



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

### Meeting Minutes

*David W. Fureigh, Chair*

Location: Webex Meeting

Date: September 2, 2022

Time: 12:00 p.m. – 2:00 p.m.

<p><b><u>Attendees:</u></b> David Fureigh, Chair Judge Paul Dame Judge Debra Jensen Mikelle Ostler Janette White Jordan Putnam Chris Yannelli Kristin Fadel Sophia Moore Matthew Johnson Carol Verdoia, Emeritus Member</p>	<p><b><u>Excused Members:</u></b> William Russell Arek Butler Michelle Jeffs</p>
<p><b><u>Staff:</u></b> Raymundo Gallardo Kiley Tilby, Recording Secretary Savannah Schoon, Juvenile Court Law Clerk</p>	

**1. Welcome and approval of the June 3, 2022 Meeting Minutes: (David Fureigh)**

David Fureigh welcomed everyone to the meeting and announced that the Supreme Court has appointed committee member and GAL Attorney Matthew Johnson as co-chair to the committee. Mr. Fureigh asked for approval of the June 3, 2022 Minutes. Judge Jensen moved to approve the June 3, 2022 Minutes. Janette White seconded the motion, and it passed unanimously.

**2. Discussion & Action - Rule 25A. Withdrawal of plea: (All)**

David Fureigh indicated the committee previously made some amendments to Rule 25A and it was sent for public comment. No comments were received. Judge Dame suggested changing line 8 and 9 of the amended rule to stated, "If the court has not imposed dispositional orders, such order shall not be announced unless the motion to withdraw is denied." Matthew Johnson asked if the proposed language change by Judge Dame would require the rule to be sent back out for public comment. Mr. Fureigh indicated he did not believe it will have to be sent out again and agreed with the proposed change. Judge Dame motioned the committee to approve the amendment. Matthew Johnson seconded the motion. The committee approved the amendment and the motion carried.

David Fureigh indicated he needs a motion to submit the amended rule to the Supreme Court for final publication. Judge Dame motioned to send it to the Supreme Court and Judge Jensen seconded the motion. The motion carried.

**3. Discussion & Action - Rule 22. Initial appearance and preliminary examination in cases under Utah Code section 80-6-503: (All)**

David Fureigh stated Rule 22 was set over for additional discussion. The proposal would be to change the language in the rule to reflect the most current terminology of "preliminary hearing" in lieu of "preliminary examination." Judge Dame indicated the related statute also uses the language of "preliminary hearing."

Mr. Fureigh also states section (g) of Rule 22 was brought to the committee attention due to confusing language as currently written. The proposal would be to change the rule to indicate a preliminary hearing would be 10 days for in-custody cases, and 30 days for out of custody cases, with the ability to extend those time periods for good cause.

Judge Dame proposed "ten" in line 36 should be numerical instead of spelled out. Judge Dame inquired if the time frames for preliminary hearing should be consistent with adult preliminary hearings (14 days for in-custody and 28 days for

out of custody). The committee discussed the time frames and determined the 10 days and 30 days were likely expedited due to the individuals being juveniles.

The committee then had a lengthy discussion about Utah Code sections 80-6-503 and 80-6-504 and the requirements outlined in each statute. The committee agreed Utah Code section 80-6-503 should remain in the title of the rule but should be stricken in section (g).

Judge Jensen addressed the language in section (h) as it relates to the “factors” outlined in Utah Code section 80-6-503. Judge Jensen stated there are no “factors” within the statute and the language in the rule is confusing. Sophia Moore agreed the language is confusing and believes it needs to be clarified. The committee discussed whether Rule 22 was dealing with all initial appearances, or only those filed by Information. Sophia Moore stated Rule 24 deals with arraignments when an Information is not filed. Judge Jensen proposed section (h) be changed from referencing section 80-6-503 to instead reference 80-6-504. Chris Yannelli agreed.

Raymundo Gallardo stated Utah Code section 80-6-503 was referenced throughout the rule in other places and inquired if those references need to be removed. Chris Yannelli stated he believes the reference to section 80-6-503 in (h) and (j) is appropriate. The committee agreed.

Sophia Moore stated section (j) is misleading because there are now two factors outlined in Utah Code section 80-6-504(2). The statute still requires probable cause, but the statute now includes a second burden of showing “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.” Sophia Moore proposed that section (j) in Rule 22 should either refer to the statute or take out the statute and put in both factors.

Judge Jensen agreed and proposed the following language to (j), “If from the evidence the court finds probable cause under Utah Code section 80-6-504, the court shall proceed in accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code section 80-6-504.” Sophia Moore and Chris Yannelli agreed to the proposed change.

Chris Yannelli motioned the committee to approve the rule as amended and that it be sent to the Supreme Court for approval for public comment. Sophia Moore seconded. The motion carried.

**4. Discussion – S.B. 85: Protective Order and Stalking Injunction Expungement:**  
(Michael Drechsel; Daniel Meza-Rincon)

David Fureigh represented there was some confusion within S.B. 85 and indicated S.B. 85 allows an individual to petition the court to expunge an ex parte protective order or protective order. At a previous committee meeting, the committee addressed the issue and Jordan Putnam did not feel like any amendments were needed based on the statute. The committee had some discussion that the expungement statute specifically excluded DCFS records. However, Mr. Fureigh indicated the expungement statute does apply to juvenile court records, but still agrees there are no amendments that need to be made to the juvenile rules. Mr. Fureigh expressed concern that if the committee attempted to develop a rule, it may be contrary to the statute because the statute specifically references the Utah Rules of Civil Procedure, which differ from the Utah Rules of Juvenile Procedure.

Daniel Meza-Rincon agreed with Mr. Fureigh that there is not a need for a rule to be developed in the juvenile rules. However, Mr. Meza-Rincon wanted to ensure the committee understood that S.B. 85 does apply to juvenile courts and juvenile court records, even if DCFS records are excluded.

Carol Verdoia stated line 62 and 63 in S.B. 85 which refers to the Utah Rules of Civil Procedure is very confusing because it makes it sound like the statute does not apply to juvenile court. Ms. Verdoia does not believe the committee needs to develop a rule because she fears it will make it more confusing but suggested perhaps the legislature could amend the statute to clarify.

Judge Jensen expressed concern that the rules, specifically as it relates to service, differ between the juvenile rules and the Utah Rules of Civil Procedure. Judge Jensen indicated the court clerks are also confused about how to implement S.B. 85 and the clerks may need some direction on how S.B. 85 is to be implemented in juvenile court. Matthew Johnson stated there are also no provisions that refer to the guardian ad litem, or whether a guardian ad litem should be appointed.

The committee then had a lengthy discussion about whether S.B. 85 was applicable to juvenile court records. Jordan Putman indicated it seemed that S.B. 85 was only applicable to adult protective orders or civil stalking injunctions in district court. Judge Dame believes “ex parte civil protective order” includes child protective orders when you look at Utah Code section 78B-7-102(3) and (12). Carol Verdoia expressed concern that there was not a cross-reference to those sections and the language in S.B. 85 specifically states it defines civil order for purposes of “this part.” Ms. Verdoia did not know if the statute intended for those other statutes be looked at.

Michael Drechsel joined the committee discussion and stated he believes the drafter of the statute and Senator Todd Weiler intended to leverage the existing definitions from the general definitions of the protective order statutes. Ms. Verdoia expressed concern that the statute may be confusing to implement if the rules of services of process are different in juvenile court. Mr. Drechsel responded

that when you look at the juvenile rules, they reference Rule 4 of the Utah Rules of Civil Procedure which is why the drafter of the bill felt comfortable just referencing the Utah Rules of Civil Procedure. Judge Dame stated the rules differentiate between service of process and service of pleadings or other papers. Judge Dame does not believe there is a conflict in the service of process.

Judge Jensen indicated there was a larger issue because Rule 4 has discrepancies between the juvenile rules and Judge Jensen had been asked to bring it to the attention of the committee to create their own service rule due to those issues.

Judge Jensen inquired if the legislature would be willing to make a few changes to the statute to reflect the concerns outlined. Michael Drechsel stated that the juvenile court may not see a lot of expungement petitions for child protective orders because there is not public access to CARE documents or juvenile court records. However, Mr. Drechsel indicated the concerns could be addressed.

David Fureigh expressed concern with creating a juvenile rule to address expungement petitions due to potentially conflicting with the statute. In order for the committee to develop a rule that would not be in conflict, the statute would need to be amended to include clear language that references both the Utah Rules of Civil Procedure and the Utah Rules of Juvenile Procedure. Judge Dame stated he does not think a new rule would be beneficial as it would be contradictory to the statute. Mikelle Ostler stated the statute needs to be cleaned up first and there needs to be guidance on how to process the expungement petitions.

Jacqueline Carlton will reach out to Senator Weiler and make the legislative committee aware of the concerns outlined. The committee will wait to determine how to move forward.

#### **5. Discussion & Action - Rule 6. Admission to detention without court order: (All)**

David Fureigh stated Judge Beck had petitioned the committee to consider amending Rule 6 to include a requirement in the form used to admit minors into detention to include a declaration statement. Judge Beck proposed a statement should be included on the JJS form that everything contained in the form is true and correct and that: 1) alternatives to detention have been considered; and 2) the reasons for detention are free from bias. Mr. Fureigh outlined that nothing is required in the form at this time. Janette White contacted Molly McDonald, the attorney for JJYS, and she did not have an objection to the language. However, Ms. McDonald stated it is law enforcement that has to sign the form declaring the information, not JJYS.

Janette White indicated JJYS understands if the change to the rule is passed, they will need to change their form. Ms. White stated there has been a big push to try to address bias and this is something the committee can do to help address it. The

proposed change to the rule will require conscious thought from law enforcement when children are being checked into detention.

Matthew Johnson expressed concern with the language “alternatives to detention have been considered.” Chris Yannelli stated most law enforcement officers already outlined in their report why the child was taken to detention, which denotes they considered alternatives based on the safety. Mr. Yannelli indicated he does not like the language “reason the minor was not released” and believes it should instead state “reason the minor was brought to detention.” Mr. Yannelli stated released has a larger meaning.

The committee discussed making the language in the rule to be consistent with the statute. The committee proposed the language be changed to “...the reason the minor was taken to a detention facility is free from bias.”

Janette White proposed the committee get feedback from law enforcement and prosecutors. Ms. White expressed concern the language may be setting law enforcement up for liability. The committee discussed whether the proposed language could be sent out for comment, while simultaneously sending it to law enforcement and getting their input. Mr. Fureigh stated the Supreme Court may want input from law enforcement or other agencies this rule would affect before sending it out for public comment as they have wanted input from other entities with past rule changes.

Judge Dame proposed the language should be changed to “...and the reason I took the minor to a detention facility is free from bias.” Judge Dame requested the change to make it clear the actual officer who took the child to the detention facility was free from bias, and not a third party. David Fureigh stated he could see a situation where other individuals were involved in making the decision to take the child to a detention facility. The committee discussed other officer involvement and whether another officer may be making the decision.

With the concerns outlined, David Fureigh stated it may be appropriate to get input from law enforcement before sending it out for comment. Law enforcement may have other scenarios where they may have an issue with the proposed language and the practicality of it. The matter will be put on next month’s agenda for the committee to get input from agencies the proposed rule will affect.

## **6. Discussion – URCP Rule 4 and URJP Rule 18: (All)**

The committee did not have time to address this agenda item. This will be placed on the agenda for the next committee meeting.

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

No old or new business was discussed.

The meeting adjourned at 2:00 PM. The next meeting will be held on October 7, 2022 at 12:00 PM via Webex.