



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

Meeting Minutes

David W. Fureigh, Chair

Location: Matheson Courthouse, Salt Lake City and Webex

Date: May 5, 2023

Time: 12:00 p.m. – 2:00 p.m.

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

1. Welcome and approval of the April 7, 2023 Meeting Minutes: (David Fureigh)

David Fureigh welcomed everyone to the meeting and welcomed the guests, Destiny Messmer, Blake Murdoch, and Jacqueline Carlton. Mr. Fureigh then welcomed the two new members of the committee, Thomas Luchs and Jim Smith. All committee members introduced themselves.

Mr. Fureigh stated he had a few other announcements. First, Mr. Fureigh announced that the Supreme Court approved Matthew Johnson as the new chair of the committee, which will be effective June 30, 2023. Mr. Fureigh indicated Mr. Johnson has been the Vice Chair and is ready and willing to take on the responsibility of being the Chair. Mr. Fureigh then provided clarification regarding the terms of the committee members and stated the rules allow members to service two three-year terms and a few of the committee members are reaching their second term, which will end on June 30, 2023. The committee members reaching the end of their terms are Chris Yannelli, Mikelle Ostler, and Kristin Fadel. Mr. Fureigh announced that an application went out to fill those vacancies, and the application deadline is May 7, 2023. Once those applications are received, they will be reviewed and taken to the Supreme Court conference to seek their approval to fill the vacancies. Mr. Fureigh stated he is hoping to announce the new committee members at the June meeting, depending on the Supreme Court conference. Mr. Fureigh indicated he has served as the chair for four years and served two terms as a committee member. His term as the chair will expire on June 30, 2023.

Mr. Fureigh asked Mr. Gallardo to give an update on the bilingual Summons. Mr. Gallardo stated he, Ms. Ostler, and Ms. White met with the staff to the forms committee and discussed the committee's interest in developing their own bilingual notice to attach to the summons. They also informed the staff to the forms committee that changes to Rule 18 were in process, but this committee was holding off for final approval until the bilingual notice was approved by the Judicial Council. Mr. Gallardo indicated they will meet again next week and hope to have a draft ready to present to the subcommittee of the forms committee. Mr. Gallardo stated once they have a proposed form, it will be presented to this committee for final approval, in hopes to have it all approved by November 1, 2023.

Mr. Fureigh then asked the committee for approval of the April 7, 2023 meeting minutes. Ms. White moved to approve the minutes. Mr. Putnam seconded the motion, and it passed unanimously.

2. Discussion – JJYS Juvenile Referral and Request for Detention Form: (Blake Murdoch; David Fureigh)

Mr. Fureigh reminded the committee that this agenda item was brought to the committee's attention by Judge Beck. Mr. Fureigh contacted AAG Mollie McDonald with regard to creating a standardized form and sent her a copy of the proposed changes to the rule, even though they won't be made, so she could use those to meet with JJYS to talk about the form. Ms. McDonald e-mailed Mr. Fureigh back on April 10, 2023, and stated JJYS is willing to amend its form to comply with the statute, but that she had been told the form was owned by the court, so she needed to look into how it could be amended. Mr. Fureigh then stated there have been some updates since this time and turned the time to Mr. Murdoch to discuss and introduce the new form they have been working on.

Mr. Murdoch stated the form is a JJYS form, and he has spoken with April Graham, the Deputy Director of JJYS, about this topic. Mr. Murdoch stated they are using variations of this form, but recognizes it is a JJYS form by statute, so JJYS would need to be involved in modifying the form. Mr. Murdoch indicated they have created a proposed form as a suggestion to JJYS based on the committee's suggestions. The form was presented to the committee, and Mr. Murdoch provided an explanation for each section of the proposed form. Mr. Murdoch stated they also added a declaration at the bottom of the form declaring it is true and correct and that alternatives to detention have been considered, which was the language Judge Beck suggested. Mr. Murdoch stated if this committee would approve the form, or something similar, he would meet again with Ms. Graham and propose the suggestions as they consider modifying the form. Mr. Murdoch stated they would also be working to ensure the same form is used consistently throughout the state.

Mr. Russell stated he likes the proposed form and thinks it complies with the statute. Mr. Russell expressed some concern regarding the section in the form that requires them to list the reason the youth was admitted to detention. Mr. Russell stated that he is worried it is going to be a stumper for law enforcement until they receive training but is nothing that training can't get around. Mr. Russell also stated the detention staff helps law enforcement with the forms so it is not insurmountable, but he anticipates there will be some pushback. Ms. White stated that although not all law enforcement would know, most of them would. Mr. Russell indicated he could see new law enforcement officers not knowing if there were other options other than felony. Mr. Russell does not want to set law enforcement up. Mr. Fureigh recalls that when law enforcement takes the youth to the detention facility, the facility has a checklist there and determines which category it falls into, which is where the education is going to come from.

Ms. Ostler proposed a checkbox that lists some of the reasons why the youth is being admitted into detention. Ms. White inquired if it would be difficult to create a checklist, and Mr. Fureigh stated he believes there is already a checklist at the detention centers, so they could use that for reference. Ms. Jeffs indicated she knows when law enforcement brings a youth to detention, the detention staff does

have a checklist and is trained on what is admissible and what is not. They also have their own procedures and processes outside of the statute. Ms. Jeffs likes the idea of including a checklist to make it simpler for law enforcement and stated anything this committee can do to help law enforcement is a good endeavor. Ms. Ostler stated creating a checklist on the form would eliminate the need to rely on the detention center. Mr. Murdoch stated he can bring that up with Ms. Graham to see what that checklist would look like.

Judge Dame indicated he is worried about the checklist as it would have to be lengthy and detailed. The checklist would have to differentiate between the categories. Judge Dame stated his proposal would be to let the training process take effect and law enforcement can access the administrative code just like any member of the public can. Mr. Luchs inquired if the detention center's checklist could be attached to the back of the form. Mr. Fureigh stated if the detention center already has the checklist, law enforcement could look at it and write in the box the applicable reason. Mr. Russell indicated if every detention center has a list of bookable offenses, he is satisfied and does not think a checklist on the form is necessary. Mr. Butler stated there are approximately 30 reasons why a youth could be admitted to detention. Ms. Moore proposed that the citation to the administrative code be listed in the form. Several committee members agreed.

The committee then discussed the declaration portion of the proposed form. Mr. Russell stated the declaration complies with the Fourth Amendment and the Utah Constitution. Mr. Fureigh stated the Supreme Court did not have an issue with the declaration and believes they would agree that it is constitutionally required. Ms. Jeffs likes the sworn statement and thinks its appropriate, however, she proposed removing the language "and that alternatives to detention have been considered." Ms. Jeffs stated that information may not be in law enforcement's purview as they often don't have all the information. Ms. Jeffs further stated law enforcement's job is to investigate the crime, bring people in for appropriate reasons, and whether alternatives have been considered is statutorily important, it will be reviewed by a judge. Mr. Fureigh and Mr. Butler also agree. Mr. Murdoch will remove the language from the declaration.

Mr. Fureigh stated he will contact Ms. McDonald again to see if the detention facilities around the state are required to have a checklist. Mr. Murdoch will also bring it up with Ms. Graham and discuss that with her as well. Judge Dame stated he typically prefers going to the source of the information, which is the rule, rather than a checklist or guide that someone else prepares based on the rule. Judge Dame stated the rule is not hard to cite to, but he believes he is in the minority there. The committee agreed the citation to Utah Administrative Code R547-13 should be specifically cited in the form. Mr. Murdoch will bring a couple of options to this committee for vote. Mr. Russell also requested a copy of the checklist or list of bookable offenses that are at the detention centers.

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

Mr. Fureigh stated he went to the Supreme Court to get final approval for publishing of the changes made to Rule 22 and anticipated it would go smoothly. However, they had some additional questions and concerns. One of the changes they proposed was stylistic changes, which Mr. Gallardo had already brought up. The Supreme Court agreed with this committee to add the word “may” to line 58, which is the joint resolution with regard to reliable hearsay.

Mr. Fureigh stated the section they were most concerned about was section (j). The Supreme Court first wondered if it would be better to leave in the sentence that was stricken by this committee on line 54 rather than take it out. Mr. Fureigh reminded this committee that they decided to take it out because it repeats what is already listed in the statute. The Supreme Court also did not like that the rule cited to 504 twice, and wondered if it would be better to include the subsections in each. The Supreme Court also suggested if adding the word “other” regarding the factors on line 56 made more sense or would help clarify the rule. They also wondered if section (h) and (j) were saying the same thing. The Supreme Court inquired if there was a difference between indictment and information, and asked if they did indictments in the juvenile court, which Mr. Fureigh stated he was unsure of. Mr. Fureigh also indicated the Supreme Court felt like the rule indicated there is a two-step process and the statute appears to only be a one-step process. Mr. Fureigh stated as he read the rule and the statute, it looked like the statute was an “and” and the rule is a “if, then.” Ms. Jeffs stated the statute used to be an “if, then,” but that has now changed. The Supreme Court was worried that if someone came in and read it for the first time, there would be some confusion. Justice Pierce suggested this rule be presented to the committee again and brought back to the Supreme Court.

The committee discussed the indictment language. Mr. Russell stated the statute still says indictment, which is why it is also stated in the rule. Ms. Jeffs states information and indictment cannot be combined because there is not a need for a hearing if there is an indictment. Mr. Russell stated he thinks the language needs to be left in the rule unless the legislature removes the indictment language from the statute, and Ms. Jeffs agreed.

The committee then discussed whether the committee should look at changing section (j) to be a one-step process instead of an “if-then.” Mr. Russell stated that 504 is broken into two parts: probable cause and other factors. Mr. Fureigh responded and stated it is just one preliminary hearing and the court has to make

all those findings in that hearing. Judge Jensen stated that in practice, these are often bifurcated issues because there are different witnesses needed. Judge Jensen then stated that if she doesn't find probable cause, there is no need for the factor hearing. Mr. Russell stated these are bifurcated and they will likely always be bifurcated because there is limited testimony on probable cause versus more in-depth testimony on the other factors. Mr. Russell indicated that as Judge Jensen pointed out, the court must find probable cause first or the other evidence presented would be irrelevant. If the court says there is not probable cause, then the other factors are irrelevant. Ms. Jeffs agreed that the procedure is to find probable cause first, then move on to other factors.

Mr. Butler proposed making subsections, so line 56 and 57 make more sense. Ms. Moore agreed. Mr. Butler then proposed that instead of saying "other factors" to use the word "best interest factors." Mr. Russell stated he would leave it and just refer to the "factors." Ms. Jeffs does not like "other factors."

The committee then discussed adding subsection (3) to line 57 behind the statute citation, and (2)(a) behind the citation in line 53, due to the concerns the Supreme Court raised. The committee agreed, and also agreed that the language that had previously been stricken should remain as stricken. If the Supreme Court suggests the language be left, then this committee can change it to reflect the language in the statute that has been changed.

Mr. Fureigh stated that in looking at section (h), it should be "will" instead of "may" in line 44. Mr. Russell and Ms. Moore agreed. Judge Dame stated that in looking at the style guide, it should be "may not." Mr. Fureigh indicated that it depends on how you read the rule, if it is directing the court or saying a party can't request a hearing. Mr. Fureigh stated the assumption he made was that it was directing the court that the preliminary hearing will not be held. Ms. White stated Utah Code 80-6-504(11) talks about if a grand jury indicts a minor. Judge Dame indicated that statute deals with what happens if an indictment is filed, not filed under the statute, and he cannot find anywhere in the juvenile code that deals with how to indict a juvenile. Ms. Moore suggested putting "indictment" without a citation reference and then put 504(11) once an indictment has been filed. Judge Jensen also suggested adding subsection (3) to line 47. Mr. Butler stated that Utah Code 77-10a-3 has a broad definition regarding indictment, and it is not limited to district court. Mr. Russell believes Utah Code 77-2-2(1) gives authority to commence a prosecution by indictment in the juvenile court. Judge Dame proposed the language be changed to, "if a grand jury indicts a minor for a qualifying offense, the court will proceed in accordance with Utah Code 80-6-504(11)."

The committee discussed additional changes to Judge Dame's proposed language and determined the following language is appropriate in section (h), "If a grand jury indicts a minor for a qualifying offense listed in Utah Code section 80-6-503, the court will proceed in accordance with Utah Code section 80-6-504(11)." Mr. Fureigh indicated it will likely need to go back out for comment due to the substantial changes that were made.

The changes were made to Rule 22 as suggested by the committee. Ms. Jeffs moved to adopt the changes as made by this committee. Mr. Johnson seconded the motion, and it passed unanimously.

4. Discussion & Action - Rules of Evidence and Rules of Juvenile Procedure: (All)

Mr. Fureigh stated Judge Dame was going to speak to Judge Leavitt to follow up regarding the proposed changes to the Rules of Evidence. Judge Dame indicated he spoke to Judge Leavitt and the proposed changes were presented during their April meeting, and the committee voted to send all four changes to the Supreme Court for approval to be sent out for comment. Judge Leavitt asked to be able to participate in the meeting with the Supreme Court, and to Judge Leavitt's knowledge, the meeting has not happened yet.

Mr. Fureigh stated there was a suggestion to add section (c) to Rule 27A to add the remedy that the statement would be inadmissible. Mr. Russell stated he and Mr. Yannelli believed the remedy was that it was inadmissible, and he believes it is appropriate to add the remedy to the rule. Mr. Fureigh stated Ms. Jeffs circulated the research regarding how other states handle it. Judge Dame agreed that the remedy is that the statement is inadmissible. Ms. White likes the idea of having it in the rule, and Mr. Russell agreed. The committee does not think this change would be impacted by what the Rules of Evidence committee is doing, and a proposal was made to add section (c) to include that the remedy is inadmissible in the custodial interrogation if there is failure to comply with Utah Code 80-6-206.

Mr. Russell moves to approve the amendment to Rule 27A. Ms. White seconds, and it passed unanimously. Mr. Fureigh will take it to the Supreme Court and ask that it go out for public comment.

5. Discussion & Action - Rule 10. Bail for non-resident minors: (Judge Dame; All)

Mr. Fureigh stated Rule 10 was brought to Judge Dame's attention by another judge, who noticed that the statute citations in this rule may be outdated. Mr. Fureigh stated he did not look at that very close as he is not involved in bail in his practice but knows that the statutes cited in the rule have to do with bail, so he doesn't know what has changed. Judge Dame stated Rule 10 was effective on November 1, 2002, so it hasn't been changed for quite some time. Judge Dame indicated several of the citations have been replaced or renumbered. Judge Dame

suggested a change to Line 7 and 8 to state, "Utah Code Title 77, Chapter 20, Parts 4 and 5." Judge Dame believes that would fix the concern, but indicated he has not spent a lot of time on it and would like someone else to look at the proposed language to make sure he is not missing anything. Mr. Butler is agreeable to take a closer look at it.

Judge Dame then proposed another suggested change to line 4 regarding the language, "judge, commissioner, or other court officer authorized in writing..." Judge Dame indicated there are no commissioners that he knows of in juvenile court and would propose to remove everything after judge. The committee then discussed the broad language in the statute and some other factors that may have contributed to the use of that language in the rule. After the discussion, the committee decided no change should be made to that language.

Judge Jensen inquired as to line 5 that states, "admitting the minor to bail..." The committee discussed the meaning of that term and suggested several changes to that language. Judge Dame proposed to leave the language as-is as he believes it is a two-step process. Ms. Jeffs proposed the committee change the language to make it more clear. Mr. Butler stated the reason why that language is used is because the statute defines bail as "pretrial release." Judge Jensen stated it is unclear as currently written. Ms. Verdoia stated the statute also uses the language "admitted to bail." Mr. Russell proposed to leave the language as written in the rule, so it is consistent with the statute.

6. Discussion & Action - Rule 37A. Visual recording of statement or testimony of child in abuse, neglect and delinquency proceedings - Conditions of admissibility: (All)

Mr. Fureigh stated Ms. Tilby brought this to the committee's attention and indicated that Rule 37A(a) lists substantiation proceedings, but section (b) and (c) does not. Mr. Fureigh stated the rule was last modified before he joined the committee and inquired if Ms. Verdoia recalls if there was a specific reason for excluding substantiation proceedings from those sections. Ms. Verdoia indicated she does not see any reason for excluding substantiation from those sections. Mr. Butler believes it should be added, and Mr. Luchs agreed. Mr. Fureigh stated the Rules of Evidence apply in substantiation hearings and if the minor is required to testify, he believes they would be entitled to those same protections in substantiation hearings. There was further discussion about the lower burden of proof, and Mr. Luchs indicated that would support the argument that substantiation hearings should be included in section (b) and (c).

Ms. Verdoia stated when legislation was passed adding substantiation proceedings, it was patterned after justice court proceedings, and they are supposed to be very informal. Ms. Verdoia stated due to the lower burden of proof, they are looked at of being a lesser kind of proceeding in terms of what needs to be done, such as full discovery not being required. Ms. Verdoia stated she believes it was intended that Rule 37A should include substantiation proceedings.

Mr. Luchs moved to approve the addition of substantial hearings to the title of Rule 37A, and also included in section (b) and (c). Mr. Butler seconded the motion, and Mr. Russell abstained from vote and indicated he did not have enough knowledge about it to provide a vote. The motion passed.

7. Old business/new business: (All)

Mr. Fureigh stated the agenda items that were not covered would be set over for next month's meeting. Mr. Fureigh reminded everyone that the committee does not meet in July.

The meeting adjourned at 2:00 PM. The next meeting will be held on June 2, 2023 at 12:00 PM via Webex.