

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

Meeting Agenda

David W. Fureigh, Chair

Location: Webex Meeting

Date: April 7, 2023

Time: 12:00 pm – 2:00 pm

Action: Welcome and approval of March 3, 2023, meeting minutes.	Tab 1	David Fureigh
Discussion & Action: Rule 18. Summons; service of process; notice. <ul style="list-style-type: none">• <i>Comment period closed March 4, 2023.</i><ul style="list-style-type: none">○ <i>One comment received</i>• <i>Committee members needed to help draft a juvenile court specific Bilingual Notice.</i>	Tab 2	All
Discussion & Action: Rule 22. Initial appearance and preliminary examination in cases under Utah Code section 80-6-503. <ul style="list-style-type: none">• <i>Senate Joint Resolution 6 recently passed amending Rule 22.</i>• <i>Combining and presenting to the Supreme Court the Committee's amendments and SJR006's amendments to Rule 22.</i>	Tab 3	All
Discussion: Rules of Evidence and Rules of Juvenile Procedure. <ul style="list-style-type: none">• <i>U.R.E. 616 and URJP 27A.</i>• <i>Legislative session updates:</i><ul style="list-style-type: none">○ <i>Senate Bill 49 recently passed and makes amendments to Utah code sections 80-6-204 and 80-6-206.</i>○ <i>House Bill 404 did not pass.</i>	Tab 4	Chris Yannelli All

Discussion & Action: Rule 29C. Victim restitution orders. <ul style="list-style-type: none"> • <i>Rule 29C is a new rule proposed by committee member Bill Russell. Senate Bill 186 recently passed and makes amendments to restitution requests.</i> 	Tab 5	Bill Russell All
Discussion: Supreme Court Memo: Remote vs. In-person hearings. <ul style="list-style-type: none"> • <i>Feedback from the Board of Juvenile Court Judges.</i> • <i>Judicial Council's Green Phase Working Group Report.</i> <ul style="list-style-type: none"> ○ <i>Judge Dame – Rules 7 and 9</i> ○ <i>Janette White – Rules 13 and 18</i> ○ <i>Michelle Jeffs – Rules 22 and 23A</i> ○ <i>Arek Butler – Rules 26 and 29B</i> ○ <i>Jordan Putnam – Rules 34 and 37B</i> ○ <i>Matthew Johnson – Rule 50</i> 	Tab 6	Judge Dame Judge Jensen All
Discussion: Old business or new business		All

[URJP Committee Site](#)

[Webex Meeting Link](#)

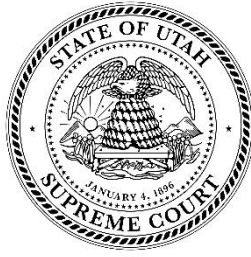
Meeting Schedule:

May 5, 2023 (In-person)
September 1, 2023

June 2, 2023
October 6, 2023

August 4, 2023
November 3, 2023

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: March 3, 2023

Time: 12:00 p.m. – 2:00 p.m.

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

1. Welcome and approval of the February 3, 2023 Meeting Minutes: (David Fureigh)

David Fureigh welcomed everyone to the meeting and welcomed Judge Beck as a guest regarding the first agenda item. Mr. Fureigh then asked for approval of the February 3, 2023, meeting minutes. Judge Dame made a few grammatical changes. Mr. Russell also requested a change to the word predisposition, and clarifies he meant propensity. With those amendments, Mr. Russell moved to approve the minutes. Matthew Johnson seconded the motion, and it passed unanimously.

2. Discussion & Action – Rule 6. Admission to detention without court order: (All)

Mr. Fureigh stated he presented the proposed rule to the Supreme Court, along with Mr. Gallardo and Mr. Johnson. Mr. Fureigh indicated there was a lot of discussion and questions asked by the justices and Mr. Fureigh relayed the feedback to the committee. The Supreme Court indicated they did not necessarily like the “i.e.” approach in the proposed rule, and was concerned it may not match the intent of the legislature.

Mr. Fureigh outlined that another concern the justices raised was regarding section four of the proposed rule. The justices felt like section four of the proposed rule altered the sequence of events as required in the statute. The justices believe that the statute indicates the youth is taken to detention first, and the report is filed after, whereas the proposed rule indicates that the youth could not be admitted to detention until after the form was completed and signed by the officer or individual taking the youth to detention, which is contrary to the intent of the legislature. The justices also commented that they did not believe a rule can direct a detention facility as to what to do, or not do, in a particular situation.

Mr. Fureigh stated the justices did not believe they could require anyone to attest that what they are doing is free from bias. The Supreme Court felt that requiring a form to include this language adds a requirement to the statute that is not there, and that the statute already outlines the list of requirements that must be included in the form and the free from bias language is not one of them. There was also discussion about how everyone has biases, and the justices do not believe they can ask someone to say that their decision was completed free of bias in making their decision.

Mr. Yannelli stated he recalls Ms. Jeffs bringing up that issue in a prior meeting. Ms. Jeffs agreed and stated that has been her concern all along based on the trainings she has received regarding unconscious biases. Mr. Fureigh stated he understands where the Supreme Court is coming from, and outlined that he did not hide anything from the justices with regard to law enforcement feedback. Mr.

Fureigh also stated he went into the reasoning behind the proposed rule, and outlined to the Supreme Court that this committee understood it would not alleviate people from having biases but may at least cause the individual to pause and ensure the decision was not made based on some sort of bias. Mr. Fureigh outlined that the letter that was submitted to the Supreme Court for the reason behind the proposed rule was very thorough, and the justices applauded this committee for what they are trying to do but did not feel like we could ask that question on the form.

Mr. Fureigh asked Mr. Johnson and Mr. Gallardo if he had missed anything, and Mr. Johnson agreed it was a good summary of the feedback and concerns.

Mr. Fureigh stated he has a suggestion regarding the form. Mr. Fureigh outlined that JJYS is represented by the Attorney General's Office, and that Ms. White has been in contact with Mollie McDonald regarding the proposed rule and the form. Ms. McDonald indicated she would work with this committee and JJYS to develop a state-wide form. Mr. Fureigh stated he does not believe this committee needs to make a change to the rule, as JJYS could incorporate a lot of what was proposed in this rule into their form. In reviewing the statute, Mr. Fureigh indicated there is no statutory requirement for how the form should look, so Mr. Fureigh suggested the form could include some of that "i.e." language without having them specifically outlined in the rule. Mr. Fureigh stated he would be happy to work with the AAG that represents JJYS in developing a form that is better, as one of the concerns brought up by this committee was the lack of consistency in the forms throughout the state. As far as the language regarding bias, Mr. Fureigh does not think JJYS can put that in their form, and would guess the Supreme Court is not going to approve that requirement either.

Mr. Yannelli asked Mr. Fureigh if he asked the Supreme Court to give a draft of what they wanted. Mr. Fureigh stated the Supreme Court was not suggesting something else, but noted one of the justices stated if the language was more simplified and mirrored the statute, they would be more inclined to consider it. Mr. Fureigh stated the justices did not make a lot of comments as to why they did not like the "i.e." language, but stated they wanted it to be simplified, and expressed concern that it added language that was not otherwise in the statute.

Judge Dame asked Mr. Fureigh if the Supreme Court gave any indication as to why they did not believe they could direct a facility to do something. Mr. Fureigh stated the rules are procedures for the court, and they did not believe a rule could direct a facility on what to do or not do. Mr. Russell stated he believes it is likely also a separation of powers issue.

Mr. Russell stated he sees some of the points the Supreme Court comments were directed to. Mr. Russell commented that it sounded like the Supreme Court wanted a more de minimis rule that references the statute, and stated he is willing to go back to the drawing board. Ms. Moore asked if the Supreme Court was not wanting a Rule 6 at all, and Mr. Fureigh indicated they did not specifically state that, but he got the impression they did not believe it was necessary.

Mr. Johnson stated the Supreme Court did not state that a rule was not needed, but they outlined concern regarding the examples, the free from bias language, and that the rule directed a facility on what they can and cannot do. Mr. Johnson stated he remembers Ms. Verdoia stating previously that it is easier to keep a rule and make changes than it is to lose a rule and bring it back. Mr. Johnson outlined this committee could do a more de minimis rule that references the statute, and maybe include a few subsections from the statute.

Judge Dame asked Mr. Fureigh if the Supreme Court had any concern with the requirement of a declaration. Mr. Fureigh responded that they did not mention that. Judge Dame stated the major benefit of keeping the rule is to keep the declaration requirement, which he believes is one of the main goals Judge Beck wanted to accomplish by amending the rule.

Mr. Russell inquired as to Mr. Fureigh's suggestion again. Mr. Fureigh proposed that maybe the committee could accomplish something similar without having a rule by working with JJYS to create a form that includes the items outlined. Mr. Fureigh stated that other than the four things that need to be included in the form, there are no other mandates as to what can or cannot be in the form. This committee could also ask JJYS to include some of the "i.e." language that was outlined in the proposed rule. Mr. Fureigh has heard in the past that these forms do not contain all the requirements that the statute requires, which would be the benefit of creating a state-wide form. As far as the declaration, the Supreme Court did not address that too much, and Mr. Fureigh believes JJYS could add a declaration to their form if they wanted to.

Ms. White stated there is also a concern that there are different forms being used at different facilities and there is not one uniform form. Mr. Fureigh agreed and stated another reason why JJYS would be willing to work with this committee is to create a state-wide form. Mr. Fureigh stated DCFS has had a big focus lately on having state-wide forms so there is consistency throughout the state, and he believes JJYS would be in support of that as well. Mr. Yannelli stated there needs to be uniformity with the form and stated Blake Murdoch attended a few meetings ago and expressed his willingness to assist with the development of that form. Mr. Fureigh agreed, and stated he thinks he could convince JJYS to come up with a state-wide form that everyone is using that has all the requirements in the statute and contains the items this committee is requesting, with the exception of the free from bias language.

Mr. Yannelli stated he does not want to speak for Judge Beck, but he agrees with Judge Dame that the declaration was an important piece of this. Judge Beck agreed. Judge Beck stated he is agreeable with Mr. Fureigh's suggestion and believes most, if not everything, could be accomplished with the form. Judge Beck outlined if there was a state-wide form, that would be great. Judge Beck further expressed that the declaration is important, and that the constitution outlined that it must be supported by oath or affirmation. Judge Beck understands that it is not

specifically required in the statute, but there are constitutional principles that support it. Judge Beck agreed that if there is a form, Rule 6 does not need to be amended at all. Mr. Yannelli and Mr. Russell expressed support for that position as well.

Mr. Fureigh stated he will work with the AAG that works with JJYS regarding the form and will report back to this committee on whatever their decision is. Mr. Fureigh will share the proposed form with this committee if a new form is developed, and the committee can then decide at that time if they need to amend the rule or not. Ms. Verdoia agreed the issue is likely a separation of powers issue, and agreed this committee's concerns could potentially be addressed through the form.

3. Discussion – Rules of Evidence and Rules of Juvenile Procedure: (All)

Mr. Fureigh stated this was put back on the agenda as Mr. Yannelli was not able to attend the last meeting. Mr. Fureigh summarized that after the committee had some discussion regarding Rule 404(c) and Rule 609, Mr. Russell felt better about it but may propose something in the future. Mr. Fureigh outlined this committee wanted to provide Mr. Yannelli an opportunity to be heard on this issue.

Mr. Yannelli stated that for those who are not familiar with that rule, it is a felony prosecution rule that an electronic recording be made when a statement is given to law enforcement. Mr. Yannelli outlined that a few meetings ago, this committee discussed Rule 27A which references Utah Code 80-6-206. Utah Code 80-6-206 deals with interrogation of a child which is different than Rule 616, so given there was already a rule and statute dealing with an interrogation of a child, it was not necessary to make changes. Mr. Yannelli outlined that Rule 27A and the statute have different requirements than Rule 616. For example, in an interrogation of a child, the parent must be notified and present when a waiver is given. Mr. Yannelli believes the juvenile rule has greater safeguards for the truth because a parent or trusted adult is there pursuant to the law. Mr. Yannelli stated his opinion is that this committee doesn't need Rule 616 because there is already a specific rule and statute in place.

Mr. Yannelli then stated he believes there was another change to that rule and suggested that perhaps this committee should wait. Mr. Yannelli outlined that the legislature looked at the prong of Utah Code 80-6-206 because the law requires the parent to be present when the waiver is given, which was turning out to be a pain because often times parents were unavailable to be there and law enforcement was left waiting. Mr. Yannelli believes one of the changes proposed to be made to Utah

Code 80-6-206 is that the parent has to be notified, but no longer has to be physically present.

Mr. Russell pulled up H.B. 404 and stated the change allows a parent to appear via video if they cannot make it to the station. Mr. Russell then outlines at the very end of Utah Code 80-6-206, the proposal was to add language that law enforcement make an audio recording or audio/video recording that accurately records a custodial interrogation of a child. Mr. Russell indicated he did not know if this had been passed but was just learning about this proposed change today. Mr. Yannelli stated if it passes, it is a non-issue. Ms. Verdoia checked the status and indicated it passed the house, but it is stuck in the senate rules so they will know after midnight today.

Judge Dame suggested this committee hold off on any action until they see what happens with H.B. 404. The committee agreed to continue this discussion at the next committee meeting.

4. Discussion & Action – Rule 29C. Victim Restitution Orders: (All)

Mr. Fureigh stated that at the last meeting Mr. Russell stated there were some proposed statutory language change in the legislature regarding this issue. Mr. Fureigh inquired if there was an update regarding this proposal. Mr. Russell responded that he received a text within the last hour that the proposed bill had passed, and it was awaiting the governor's signature. Ms. Verdoia confirmed that was correct. Mr. Fureigh suggested this committee wait and see if the governor signs it and if it goes into effect, it may alleviate some of the concerns or issues Mr. Russell had. Mr. Russell agreed that it takes significant steps, although it is not a perfect solution.

Judge Dame expressed concern regarding the language in the statute and the confusion it may cause, specifically as it references the victim's attorney in the first part but only references the victim later in the proposed statute. Mr. Yannelli agreed there is already confusion by the proposed language. Ms. Verdoia inquired if this was on any of the committee members' radars to alleviate any confusion. Mr. Yannelli responded that he knows there were several organizations and individuals working on this issue and making compromises. Mr. Russell also indicated he knows there were people working on it and many discussions on how to reach a consensus on the interpretation to at least get some guidance. Mr. Russell stated the proposed legislation is better than nothing, though still problematic.

The committee agreed to look at this at the next committee meeting to see if there is anything further this committee needs to do.

5. Discussion – The Judicial Council’s Green Phase Working Group Report, and Supreme Court Memo: (All)

Mr. Fureigh stated that the committee set this matter over because they wanted to see what other committees were doing and get input as to the terms they were going to use. Since the last committee meeting, they have received a memo from the Supreme Court requesting feedback. Mr. Gallardo stated this committee could comment at a Supreme Court conference, and anyone, including the public, can comment through the public comment site. Mr. Fureigh inquired how the committee would like to move forward.

Judge Dame informed the committee that himself and Judge Jensen will be attending a juvenile judges meeting next week to address this particular topic.

Mr. Johnson stated that he was speaking with Ms. White the other day and wondered if the committee needed to put something in each of the rules, or if they could put something in Rule 18 with regards to the hearing process instead of each individual rule. Ms. White stated they also spoke about Rule 5 and including definitions for virtual hearings instead of each separate rule. Ms. Moore inquired if the Supreme Court was looking for a rule defining good cause, and stated she did not know if that would be this committee or another agency. Mr. Fureigh stated the Supreme Court is just looking for feedback at this point to get thoughts regarding what the rules should say and how they should be crafted, and then will direct the individual committees to look at it and develop the rules.

The committee then discussed the different practices within each jurisdiction regarding virtual hearings. Mr. Johnson stated each judge within Second District do things different. Mr. Putnam agreed, and stated Third District is a total mix with some judges requiring in-person hearings, some hybrid, some virtual, some are required to file a motion and others can e-mail the clerk. Ms. Moore stated this is a problem for conflict attorneys because they never know what to expect. Ms. Moore then stated the court internet is horrible, so attorneys have a difficult time appearing in person at one hearing, and then having to appear virtually for the next. Ms. Moore would like to see some consistency throughout the state.

Mr. Fureigh stated he thinks a lot of the reason behind the memo from the Supreme Court is due to the lack of direction right now, so they are looking for feedback. Mr. Fureigh then inquired if this committee wanted to submit something to the Supreme Court as a committee or handle it by individual or organization. Mr. Fureigh outlined that if this committee was going to submit something, the majority of the committee members would need to be on board on whatever feedback is given. Ms. Moore stated she thinks it would be best to wait and see what comes of it but would like to eventually have a rule at least in regard to procedure.

Mr. Johnson inquired if the Supreme Court was looking at the committee to create a whole new rule of procedure, or if the committee could add to the existing rules. Mr. Johnson noted the way the memo reads is a bit ambiguous. Mr. Fureigh

responded that he does not know yet, and thinks they are just taking feedback right now before decisions are made in regard to what the rules should look like and what they should allow. Mr. Fureigh noted this does not prevent this committee from developing or amending their own rules, but would hate to amend the rules and then have to change it again after direction is given from the Supreme Court. Mr. Johnson stated the committee should wait to prevent the committee from putting a lot of work into drafting amendments, and later having to start over. Mr. Yannelli agreed that things are still changing, and Ms. Moore noted it seemed like it changes almost daily.

Ms. White stated she understands there is inconsistency throughout the state, and even within each district, but Ms. White expressed concern that if the language is too specific, it could be problematic. Ms. White noted there is already a motion practice and she has never seen a judge deny a virtual appearance at the request of a party. Ms. Moore and Mr. Fureigh agreed that they have never seen a judge deny a virtual appearance, but acknowledged there must be some judges in the state that have since the Supreme Court has asked those specific questions.

The committee agreed not to submit feedback and would leave it up to each individual or organization to submit public comment.

6. Old business/new business: (All)

Mr. Fureigh asked the committee if any members had any old or new business they wanted to discuss. Ms. White stated there was an issue that has been brought up regarding Rule 2(a). Ms. White notes that Rule 2(a) talks about the applicability of juvenile rules and outlines that the rules of civil and criminal procedure also apply. Ms. White stated she has had a few requests to include substantiation proceedings in that section so it is clear. Mr. Fureigh stated how he has handled that in the past is to argue that substantiation proceedings involve neglect, abuse or dependency, since that is what is being challenged. Ms. White expressed concern with inconsistency across the state on how the judges handle that. Mr. Fureigh suggested Ms. White put it on the agenda and propose adding the substantiation proceedings language into Rule 2(a).

Mr. Fureigh then reminded all committee members of the in-person meeting in May and discussed the location of the meeting.

The meeting adjourned at 1:15 PM. The next meeting will be held on April 7, 2023 at 12:00 PM via Webex.

TAB 2

Rule 18. Summons; service of process; notice.

(a) **Summons.** Upon the filing of a petition, the clerk, unless otherwise directed by the court, ~~shall~~will schedule an initial hearing in the case.

(1) Summons may be issued by the petitioning attorney. If the petitioning attorney does not issue a summons, summons ~~shall~~will be issued by the clerk in accordance with Utah Code section 78A-6-351. The summons ~~shall~~must conform to the format prescribed by these rules.

(2) Content of the summons.

(A) Abuse, neglect, and dependency cases. The summons ~~shall~~must contain the name and address of the court, the title of the proceeding, the type of hearing scheduled, and the date, place and time of the hearing. It ~~shall~~must state the time within which the respondent is required to answer the petition, and ~~shall~~must notify the respondent that in the case of the failure to do so, judgment by default may be rendered against the respondent. It ~~shall~~must ~~also~~ contain an abbreviated reference to the substance of the petition. It must include the bilingual notice set forth in the juvenile form summons approved by the Utah Judicial Council.

(B) Termination of parental rights cases. The summons must contain the name and address of the court, the title of the proceeding, the type of hearing scheduled, and the date, place and time of the hearing. It must state the time within which the respondent is required to answer the petition. It must contain an abbreviated reference to the substance of the petition. It must include the bilingual notice set forth in the juvenile form summons approved by the Utah Judicial Council.

(C) Other cases. The summons ~~shall~~must contain the name and address of the court, the title of the proceeding, the type of hearing scheduled, and the date, place and time of the hearing. It ~~shall~~must also contain an abbreviated

reference to the substance of the petition. In proceedings against an adult pursuant to Utah Code section 78A-6-450, the summons ~~shall~~must conform to the Utah Rules of Criminal Procedure and be issued by the prosecuting attorney.

(3) The summons ~~shall~~must be directed to the person or persons who have physical care, control or custody of the minor and require them to appear and bring the minor before the court. If the person so summoned is not the parent, guardian, or custodian of the minor, a summons ~~shall~~must also be issued to the parent, guardian, or custodian. If the minor or person who is the subject of the petition has been emancipated by marriage or is 18 years of age or older at the time the petition is filed, the summons may require the appearance of the minor only, unless otherwise ordered by the court. In neglect, abuse and dependency cases, unless otherwise directed by the court, the summons ~~shall~~must not require the appearance of the subject minor.

(4) No summons ~~shall be~~is necessary as to any party who appears voluntarily or who files a written waiver of service with the clerk prior to or upon appearance at the hearing.

(b) Service.

(1) Except as otherwise provided by these rules or by statute, service of process and proof of service ~~shall~~must be made by the methods provided in Rule 4 of Utah Rules of Civil Procedure. Service of process ~~shall~~must be made by the sheriff of the county where the service is to be made, by a deputy, by a process server, or by any other suitable person appointed by the court. However, when the court so directs, an agent of the Department of Human Services may serve process in a case in which the Department is a party. A party or party's attorney may serve another party at a court hearing. The record of the proceeding ~~shall~~will reflect the service of the document and ~~shall~~will constitute the proof of service.

(2) Personal service may be made upon a parent, guardian, or custodian and upon a minor in that person's legal custody by delivering to a parent, guardian, or custodian a copy of the summons with a copy of the petition attached. If a minor is in the legal custody or guardianship of an agency or person other than a parent, service ~~shall~~must also be made by delivering to the legal custodian a copy of the summons with a copy of the petition attached and notice ~~shall~~must be given to the parent as provided in paragraph (d). Service upon a minor who has attained majority by marriage as provided in Utah Code Section 15-2-1 or upon court order ~~shall~~must be made in the manner provided in the Utah Rules of Civil Procedure.

(3) Service may be made by any form of mail requiring a signed receipt by the addressee. Service is complete upon return to court of the signed receipt. Service of process may be made by depositing a copy thereof in the United States mail addressed to the last known address of the person to be served. Any person who appears in court in response to mailed service ~~shall be~~is considered to have been legally served.

(4) In any proceeding wherein the parent, guardian, or custodian cannot after the exercise of reasonable diligence be located for personal service, the court may proceed to adjudicate the matter subject to the right of the parent, guardian or custodian to a rehearing, except that in certification proceedings brought pursuant to Title 80, Chapter 6, Part 5, Transfer to District Court and in proceedings seeking permanent termination of parental rights, the court ~~shall~~will order service upon the parent, guardian, or custodian by publication. Any rehearing ~~shall~~must be requested by written motion.

(5) Service ~~shall~~must be completed at least 48 hours prior to the adjudicatory hearing. If the summons is for the permanent termination of parental rights, service ~~shall~~must be completed at least ten days before the adjudicatory hearing. If the summons is for a substantiation proceeding, service ~~shall~~must be completed at least ~~forty-five~~45 days before the adjudicatory hearing.

(c) **Service by publication.** Service by publication ~~shall~~must be authorized by the procedure and in the form provided by the Utah Juvenile Code and Rule 4 of Utah Rules of Civil Procedure except that within the caption and the body of any published document, children ~~shall~~must be identified by their initials and respective birth dates, and not by their names. The parent, guardian, or custodian of each child ~~shall~~must be identified as such using their full names within the caption of any published document.

(d) **Notice.**

(1) Notice of the time, date and place of any further proceedings, after an initial appearance or service of summons, may be given in open court or by mail to any party. Notice ~~shall be~~is sufficient if the clerk deposits the notice in the United States mail, postage pre-paid, to the address provided by the party in court or the address at which the party was initially served, or, if the party has agreed to accept service by email, sends notice to the email address provided by the party.

(2) Notice for any party represented by counsel ~~shall~~must be given to counsel for the party through either mail, notice given in open court, or by email to the email address on file with the Utah State Bar.

(e) **Additional parties.** Whenever it appears to the court that a person who is not the parent, guardian or custodian should be made subject to the jurisdiction and authority of the court in a minor's case, upon the motion of any party or the court's own motion, the court may issue a summons ordering such person to appear. Upon the appearance of such person, the court may enter an order making such person a party to the proceeding and may order such person to comply with reasonable conditions as a part of the disposition in the minor's case. Upon the request of such person, the court ~~shall~~will conduct a hearing upon the issue of whether such person should be made a party.

(f) **Service of pleadings and other papers.** Except as otherwise provided by these rules or by statute, service of pleadings and other papers not requiring a summons ~~shall~~must be made by the methods provided in Rule 5 of Utah Rules of Civil Procedure, except that

110 service to the email address on file with the Utah State Bar is sufficient service to an
111 attorney under this rule, whether or not an attorney agrees to accept service by email.
112 (g) Access to the Juvenile Court's Court and Agency Records Exchange (C.A.R.E.) for
113 eFiling documents does not constitute an electronic filing account as referenced in the
114 Rules of Civil Procedure. eFiling in C.A.R.E. does not constitute service upon a party.

Rule 18. Summons; service of process; notice.

(a) **Summons.** Upon the filing of a petition, the clerk, unless otherwise directed by the court, will schedule an initial hearing in the case.

(1) Summons may be issued by the petitioning attorney. If the petitioning attorney does not issue a summons, summons will be issued by the clerk in accordance with Utah Code section 78A-6-351. The summons must conform to the format prescribed by these rules.

(2) Content of the summons.

(A) Abuse, neglect, and dependency cases. The summons must contain the name and address of the court, the title of the proceeding, the type of hearing scheduled, and the date, place and time of the hearing. It must state the time within which the respondent is required to answer the petition, and must notify the respondent that in the case of the failure to do so, judgment by default may be rendered against the respondent. It must contain an abbreviated reference to the substance of the petition. It must include the bilingual notice set forth in the juvenile form summons approved by the Utah Judicial Council.

(B) Termination of parental rights cases. The summons must contain the name and address of the court, the title of the proceeding, the type of hearing scheduled, and the date, place and time of the hearing. It must state the time within which the respondent is required to answer the petition. It must contain an abbreviated reference to the substance of the petition. It must include the bilingual notice set forth in the juvenile form summons approved by the Utah Judicial Council.

(C) Other cases. The summons must contain the name and address of the court, the title of the proceeding, the type of hearing scheduled, and the date, place and time of the hearing. It must also contain an abbreviated

reference to the substance of the petition. In proceedings against an adult pursuant to Utah Code section 78A-6-450, the summons must conform to the Utah Rules of Criminal Procedure and be issued by the prosecuting attorney.

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(4) No summons is necessary as to any party who appears voluntarily or who files a written waiver of service with the clerk prior to or upon appearance at the hearing.

(b) Service.

(1) Except as otherwise provided by these rules or by statute, service of process and proof of service must be made by the methods provided in Rule 4 of Utah Rules of Civil Procedure. Service of process must be made by the sheriff of the county where the service is to be made, by a deputy, by a process server, or by any other suitable person appointed by the court. However, when the court so directs, an agent of the Department of Human Services may serve process in a case in which the Department is a party. A party or party's attorney may serve another party at a court hearing. The record of the proceeding will reflect the service of the document and will constitute the proof of service.

(2) Personal service may be made upon a parent, guardian, or custodian and upon a minor in that person's legal custody by delivering to a parent, guardian, or custodian a copy of the summons with a copy of the petition attached. If a minor is in the legal custody or guardianship of an agency or person other than a parent, service must also be made by delivering to the legal custodian a copy of the summons with a copy of the petition attached and notice must be given to the parent as provided in paragraph (d). Service upon a minor who has attained majority by marriage as provided in Utah Code Section 15-2-1 or upon court order must be made in the manner provided in the Utah Rules of Civil Procedure.

(3) Service may be made by any form of mail requiring a signed receipt by the addressee. Service is complete upon return to court of the signed receipt. Service of process may be made by depositing a copy thereof in the United States mail addressed to the last known address of the person to be served. Any person who appears in court in response to mailed service is considered to have been legally served.

(4) In any proceeding wherein the parent, guardian, or custodian cannot after the exercise of reasonable diligence be located for personal service, the court may proceed to adjudicate the matter subject to the right of the parent, guardian or custodian to a rehearing, except that in certification proceedings brought pursuant to Title 80, Chapter 6, Part 5, Transfer to District Court and in proceedings seeking permanent termination of parental rights, the court will order service upon the parent, guardian, or custodian by publication. Any rehearing must be requested by written motion.

(5) Service must be completed at least 48 hours prior to the adjudicatory hearing. If the summons is for the permanent termination of parental rights, service must be completed at least ten days before the adjudicatory hearing. If the summons is for a substantiation proceeding, service must be completed at least 45 days before the adjudicatory hearing.

(c) **Service by publication.** Service by publication must be authorized by the procedure and in the form provided by the Utah Juvenile Code and Rule 4 of Utah Rules of Civil Procedure except that within the caption and the body of any published document, children must be identified by their initials and respective birth dates, and not by their names. The parent, guardian, or custodian of each child must be identified as such using their full names within the caption of any published document.

(d) **Notice.**

(1) Notice of the time, date and place of any further proceedings, after an initial appearance or service of summons, may be given in open court or by mail to any party. Notice is sufficient if the clerk deposits the notice in the United States mail, postage pre-paid, to the address provided by the party in court or the address at which the party was initially served, or, if the party has agreed to accept service by email, sends notice to the email address provided by the party.

(2) Notice for any party represented by counsel must be given to counsel for the party through either mail, notice given in open court, or by email to the email address on file with the Utah State Bar.

(e) **Additional parties.** Whenever it appears to the court that a person who is not the parent, guardian or custodian should be made subject to the jurisdiction and authority of the court in a minor's case, upon the motion of any party or the court's own motion, the court may issue a summons ordering such person to appear. Upon the appearance of such person, the court may enter an order making such person a party to the proceeding and may order such person to comply with reasonable conditions as a part of the disposition in the minor's case. Upon the request of such person, the court will conduct a hearing upon the issue of whether such person should be made a party.

(f) **Service of pleadings and other papers.** Except as otherwise provided by these rules or by statute, service of pleadings and other papers not requiring a summons must be made by the methods provided in Rule 5 of Utah Rules of Civil Procedure, except that

110 service to the email address on file with the Utah State Bar is sufficient service to an
111 attorney under this rule, whether or not an attorney agrees to accept service by email.
112 (g) Access to the Juvenile Court's Court and Agency Records Exchange (C.A.R.E.) for
113 eFiling documents does not constitute an electronic filing account as referenced in the
114 Rules of Civil Procedure. eFiling in C.A.R.E. does not constitute service upon a party.

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.”

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Posted: January 18, 2023

Utah Courts

Rules of Juvenile Procedure – Comment Period Closes March 4, 2023

URJP018. Summons; service of process; notice. Amend. The proposed amendments to Rule 18 include: (1) adding language that requires a bilingual notice in abuse, neglect, dependency, and termination of parental rights cases; (2) adding a subsection to 18(a)(2) to include termination of parental rights cases; and, (3) replacing the language “shall” with “must,” “will,” or “is” to conform with the Utah Supreme Court stylistic guidelines.

This entry was posted in [-Rules of Juvenile Procedure, URJP018.](#)

« [Rules of Civil Procedure – Comment Period Closes March 5, 2023](#)

[Code of Judicial Administration – Comment Period Closes March 3, 2023](#) »

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.

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UTAH COURTS

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One thought on “Rules of Juvenile Procedure – Comment Period Closes March 4, 2023”

Anonymous
January 18, 2023 at 6:05 pm

Bilingual notice is vague. What two languages?

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TAB 3

Rule 22. Initial appearance and preliminary ~~examination hearing~~ in cases under Utah Code sections 80-6-503 and 80-6-504.

(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~~hearing. If the minor waives the right to a preliminary ~~examination-hearing~~ 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~~hearing, the court shall schedule the preliminary ~~examination~~hearing. ~~The time periods of this rule may be extended by the court for good cause shown.~~ The preliminary ~~examination~~hearing shall be held within a reasonable time, but not later than 10 ~~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-hearing~~ 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. The time periods of this rule may be extended by the court for good cause shown.~~

(h) A preliminary ~~examination~~hearing 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~~4~~.

(i) A preliminary ~~examination-hearing~~ 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 under Utah Code section 80-6-504 ~~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, but not~~ be based solely on reliable hearsay evidence admitted under Rule 1102(b)(8) of the Utah Rules of Evidence. Objections to evidence on the ground that it was acquired by unlawful means are not properly raised at the preliminary ~~examination~~hearing.

(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~~hearing, upon request of either party, and subject to Title 77, Chapter 38, ~~Victim Rights~~Rights of Crime Victims Act, the court may:

(1) exclude witnesses from the courtroom;

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

(3) exclude spectators from the courtroom.

Rule 22. Initial appearance and preliminary hearing in cases under Utah Code sections 80-6-503 and 80-6-504.

(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 hearing. If the minor waives the right to a preliminary hearing 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 hearing, the court shall schedule the preliminary hearing. The preliminary hearing shall be held within a reasonable time, but not later than 10 days after the initial appearance if the minor is in custody for the offense charged. The preliminary hearing shall be held within a reasonable time, but not later than 30 days after the initial appearance if the minor is not in custody. The time periods of this rule may be extended by the court for good cause shown.

(h) A preliminary hearing 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 80-6-504.

(i) A preliminary hearing 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 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.

(k) The finding of probable cause may be based on hearsay, but not be based solely on reliable hearsay evidence admitted under Rule 1102(b)(8) of the Utah Rules of Evidence. Objections to evidence on the ground that it was acquired by unlawful means are not properly raised at the preliminary hearing.

(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 hearing, upon request of either party, and subject to Title 77, Chapter 38, Rights of Crime Victims Act, the court may:

(1) exclude witnesses from the courtroom;

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

(3) exclude spectators from the courtroom.

**JOINT RESOLUTION AMENDING RULES OF PROCEDURE
AND EVIDENCE REGARDING CRIMINAL PROSECUTIONS**

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: Nelson T. Abbott

LONG TITLE

General Description:

This joint resolution amends court rules of procedure and evidence regarding criminal prosecutions.

Highlighted Provisions:

This joint resolution:

- ▶ amends Rule 7B of the Utah Rules of Criminal Procedure to address the probable cause determination at a preliminary examination;
- ▶ amends Rule 16 of the Utah Rules of Criminal Procedure to address the disclosure of evidence after an information is filed;
- ▶ amends Rule 22 of the Utah Rules of Juvenile Procedure to address the probable cause determination at a preliminary examination;
- ▶ amends Rule 1102 of the Utah Rules of Evidence to address statements from witnesses; and
- ▶ makes technical and conforming changes.

Special Clauses:

This joint resolution provides a special effective date.

Utah Rules of Criminal Procedure Affected:

AMENDS:

Rule 7B, Utah Rules of Criminal Procedure

Rule 16, Utah Rules of Criminal Procedure

Utah Rules of Juvenile Procedure Affected:

AMENDS:

Rule 22, Utah Rules of Juvenile Procedure

Utah Rules of Evidence Affected:

AMENDS:

Rule 1102, Utah Rules of Evidence

Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:

As provided in Utah Constitution Article VIII, Section 4, the Legislature may amend rules of procedure and evidence adopted by the Utah Supreme Court upon a two-thirds vote of all members of both houses of the Legislature:

Section 1. **Rule 7B**, Utah Rules of Criminal Procedure is amended to read:

Rule 7B. Preliminary examinations.

(a) **Burden of proof.** At the preliminary examination, the state has the burden of proof and proceeds first with its case. At the conclusion of the state's case, the defendant may testify under oath, call witnesses, and present evidence. The defendant may also cross-examine adverse witnesses.

(b) **Probable cause determination.** If from the evidence the magistrate finds probable cause to believe that the crime charged has been committed and that the defendant has committed it, the magistrate must order that the defendant be bound over for trial. The findings of probable cause may be based on hearsay, ~~[in whole or in part]~~ but may not be based solely on hearsay evidence admitted under Rule 1102(b)(8) of the Utah Rules of Evidence. Objections to evidence on the ground that it was acquired by unlawful means are not properly raised at the preliminary examination.

(c) **If no probable cause.** If the magistrate does not find probable cause to believe the crime charged has been committed or the defendant committed it, the magistrate must dismiss the information and discharge the defendant. The magistrate 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.

(d) **Witnesses.** At a preliminary examination, the magistrate, upon request of either party, may exclude witnesses from the courtroom and may require witnesses not to converse with each other until the preliminary examination is concluded.

(e) **Written findings.** If the magistrate orders the defendant bound over for trial, the magistrate must execute a bind-over order and include any written findings in the case record.

(f) **Assignment on motion to quash.** If a defendant files a motion to quash a bind-over order, the motion shall be decided by the judge assigned to the case after bind-over, regardless of whether the judge conducted the preliminary examination in the judge's role as a magistrate.

Section 2. **Rule 16**, Utah Rules of Criminal Procedure is amended to read:

Rule 16. Discovery.

(a) Disclosures by prosecutor.

(1) Mandatory disclosures. The prosecutor must disclose to the defendant the following material or information directly related to the case of which the prosecution team has knowledge and control:

(A) written or recorded statements of the defendant and any codefendants, and the substance of any unrecorded oral statements made by the defendant and any codefendants to law enforcement officials;

(B) reports and results of any physical or mental examination, of any identification procedure, and of any scientific test or experiment;

(C) physical and electronic evidence, including any warrants, warrant affidavits, books, papers, documents, photographs, and digital media recordings;

(D) written or recorded statements of witnesses;

(E) reports prepared by law enforcement officials and any notes that are not incorporated into such a report; and

(F) evidence that must be disclosed under the United States and Utah constitutions, including all evidence favorable to the defendant that is material to guilt or punishment.

(2) Timing of mandatory disclosures. The prosecutor's duty to disclose under

paragraph (a)(1) is a continuing duty as the material or information becomes known to the prosecutor. The prosecutor's disclosures must be made as soon as practicable following the filing of ~~[charges an Information]~~ an information, except that a prosecutor must disclose all evidence that the prosecutor relied upon to file the information within five days after the day on which the prosecutor receives a request for discovery from the defendant. In every case, all material or information listed under paragraph (a)(1) that is presently and reasonably available to the prosecutor must be disclosed before the preliminary ~~[hearing]~~ examination, if applicable, or before the defendant enters a plea of guilty or no contest or goes to trial, unless otherwise waived by the defendant.

(3) Disclosures upon request.

(A) Upon request, the prosecutor must obtain and disclose to the defendant any of the material or information listed in paragraph (a)(1) which is in a record possessed by another governmental agency and may be shared with the prosecutor under Title 63G, Chapter 2, Government Records Access and Management Act. The request must identify with particularity the record sought and the agency that possesses it, and must demonstrate that the information in the record is directly related to the case.

(B) If the government agency refuses to share with the prosecutor the record containing the requested material or information under paragraph (a)(3)(A), or if the prosecution determines that it is prohibited by law from disclosing to the defense the record shared by the governmental agency, the prosecutor must promptly file notice stating the reasons for noncompliance. The defense may thereafter file an appropriate motion seeking a subpoena or other order requiring the disclosure of the requested record.

(4) Good cause disclosures. The prosecutor must disclose any other item of evidence which the court determines on good cause shown should be made available to the defendant in order for the defendant to adequately prepare a defense.

(5) Trial disclosures. The prosecutor must also disclose to the defendant the following information and material no later than 14 days, or as soon as practicable, before trial:

(A) Unless otherwise prohibited by law, a written list of the names and current contact

information of all persons whom the prosecution intends to call as witnesses at trial; and

(B) Any exhibits that the prosecution intends to introduce at trial.

(C) Upon order of the court, the criminal records, if any, of all persons whom the prosecution intends to call as a witness at trial.

(6) Information not subject to disclosure. Unless otherwise required by law, the prosecution's disclosure obligations do not include information or material that is privileged or attorney work product. Attorney work product protection is not subject to the exception in Rule 26(b)(5) of the Utah Rules of Civil Procedure.

(b) Disclosures by defense.

(1) Good cause disclosures. The defense must disclose to the prosecutor any item of evidence which the court determines on good cause shown should be made available to the prosecutor in order for the prosecutor to adequately prepare the prosecutor's case for trial.

(2) Other disclosures required by statute. The defense must disclose to the prosecutor such information as required by statute relating to alibi or insanity.

(3) Trial disclosures. The defense must also disclose to the prosecutor the following information and material no later than 14 days, or as soon as practicable, before trial:

(A) A written list of the names and current contact information of all persons, except for the defendant, whom the defense intends to call as witnesses at trial; and

(B) Any exhibits that the defense intends to introduce at trial.

(4) Information not subject to disclosure. The defendant's disclosure obligations do not include information or material that is privileged or attorney work product. Attorney work product protection is not subject to the exception in Rule 26(b)(5) of the Utah Rules of Civil Procedure.

(c) Methods of disclosure.

(1) The prosecutor or defendant may make disclosure by notifying the opposing party that material and information may be inspected, tested, or copied at specified reasonable times and places.

(2) If the prosecutor concludes any disclosure required under this rule is prohibited by

law, or believes disclosure would endanger any person or interfere with an ongoing investigation, the prosecutor must file notice identifying the nature of the material or information withheld and the basis for non-disclosure. If disclosure is then requested by the defendant, the court must hold an in camera review to decide whether disclosure is required and whether any limitations or restrictions will apply to disclosure as provided in paragraph (d).

(d) Disclosure limitations and restrictions.

(1) The prosecutor or defendant may impose reasonable limitations on the further dissemination of sensitive information otherwise subject to discovery to prevent improper use of the information or to protect victims and witnesses from harassment, abuse, or undue invasion of privacy, including limitations on the further dissemination of recorded interviews, photographs, or psychological or medical reports.

(2) Upon a sufficient showing the court may at any time order that discovery or inspection be denied, restricted, or deferred, that limitations on the further dissemination of discovery be modified or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(e) Relief and sanctions for failing to disclose.

(1) When a party fails to comply with the disclosure requirements of this rule, the court may, subject to constitutional limitations and the rules of evidence, take the measures or impose the sanctions provided in this paragraph that it deems appropriate under the circumstances. If a party has failed to comply with this rule, the court may take one or more of the following actions:

(A) order such party to permit the discovery or inspection, of the undisclosed material or information;

(B) grant a continuance of the proceedings;

(C) prohibit the party from introducing evidence not disclosed; or

(D) order such other relief as the court deems just under the circumstances.

(2) If after a hearing the court finds that a party has knowingly and willfully failed to comply with an order of the court compelling disclosure under this rule, the nondisclosing party or attorney may be held in contempt of court and subject to the penalties thereof.

(f) Identification evidence.

(1) Subject to constitutional limitations and upon good cause shown, the trial court may order the defendant to: appear in a lineup; speak for identification; submit to fingerprinting or the making of other bodily impressions; pose for photographs not involving reenactment of the crime; try on articles of clothing or other items of disguise; permit the taking of samples of blood, hair, fingernail scrapings, and other bodily materials which can be obtained without unreasonable intrusion; provide specimens of handwriting; submit to reasonable physical or medical inspection of the accused's body; and cut hair or allow hair to grow to approximate appearance at the time of the alleged offense.

(2) Whenever the personal appearance of the accused is required for the foregoing purposes, reasonable notice of the time and place of such appearance shall be given to the accused and the accused's counsel.

(3) Unless relieved by court order, failure of the accused to appear or to comply with the requirements of this paragraph without reasonable excuse shall be grounds for revocation of pre-trial release and will subject the defendant to such further consequences or sanctions as the court may deem appropriate, including allowing the prosecutor to offer as evidence at trial the defendant's failure to comply with this paragraph.

Section 3. **Rule 22**, Utah Rules of Juvenile Procedure is amended to read:

Rule 22. Initial appearance and preliminary examinations 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]~~, but not be based solely on reliable hearsay evidence admitted under Rule 1102(b)(8) of the Utah Rules of Evidence. 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]~~ Rights of Crime Victims Act, 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.

Section 4. **Rule 1102**, Utah Rules of Evidence is amended to read:

Rule 1102. Reliable Hearsay in Criminal Preliminary Examinations.

(a) Statement of the Rule. Reliable hearsay is admissible at criminal preliminary examinations.

(b) Definition of Reliable Hearsay. For purposes of criminal preliminary examinations only, reliable hearsay includes:

(b)(1) hearsay evidence admissible at trial under the Utah Rules of Evidence;

(b)(2) hearsay evidence admissible at trial under Rule 804 of the Utah Rules of Evidence, regardless of the availability of the declarant at the preliminary examination;

(b)(3) evidence establishing the foundation for or the authenticity of any exhibit;

(b)(4) scientific, laboratory, or forensic reports and records;

(b)(5) medical and autopsy reports and records;

(b)(6) a statement of a non-testifying peace officer to a testifying peace officer;

(b)(7) a statement made by a child victim of physical abuse or a sexual offense which is recorded in accordance with Rule 15.5 of the Utah Rules of Criminal Procedure;

(b)(8) a statement of a declarant that is written, recorded, or transcribed verbatim which is:

(b)(8)(A) under oath or affirmation; or

(b)(8)(B) pursuant to a notification to the declarant that a false statement made therein is punishable; and

(b)(9) other hearsay evidence with similar indicia of reliability, regardless of admissibility at trial under Rules 803 and 804 of the Utah Rules of Evidence.

(c) Continuance for Production of Additional Evidence. If hearsay evidence is

proffered or admitted in the preliminary examination, a continuance of the hearing may be granted for the purpose of furnishing additional evidence if:

(c)(1) The magistrate finds that the hearsay evidence proffered or admitted is not sufficient and additional evidence is necessary for a bindover; or

(c)(2) The defense establishes that it would be so substantially and unfairly disadvantaged by the use of the hearsay evidence as to outweigh the interests of the declarant and the efficient administration of justice.

(d)(1) Except as provided in paragraph (d)(2), a prosecutor, or any staff for the office of the prosecutor, may transcribe a declarant's statement verbatim or assist a declarant in drafting a statement.

(d)(2) A prosecutor, or any staff for the office of the prosecutor, may not draft a statement for a declarant, or tamper with a witness in violation of Utah Code section [76-8-508](#).

Section 5. **Effective date.**

(1) In accordance with Utah Constitution Article VIII, Section 4, the amendments in this resolution pass upon approval by a two-thirds vote of all members elected to each house.

(2) After passage of this resolution under Subsection (1), the amendments in this resolution take effect on May 3, 2023.

TAB 4

1 Rule 616. Statements Made During Custodial Interrogations.

2 Effective: 1/1/2016

3 (a) Definitions.

4 (a)(1) "Custodial interrogation" means questioning or other conduct by a law
5 enforcement officer that is reasonably likely to elicit an incriminating response
6 from a person and occurs when reasonable persons in the same circumstances
7 would consider themselves in custody.

8 (a)(2) "Electronic recording" means an audio recording or an audio-video
9 recording that accurately records a custodial interrogation.

10 (a)(3) "Law enforcement agency" means a governmental entity or person
11 authorized by a governmental entity or by state law to enforce criminal laws or
12 investigate suspected criminal activity. The term includes a nongovernmental
13 entity that has been delegated the authority to enforce criminal laws or
14 investigate suspected criminal activity.

15 (a)(4) "Law enforcement officer" means a person described in [Utah Code § 53-13-](#)
16 [103\(1\)](#).

17 (a)(5) "Place of detention" means a facility or area owned or operated by a law
18 enforcement agency where persons are detained in connection with criminal
19 investigations or questioned about alleged criminal conduct. The term includes a
20 law enforcement agency station, jail, holding cell, correctional or detention
21 facility, police vehicle or any other stationary or mobile building owned or
22 operated by a law enforcement agency.

23 (a)(6) "Statement" means the same as in [Rule 801\(a\)](#).

24 (b) Admissibility. Except as otherwise provided in Subsection (c) of this rule, evidence
25 of a statement made by the defendant during a custodial interrogation in a place of
26 detention shall not be admitted against the defendant in a felony criminal prosecution
27 unless an electronic recording of the statement was made and is available at trial. This
28 requirement is in addition to, and does not diminish, any other requirement regarding
29 the admissibility of a person's statements.

(c) Exceptions. Notwithstanding subsection (b), the court may admit a statement made under any of the following circumstances if the statement is otherwise admissible under the law:

(c)(1) The statement was made prior to January 1, 2016;

(c)(2) The statement was made during a custodial interrogation that occurred outside Utah and was conducted by officers of a jurisdiction outside Utah;

(c)(3) The statement is offered for impeachment purposes only;

(c)(4) The statement was a spontaneous statement made outside the course of a custodial interrogation or made during routine processing or booking of the person;

(c)(5) Before or during a custodial interrogation, the person agreed to respond to questions only if his or her statements were not electronically recorded, provided that such agreement is electronically recorded or documented in writing;

(c)(6) The law enforcement officers conducting the custodial interrogation in good faith failed to make an electronic recording because the officers inadvertently failed to operate the recording equipment properly, or without the knowledge of any of the officers the recording equipment malfunctioned or stopped operating;

(c)(7) The law enforcement officers conducting or observing the custodial interrogation reasonably believed that the crime for which the person was being investigated was not a felony under Utah law;

(c)(8) Substantial exigent circumstances existed that prevented or rendered unfeasible the making of an electronic recording of the custodial interrogation, or prevented its preservation and availability at trial; or

(c)(9) The court finds:

(c)(9)(A) The statement has substantial guarantees of trustworthiness and reliability equivalent to those of an electronic recording; and

(c)(9)(B) Admitting the statement best serves the purposes of these rules and the interests of justice.

(d) Procedure to determine admissibility.

(d)(1) Notice. If the prosecution intends to offer an unrecorded statement under an exception described in Subsection (c)(4) through (9) of this Rule, the prosecution must serve the defendant with written notice of an intent to rely on such an exception not later than 30 days before trial.

(d)(2) Instruction. If the court admits into evidence a statement made during a custodial interrogation that was not electronically recorded under an exception described in Subsection (c)(4) through (9) of this Rule, the court, upon request of the defendant, may give cautionary instructions to the jury concerning the unrecorded statement.

2015 Advisory Committee Note. In 2008, the Utah Attorney General's Office, in cooperation with statewide law enforcement agencies, drafted a Best Practices Statement for Law Enforcement that recommended electronic recording of custodial interrogations. Since then, most agencies have adopted the Statement or their own policies to record custodial interviews. This rule is promulgated to bring statewide uniformity to the admissibility of statements made during custodial interrogations. See *State v. Perea*, 2013 UT 68, ¶ 130, 322 P.3d 624. Several states have adopted requirements for recording custodial interviews, and the National Conference of Commissioners on Uniform State Law has approved and recommended for enactment a Uniform Electronic Recordation of Custodial Interrogations Act. The benefits of recording custodial interrogations include “avoiding unwarranted claims of coercion”; preventing the use of “actual coercive tactics by police”; and demonstrating “the voluntariness of the confession, the context in which a particular statement was made, and . . . the actual content of the statement.” *State v. James*, 858 P.2d 1012, 1018 (Utah Ct. App. 1993) (internal quotation marks omitted). Recordings assist the fact-finder and protect police officers and agencies from false claims of coercion and misconduct. *Perea*, 2013 UT 68, ¶ 130 n.23.

88 The rule addresses direct custodial questioning by law enforcement as well as other
89 conduct during custodial questioning. It is intended to ensure that the custodial
90 interrogation, including any part of the interrogation that is written or electronically
91 transmitted, is fully and fairly recorded. Also, the admissibility of evidence under this
92 rule is a preliminary question governed by Rule 104.

93

Rule 27A. Admissibility of statements given by a child.

(a) The custodial interrogation of a child for an offense is governed by Utah Code section 80-6-206.

(b) The state shall retain the burden of proving by a preponderance of the evidence that any waiver of the child's constitutional rights was knowing, voluntary, and satisfied the requirements outlined in Utah Code section 80-6-206.

Effective January 19, 2022.

JUVENILE CUSTODIAL INTERROGATION AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kathleen A. Riebe

House Sponsor: Marsha Judkins

LONG TITLE

General Description:

This bill addresses the custodial interrogation of a child.

Highlighted Provisions:

This bill:

- ▶ modifies the time period requirement for the custodial interrogation of a child;
- ▶ addresses disclosures made to a child before the custodial interrogation of the child;
- ▶ addresses compliance with required disclosures for the custodial interrogation of a child; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

80-6-204, as renumbered and amended by Laws of Utah 2021, Chapter 261

80-6-206, as last amended by Laws of Utah 2022, Chapters 155, 312 and 335 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 155

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

Section 1. Section **80-6-204** is amended to read:

80-6-204. Detention or confinement of a minor -- Restrictions.

(1) Except as provided in Subsection (2) or this chapter, if a child is apprehended by a peace officer, or brought before a court for examination under state law, the child may not be confined:

(a) in a jail, lockup, or cell used for an adult who is charged with a crime; or

(b) in secure care .

(2) (a) The division shall detain a child in accordance with Sections 80-6-502, 80-6-504, and 80-6-505 if:

(i) the child is charged with an offense under Section 80-6-502 or 80-6-503;

(ii) the district court has obtained jurisdiction over the offense because the child is bound over to the district court under Section 80-6-504; and

(iii) the juvenile or district court orders the detention of the child.

(b) (i) If a child is detained before a detention hearing, or a preliminary hearing under Section 80-6-504 if a criminal information is filed for the child under Section 80-6-503, the child may only be held in certified juvenile detention accommodations in accordance with rules made by the commission.

(ii) The commission's rules shall include rules for acceptable sight and sound separation from adult inmates.

(iii) The commission shall certify that a correctional facility is in compliance with the commission's rules.

(iv) This Subsection (2)(b) does not apply to a child held in a correctional facility in accordance with Subsection (2)(a).

(3) (a) In an area of low density population, the commission may, by rule, approve a juvenile detention accommodation within a correctional facility that has acceptable sight and sound separation.

(b) An accommodation described in Subsection (3)(a) shall be used only:

(i) for short-term holding of a child who is alleged to have committed an act that would be a criminal offense if committed by an adult; and

(ii) for a maximum confinement period of six hours.

(c) A child may only be held in an accommodation described in Subsection (3)(a) for:

- (i) identification;
- (ii) notification of a juvenile court official;
- (iii) processing; and
- (iv) allowance of adequate time for evaluation of needs and circumstances regarding the release or transfer of the child to a shelter or detention facility.

(d) This Subsection (3) does not apply to a child held in a correctional facility in accordance with Subsection (2)(a).

~~(4) [(a) If a child is alleged to have committed an act that would be a criminal offense if committed by an adult, the child may be detained in a holding room in a local law enforcement agency facility:]~~

~~[(i) for a maximum of two hours; and]~~

~~[(ii) (A) for identification or interrogation; or]~~

~~[(B) while awaiting release to a parent or other responsible adult.]~~

(a) If a child is alleged to have committed an act that would be a criminal offense if committed by an adult, a law enforcement officer or agency may detain the child in a holding room in a local law enforcement agency facility for no longer than four hours:

(i) for identification or interrogation; or

(ii) while awaiting release to a parent or other responsible adult.

(b) A holding room described in Subsection (4)(a) shall be certified by the commission in accordance with the commission's rules.

(c) The commission's rules shall include provisions for constant supervision and for sight and sound separation from adult inmates.

(5) Willful failure to comply with this section is a class B misdemeanor.

(6) (a) The division is responsible for the custody and detention of:

(i) a child who requires detention before trial or examination, or is placed in secure detention after an adjudication under Section 80-6-704; and

(ii) a juvenile offender under Subsection 80-6-806(7).

(b) Subsection (6)(a) does not apply to a child held in a correctional facility in accordance with Subsection (2)(a).

(c) (i) The commission shall provide standards for custody or detention under Subsections (2)(b), (3), and (4).

(ii) The division shall determine and set standards for conditions of care and confinement of children in detention facilities.

(d) (i) The division, or a public or private agency willing to undertake temporary custody or detention upon agreed terms in a contract with the division, shall provide all other custody or detention in suitable premises distinct and separate from the general jails, lockups, or cells used in law enforcement and corrections systems.

(ii) This Subsection (6)(d) does not apply to a child held in a correctional facility in accordance with Subsection (2)(a).

(7) Except as otherwise provided by this chapter, if an individual who is, or appears to be, under 18 years old is received at a correctional facility, the sheriff, warden, or other official, in charge of the correctional facility shall:

(a) immediately notify the juvenile court of the individual; and

(b) make arrangements for the transfer of the individual to a detention facility, unless otherwise ordered by the juvenile court.

Section 2. Section **80-6-206** is amended to read:

80-6-206. Interrogation of a child -- Presence of a parent, legal guardian, or other adult -- Interrogation of a minor in a facility -- Prohibition on false information or unauthorized statement.

(1) As used in this section:

(a) "Custodial interrogation" means any interrogation of a minor while the individual is in custody.

(b) (i) "Friendly adult" means an adult:

(A) who has an established relationship with the child to the extent that the adult can provide meaningful advice and concerned help to the child should the need arise; and

(B) who is not hostile or adverse to the child's interest.

(ii) "Friendly adult" does not include a parent or guardian of the child.

(c) (i) "Interrogation" means any express questioning or any words or actions that are reasonably likely to elicit an incriminating response.

(ii) "Interrogation" does not include words or actions normally attendant to arrest and custody.

(2) If a child is subject to a custodial interrogation for an offense, the child has the right:

(a) to have the child's parent or guardian present during an interrogation of the child; or

(b) to have a friendly adult present during an interrogation of the child if:

(i) there is reason to believe that the child's parent or guardian has abused or threatened the child; or

(ii) the child's parent's or guardian's interest is adverse to the child's interest, including that the parent or guardian is a victim or a codefendant of the offense alleged to have been committed by the child.

(3) If a child is subject to a custodial interrogation for an offense, the child may not be interrogated unless:

(a) the child has been advised, in accordance with Subsection (4), of the child's constitutional rights and the child's right to have a parent or guardian, or a friendly adult if applicable under Subsection (2)(b), present during the interrogation;

(b) the child has waived the child's constitutional rights;

(c) except as provided in Subsection [~~(4)~~] (6), the child's parent or guardian, or the friendly adult if applicable under Subsection (2)(b), was present during the child's waiver under Subsection (3)(b) and has given permission for the child to be interrogated; and

(d) if the child is in the custody of the Division of Child and Family Services and a guardian ad litem has been appointed for the child, the child's guardian ad litem has given consent to an interview of the child as described in Section 80-2-705.

(4) Before the custodial interrogation of a child by a peace officer or a juvenile

probation officer, the peace officer or juvenile probation officer shall disclose the following to the child:

(a) You have the right to remain silent.

(b) If you do not want to talk to me, you do not have to talk to me.

(c) If you decide to talk to me, you have the right to stop answering my questions or talking to me at any time.

(d) Anything you say can and will be used against you in court.

(e) If you talk to me, I can tell a judge and everyone else in court everything that you tell me.

(f) You have the right to have a parent or guardian, or a friendly adult if applicable, with you while I ask you questions.

(g) You have the right to a lawyer.

(h) You can talk to a lawyer before I ask you any questions and you can have that lawyer with you while I ask you questions.

(i) If you want to talk to a lawyer, a lawyer will be provided to you for free.

(j) These are your rights.

(k) Do you understand the rights that I have just told you?

(l) Do you want to talk to me?

(5) (a) A peace officer's, or a juvenile probation officer's, compliance with Subsection (4) is determined by examining the entirety of the officer's disclosures to the child.

(b) A peace officer's, or a juvenile probation officer's, failure to strictly comply with, or state the exact language of, Subsection (4) is not grounds by itself for finding the officer has not complied with Subsection (4).

~~[(4)]~~ (6) A child's parent or guardian, or a friendly adult if applicable under Subsection (2)(b), is not required to be present during the child's waiver under Subsection (3) or to give permission to the interrogation of the child if:

(a) the child is emancipated as described in Section 80-7-105;

(b) the child has misrepresented the child's age as being 18 years old or older and a

peace officer or a juvenile probation officer has relied on that misrepresentation in good faith;
or

(c) a peace officer ~~[or]~~, a juvenile probation officer, or a law enforcement agency:

(i) has made reasonable efforts to contact the child's parent or legal guardian[;] or a friendly adult if applicable under Subsection (2)(b); and

(ii) has been unable to make contact within one hour after the time at which the child is taken into temporary custody.

~~[(5)]~~ (7) (a) If an individual is admitted to a detention facility under Section 80-6-205, committed to a secure care facility under Section 80-6-705, or housed in a secure care facility under Section 80-6-507, and the individual is subject to a custodial interrogation for an offense, the individual may not be interrogated unless:

(i) the individual has had a meaningful opportunity to consult with the individual's appointed or retained attorney;

(ii) the individual waives the individual's constitutional rights after consultation with the individual's appointed or retained attorney; and

(iii) the individual's appointed or retained attorney is present for the interrogation.

(b) Subsection ~~[(5)(a)]~~ (7)(a) does not apply to a juvenile probation officer[;] or a staff member of a detention facility, unless the juvenile probation officer or the staff member is interrogating the individual on behalf of a peace officer or a law enforcement agency.

~~[(6) A minor may only waive the minor's right to be represented by counsel at all stages of court proceedings as described in Section 78B-22-204.]~~

~~[(7)]~~ (8) If a child is subject to a custodial interrogation for an offense, a peace officer, or an individual interrogating a child on behalf of a peace officer or a law enforcement agency, may not knowingly:

(a) provide false information about evidence that is reasonably likely to elicit an incriminating response from the child; or

(b) make an unauthorized statement about leniency for the offense.

(9) A minor may only waive the minor's right to be represented by counsel at all stages

198 of court proceedings as described in Section [78B-22-204](#).

TAB 5

1 Rule 29C. Victim restitution orders.

2 (a) Determinations of amounts ordered as victim restitution are governed by Utah
3 Code section 80-6-710.

4 (b) To be considered by the court for a dispositional order, the submission of a request
5 for victim restitution will be in writing and filed by the prosecuting attorney or the
6 victim in the juvenile court's CARE system and served on all parties in the time and
7 manner provided by law. Failure to timely file and serve this request constitutes a bar
8 on the entry of an order of victim restitution as to the minor.

9 (c) If a request for restitution is filed, the documentation supporting the request
10 described in Utah Code section 80-6-710(3)(a) and (b) will be attached to the written
11 request.

12 (d) The court may enter an order of victim restitution as to the minor based upon a
13 timely filed and supported request for restitution if the parties stipulate or the time to
14 object under these rules has passed. If a timely objection to the request for victim
15 restitution is filed by the minor, the court will hold a hearing to determine whether the
16 adjudicated offenses proximately caused the victim's material loss, whether the
17 supporting documents adequately prove such amounts, and the minor's ability to pay.

18 (e) At the hearing the prosecution bears the burden to prove by a preponderance of the
19 evidence that the adjudicated offenses proximately caused the victim's material loss as
20 stated in the written request. Any party may present evidence of the minor's ability to
21 pay restitution.

22 (f) At the conclusion of the hearing, the court will enter findings as to whether the
23 prosecution has met its burden to prove that the minor proximately caused material
24 loss requested as victim restitution, whether the material loss arose from admitted
25 conduct or by stipulation, and regarding the minor's ability to pay such amounts.

JUVENILE COURT AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Pitcher

House Sponsor: Andrew Stoddard

LONG TITLE

General Description:

This bill amends provisions related to the juvenile court.

Highlighted Provisions:

This bill:

- ▶ amends the requirements for requesting restitution in the juvenile court; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

80-6-710, as last amended by Laws of Utah 2022, Chapters 155, 334

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

Section 1. Section **80-6-710** is amended to read:

80-6-710. Determination of restitution -- Requirements.

(1) If a minor is adjudicated under Section **80-6-701**, the juvenile court may order the minor to repair, replace, or otherwise make restitution for:

- (a) material loss caused by an offense listed in the petition; or
- (b) conduct for which the minor agrees to make restitution.

(2) Within seven days after the day on which a petition is filed under this chapter, the

prosecuting attorney or a juvenile probation officer shall provide notification of the restitution process to all reasonably identifiable and locatable victims of an offense listed in the petition.

(3) A victim that receives notice under Subsection (2) is responsible for providing the prosecuting attorney with:

(a) all invoices, bills, receipts, and any other evidence of the injury or out-of-pocket loss;

(b) all documentation of any compensation or reimbursement from an insurance company or a local, state, or federal agency that is related to the injury or out-of-pocket loss;

(c) if available, the victim's proof of identification, including the victim's date of birth, social security number, or driver license number; and

(d) the victim's contact information, including the victim's current home and work address and telephone number.

~~(4) [A prosecuting attorney or victim shall submit a request for restitution to the juvenile court:]~~

(a) A prosecuting attorney, or a victim's attorney, shall make a request for an order for restitution in the juvenile court:

~~[(a)]~~ (i) if feasible, at the time of disposition; or

~~[(b)]~~ (ii) within 90 days after disposition.

(b) If a prosecuting attorney's request for restitution includes an amount that is less than the amount requested by the victim, the prosecuting attorney shall include a copy of the victim's request with the prosecuting attorney's request.

(c) A written request for an order for restitution under Subsection (4)(a) shall be served on all parties to the minor's case.

(5) In an order for restitution under Subsection (1), the juvenile court:

(a) shall only order restitution for the victim's material loss;

(b) may not order restitution if the juvenile court finds that the minor is unable to pay or acquire the means to pay;

(c) shall take into account:

58 (i) the minor's ability to satisfy the restitution order within six months from the day on
59 which restitution is ordered; or

60 (ii) if the minor participates in a restorative justice program under Subsection (6), the
61 amount or conditions of restitution agreed upon by the minor and the victim of the adjudicated
62 offense;

63 (d) shall credit any amount paid by the minor to the victim in a civil suit against
64 restitution owed by the minor; and

65 (e) shall credit any amount paid to the victim in restitution against liability in a civil
66 suit.

67 (6) If the minor and the victim of the adjudicated offense agree to participate, the
68 juvenile court may refer the minor's case to a restorative justice program, such as victim
69 offender mediation, to address how loss resulting from the adjudicated offense may be
70 addressed.

71 (7) (a) The juvenile court may require a minor to reimburse an individual, entity, or
72 governmental agency who offered and paid a reward to a person for providing information
73 resulting in an adjudication of a minor for the commission of an offense.

74 (b) If a minor is returned to this state in accordance with Part 11, Interstate Compact
75 for Juveniles, the juvenile court may order the minor to make restitution for costs expended by
76 any governmental entity for the return of the minor.

TAB 6



Supreme Court of Utah

450 South State Street
P.O. Box 140210
Salt Lake City, Utah 84114-0210
Telephone 801-578-3834

Nicholas Stiles
Appellate Court Administrator

MEMORANDUM

To: Advisory Committees on the Rules of Criminal, Civil, Juvenile, and Appellate Procedure
CC: Boards of Judges for Juvenile, District, Appellate, and Justice Courts.
From: Utah Supreme Court
Re: Remote vs. In-person Hearings

In October 2022, the Green Phase Workgroup presented its *Report and Recommendation to the Judicial Council and Supreme Court Regarding the Ongoing Use of Virtual Meeting Technology to Conduct Court Proceedings*. The Judicial Council considered the matter extensively and in November 2022, published its *Findings and Recommendations Regarding Ongoing Use of Virtual Meeting Technology to Conduct Court Proceedings*. The report provided in relevant part, “The Judicial Council recommends the Supreme Court consider establishing a rule that allows hearing participants to request permission to appear opposite the decision of the judicial officer.”¹

The Supreme Court recently considered this charge and requests its Advisory Committees provide recommendations on the following questions as they relate to each committee respectively:

1. Should there be a rule of procedure that allows participants to request their hearing be held opposite the decision of the judicial officer?
2. Should there be a rule of procedure that provides a presumption regarding certain hearing types? (Example: non-evidentiary, status hearings, etc.)
3. Should there be a rule of procedure that provides an appeal process for challenging the decision of a judicial officer as it relates to remote vs. in-person hearings, and if so, who should consider the appeal? (Example: presiding judge)

The Supreme Court welcomes the input from the various Boards of Judges concerning these questions, and invites the Boards to attend relevant advisory committee meetings or provide input directly to the Supreme Court.

¹ Both reports are included in this document.