-503 in Rule 22(g). David Fureigh suggested putting this on the agenda for the next meeting prior to voting on it so the members of the committee who are not present and who deal with those rules and statutes can weigh in on the proposed changes. Judge Dame and Judge Jensen agreed so the committee can take a closer look at the rule and applicable statutes.

This issue will be added to the agenda for the next committee meeting.

10. Discussion – Future Meetings: In-person, Webex, or Hybrid: (All)

The committee discussed preferences on the platform to hold future meetings. Raymundo Gallardo stated the Supreme Court has no preference and has indicated it is up to the committee and committee chair to decide how to hold meetings in the future. Mr. Gallardo indicated the Supreme Court has stated with the technology available, they believe it is appropriate to offer virtual for those who are not able to attend in person.

David Fureigh stated holding the meetings virtually gives him more availability to schedule other meetings and hearings without travel time. Carol Verdoia agreed and stated the need to travel may decrease participation and virtual may be better. Judge Dame indicated he would appear remotely, and Judge Jensen stated her preference is to continue holding the meetings via Webex as well.

Mikelle Ostler suggested the committee meet in person once a year, with the remaining meetings being held virtually. The committee agreed. The committee will continue to meet virtually and can readdress it in the future.

11. Old business/new business: (All)

No old or new business was discussed.

The meeting adjourned at 1:30 PM. The next meeting will be held on August 5, 2022 at 12:00 PM via Webex.