

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

### Meeting Agenda

*Matthew Johnson, Chair*

Location: Webex Meeting

Date: May 2, 2025

Time: 12:00 pm – 2:00 pm

<b>Action:</b> Welcome and approval of the April 4, 2025 meeting minutes.	Tab 1	Matt Johnson
<b>Discussion &amp; Action:</b> <a href="#">Senate Bill 157</a> and <a href="#">Rule 15</a> . <ul style="list-style-type: none"><li><i>SB0157 amends Utah Code section <a href="#">80-6-304</a>. A minor will no longer be able to decline a nonjudicial adjustment without first being advised of their right to consult with counsel. Vice-chair Bill Russell proposes amending Rule 15.</i></li></ul>	Tab 2	All
<b>Discussion &amp; Action:</b> <a href="#">Rule 34</a> . Pre-trial hearing in non-delinquency cases. <ul style="list-style-type: none"><li><i>In response to <a href="#">In re J.M., 2024 UT App 147</a>, the Committee has proposed several amendments. Most notably, a Rule 34(e) response is now termed an “uncontested answer,” and a new paragraph provides a process for seeking relief from an admission or uncontested answer.</i></li><li><i>A Rule 34 workgroup was formed and met on April 23, 2025. The workgroup proposes the enclosed draft for Committee consideration.</i></li></ul>	Tab 3	All

<b>Discussion:</b> Defense Counsel Qualifications When Youth Face Risk of Adult Prosecution.  <ul style="list-style-type: none"> <li><i>The Committee received a letter from the Indigent Defense Commission requesting this Committee consider a rule similar to <a href="#">Rule 8(b)</a> of the Utah Rules of Criminal Procedure. Vice-chair Bill Russell has proposed new Rule 23B.</i></li> </ul>	Tab 4	All
<b>Discussion:</b> Old business or new business.		All

### [URJP Committee Site](#)

#### Meeting Schedule:

June 6, 2025

August 1, 2025

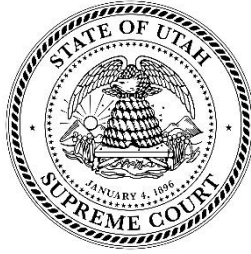
September 5, 2025

October 3, 2025

November 7, 2025

December 5, 2025

# TAB 1



1  
2  
3 **Utah Supreme Court's**  
4 **Advisory Committee on the Rules of Juvenile Procedure**

5 **Draft Meeting Minutes**

6  
7 *Matthew Johnson, Chair*  
8

9 Location: Webex Meeting  
10

11 Date: April 4, 2025  
12

13 Time: 12:00 p.m. – 2:00 p.m.  
14

**Attendees:**

Adrianna Davis  
David Fureigh, Emeritus Member  
Dawn Hautamaki  
Elizabeth Ferrin  
Janette White  
Jordan Putnam  
Sophia Moore  
Thomas Luchs  
William Russell, Vice Chair

**Excused Members:**

Matthew Johnson, Chair  
Arek Butler  
James Smith  
Judge David Johnson  
Judge Debra Jensen  
Michelle Jeffs

**Guests:**

Blake Murdoch  
Judge F. Richards Smith  
Tyler Ulrich

**Staff:**

Joe Mitchell, Juvenile Court Law Clerk  
Raymundo Gallardo

17 **1. Welcome and approval of the March 7, 2025 Meeting Minutes.** (William Russell)

18  
19 Committee Vice-chair William Russell welcomed everyone to the meeting and  
20 introduced guests Judge F. Richards Smith and Assistant Attorney General Tyler  
21 Ulrich. Mr. Ulrich has accepted the role of recording secretary for the Committee.  
22 Vice-chair Russell then asked the Committee for approval of the March 7, 2025  
23 meeting minutes. Sophia Moore moved to approve the minutes as presented. Janette  
24 White seconded the motion, and it passed unanimously.

25  
26 **2. Discussion & Action: Rule 44. Findings and conclusions.** (Judge Smith)

27  
28 Judge Smith presented amendments to Rule 44 that he found necessary after recently  
29 presiding over a juvenile delinquency trial. Judge Smith proposed creating a  
30 distinction between dismissing a petition that has not been proven in a non-  
31 delinquency case and entering a finding of *Not True* after a trial when a delinquency  
32 allegation has not been proven. Judge Smith added that C.A.R.E. is now programmed  
33 to enter a finding of *Not True*. Committee members agreed that the current practice of  
34 dismissing delinquency allegations after having been found *Not True* does not  
35 accurately reflect the outcome of the trial.

36  
37 A discussion around C.A.R.E. and its operational requirements also took place.  
38 Currently, the C.A.R.E. system supports a court's entering of the finding *dismissed*  
39 *without prejudice* and *dismissed with prejudice*; however, the C.A.R.E. system does not  
40 accurately reflect that finding in some of its user interfaces. Dawn Hautamaki reports  
41 that the C.A.R.E. programming team is working on a solution, and perhaps, this may  
42 solve the issue raised by Judge Smith.

43  
44 Judge Smith believes that in order to accurately reflect the court's findings after an  
45 allegation has not been proven at trial, the record and C.A.R.E. should reflect a finding  
46 of *Not True*. Ms. Hautamaki clarified that the finding is available in C.A.R.E., but the  
47 disposition of *Not True* is not available. Judge Smith argued that both the finding and  
48 disposition of the allegation should be *Not True*.

49  
50 The Committee approved the following procedures to be added to paragraph (c): "If  
51 a petition has not been proven in a non-delinquency case, the court will dismiss the  
52 petition."; and "If an allegation has not been proven during a juvenile delinquency  
53 trial, the court will enter a finding and disposition that an allegation is *Not True*."

54  
55 Elizabeth Ferrin made a motion to present Rule 44 as amended to the Supreme Court  
56 and request that it be sent out for an initial public comment period. Adrianna Davis  
57 seconded the motion. The motion passed unanimously.

60 **3. Discussion & Action: Rule 34. Pretrial hearing in non-delinquency cases. (All)**  
61

62 Mr. Gallardo presented both drafts that were prepared and circulated to members, a  
63 February 7, 2025 draft and a March 7, 2025 draft, which contains additional proposed  
64 changes as suggested by past guest and Indigent Defense Commission member, Jason  
65 Richards, and an additional change in paragraph (g) proposed by Vice-chair Russell.  
66 Mr. Gallardo also shared comments made by committee members who were not able  
67 to be present today. Judge Jensen sent in a comment indicating she prefers the  
68 proposed paragraph (d) in the February 7, 2025 draft, and prefers the proposed  
69 language in paragraph (g) contained in the March 7, 2025 draft. Jim Smith also sent in  
70 a comment regarding proposed paragraph (d). Mr. Smith prefers a less detailed  
71 colloquy. Vice-chair Russell and Jordan Putnam agree with this comment. The idea  
72 behind the language in (d) is not to provide a script to judges.  
73

74 Ms. Moore suggested that this Committee form a subcommittee to address all  
75 proposed changes and comments to those changes. Vice-chair Russell supports the  
76 formation of a subcommittee. Ms. White, Ms. Moore, Mr. Putnam, Mr. Fureigh, and  
77 Mr. Luchs volunteered to participate in a Rule 34 subcommittee. Vice-chair Russell  
78 asked Mr. Gallardo to invite Judge Jensen, Judge Johnson, and Mr. Smith to  
79 participate on the subcommittee.  
80

81 The Committee did decide on the language in paragraph (g). Vice-chair Russell's  
82 proposal was preferred and added to both drafts. The proposal is to the last sentence  
83 in (g) and it reads, "Upon a finding of good cause, the court may set aside an entry of  
84 default if the defaulting party files a written motion within the time limits set forth in  
85 Rule 60 of the Utah Rules of Civil Procedure." Ms. White made a motion to proceed  
86 with this language. Ms. Moore seconded the motion. The motion passed  
87 unanimously.  
88

89 **4. Discussion & Action: Rule 48. Post judgment motions. (All)**  
90

91 Mr. Gallardo presented the proposed change to Rule 48, which aims to add Rule 60(b)  
92 of the Utah Rules of Civil Procedure to paragraph (c) of Rule 48. Judge Jensen also  
93 sent in a comment. Judge Jensen points out that Civil Rule 60(b) motions include  
94 mistakes and newly discovered evidence, so shortening the timeframe for the filing  
95 of a Civil Rule 60(b) motion to 14 days after judgment does not seem reasonable. Vice-  
96 chair Russell agrees with Judge Jensen. Civil Rule 60(b) motions also apply in  
97 delinquency cases, and 14 days in those cases is also not enough time.  
98

99 The Committee briefly discussed adding a new paragraph (d) to Rule 48 to address  
100 an appropriate timeframe for Civil Rule 60(b) motions.

Ms. Moore suggested seeking input from the Committee on the Rules of Appellate Procedure and the Committee on the Rules of Civil Procedure regarding the timeframes in Civil Rule 60(b).

Mr. Fureigh suggested tabling Rule 48 until the Committee has finalized a Rule 34 draft, and Vice-chair Russell and members agreed. Rule 48 will be tabled without a return date until a Rule 34 draft is finalized.

**5. Discussion & Action: Rule 37A. Visual recording of statement or testimony of child in abuse, neglect, dependency, or substantiation proceedings—Conditions of admissibility. (All)**

Mr. Fureigh shared that Judge Jensen and he recently collaborated alongside members of the Committee on the Rules of Civil Procedure in an effort to draft a rule similar to 37A, which would then be proposed for adoption into their body of rules. Mr. Fureigh learned that there are juvenile court judges who apply Rule 37A to child protective order proceedings and there are judges who do not. Furthermore, Mr. Fureigh pointed out that Rule 37A exists under Section IX Proceedings Relating to Neglect, Abuse and Dependency and Related Non-Delinquency Matters of the Rules of Juvenile Procedure. Moreover, Mr. Fureigh explained that Rule 37A was last amended in 2023, when the Committee added substantiation proceedings to the rule. It is believed that because the rule expressly identifies certain proceedings and does not identify child protective order proceedings, practitioners may conclude that the Committee purposefully omitted child protective order proceedings.

The Committee added child protective order proceedings to the title of the rule and to paragraphs (a), (b), and (c). The Committee also added “other related non-delinquency proceedings” to the title in order to capture, for example, a case before the juvenile court that initially began as an abuse proceeding but later turned into a custody case, i.e., a “spillover” custody case. The Committee also identified other non-delinquency proceedings—status offenses, ungovernability, runaways, judicial bypass, petition to marry—that are not related to abuse, neglect, and dependency. So, the Committee agreed that adding “other related non-delinquency proceedings” is appropriate.

Mr. Luchs made a motion to present Rule 37A as amended to the Supreme Court and request that it be sent out for an initial public comment period. Ms. White seconded the motion. The motion passed unanimously.

144 **6. Discussion: Defense counsel qualifications when youth face risk of adult**  
145 **prosecution. (All)**  
146

147 The Indigent Defense Commission submitted a request asking that the Committee  
148 consider adopting a rule similar to Rule 8(b) of the Utah Rules of Criminal Procedure.  
149 In cases when a youth faces the risk of adult prosecution, the IDC would like to see a  
150 rule that addresses the qualifications of appointed defense counsel.  
151

152 After canvassing several practitioners, Vice-chair Russell drafted a rule, and it has  
153 been circulated amongst committee members. Committee members agree that youth  
154 deserve the best defense.  
155

156 Ms. Davis supports a rule to address this issue; however, she foresees other issues  
157 around funding for training and hiring of competent defense attorneys, especially in  
158 rural parts of the state.  
159

160 The Committee requested data on the number of information filings per district. Mr.  
161 Gallardo will work with the AOC to gather this data.  
162

163 The issue will be added to the May 2, 2025 agenda for further discussion.  
164

165 **7. Old business/new business: (All)**  
166

167 The meeting adjourned at 2:04 p.m. The next meeting will be held on May 2, 2025 via  
168 Webex.



# TAB 2

**Rule 15. Preliminary inquiry; informal adjustment without petition.**

(a) If a minor qualifies for a nonjudicial adjustment pursuant to statute, the probation officer must offer a nonjudicial adjustment to the minor.

(b) If a minor does not qualify for a nonjudicial adjustment, the probation officer may conduct one or more interviews with the minor, or if a child, then with the child and at least one of the child's parents, guardians, or custodians, and may invite the referring party and the victim, if any, to attend or otherwise seek further information from them. Attendance at any such interview is voluntary, and the probation officer may not compel the disclosure of any information or the visiting of any place.

(c) In any such interview, the minor, or if a child, then the child and the child's parent, guardian, or custodian, must be advised that the interview is voluntary, that the minor has the right to have counsel present to represent the minor, that the minor has the right not to disclose any information, and that any information disclosed that could tend to incriminate the minor cannot be used against the minor in court to prove whether the minor committed the offense alleged in the referral.

(d) If, on the basis of the preliminary inquiry, the probation officer concludes that nonjudicial adjustment is appropriate and is authorized by law, the probation officer may seek agreement with the minor, or if a child, then with the child and the child's parent, guardian, or custodian, to a proposed nonjudicial adjustment. If the probation officer offers a nonjudicial adjustment to the minor, the minor may not decline to enter into a nonjudicial adjustment without first being advised of their right to consult with counsel, consistent with the requirements of Utah Code section 80-6-304. Upon request, the probation officer must provide defense counsel with copies of both the referral itself and all reports submitted to the court upon which the referral is based.

(e) If an agreement is reached and the terms and conditions agreed upon are satisfactorily complied with by the minor, or if a child, then with the child and the child's parent, guardian, or custodian, the case must be closed without petition. Such resolution of the

28 case will not be deemed an adjudication of jurisdiction of the court and will not constitute  
29 an official record of juvenile court action or disposition. A nonjudicial adjustment may  
30 be considered by the probation officer in a subsequent preliminary inquiry and by the  
31 court for purposes of disposition only, following adjudication of a subsequent  
32 delinquency involving the same minor.

33 (f) The initial time in which to complete a nonjudicial adjustment, and any extensions  
34 thereof, are governed by Utah Code section 80-6-304.

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# TAB 3

**Rule 34. Pre-trial hearing in non-delinquency cases.**

(a) Petitions in non-delinquency cases ~~shall~~will be scheduled for an initial pre-trial hearing.

(b) The pre-trial hearing ~~shall~~will be scheduled on the nearest court calendar date available in all cases where the subject minor is in temporary shelter care custody in accordance with Utah Code section 80-3-401.

(c) In the pre-trial hearing, the court ~~shall~~will advise the parent, guardian, or custodian of the minor's rights and of the authority of the court in such cases. In the hearing or in any continuance of the hearing, the parent, guardian, or custodian ~~shall~~must answer the petition in open court.

(d) Before answering, the court will inform the respondent of their rights and their rights on appeal. The court will inform the respondent that a finding based on their response may subject the respondent and the children to the jurisdiction of the juvenile court and the potential for reasonable dispositional orders that may affect their parental rights. The court will specifically find that the respondent's answer and their waiver of rights is knowing and voluntary. ~~the respondent may move to dismiss the petition as insufficient to state a claim upon which relief can be granted. The court shall hear all parties and rule on said motion before requiring a party to answer.~~

(e) A respondent may answer by admitting or denying the specific allegations of the petition, or by proceeding with an uncontested answer by declining to admit or deny the allegations. Allegations not specifically denied by a respondent ~~shall~~will be deemed true.

(f) An answer to a child welfare petition is civil in nature. Relief from admissions or uncontested answers, pursuant to paragraph (e) above, are governed by civil remedies, including Rule 59 and Rule 60 of the Utah Rules of Civil Procedure, applicable appellate procedure, and Rule 48. Relief sought under this rule will not toll any statutory timeframes.

(g) Except in cases where the petitioner is seeking a termination of parental rights, the court may enter the default of any respondent who fails to file an answer, or who fails to appear either in person or by counsel after having been served with a summons or notice pursuant to Rule 18. Allegations relating to any party in default ~~shall~~will be deemed admitted unless the court, on its own motion, or the motion of any party not in default, ~~shall~~will require evidence in support of the petition. ~~Within the time limits set forth in Utah R. Civ. P. 60(b), upon the written motion of any party in default and a showing of good cause, the court may set aside an entry of default. On timely motion and for good cause shown, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).~~



**Rule 34. Pre-trial hearing in non-delinquency cases.**

(a) Petitions in non-delinquency cases will be scheduled for an initial pre-trial hearing.

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(c) In the pre-trial hearing, the court will advise the parent, guardian, or custodian of the minor's rights and of the authority of the court in such cases. In the hearing or in any continuance of the hearing, the parent, guardian, or custodian must answer the petition in open court.

(d) Before answering, the court will inform the respondent of their rights and their rights on appeal. The court will inform the respondent that a finding based on their response may subject the respondent and the children to the jurisdiction of the juvenile court and the potential for reasonable dispositional orders that may affect their parental rights. The court will specifically find that the respondent's answer and their waiver of rights is knowing and voluntary.

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29 evidence in support of the petition. On timely motion and for good cause shown, the  
30 court may set aside an entry of default and, if a judgment by default has been entered,  
31 may likewise set it aside in accordance with Rule [60\(b\)](#).

# TAB 4

PROPOSED NEW JUV RULE 23B (?)

(a) **Transfer case qualifications.** In all cases in which counsel is appointed to represent a minor who is charged by information filed in the juvenile court under Utah Code section 80-6-503, the juvenile court will appoint one or more attorneys to represent the minor and will make a finding on the record that appointed counsel is competent under this rule to litigate a transfer case. To be found competent to represent a minor charged in a transfer case, the combined experience of the appointed attorneys must meet the following requirements:

(1) at least one of the appointed attorneys must have tried to judgment at least six felony juvenile prosecutions as defense counsel within the past five years or 15 felony juvenile trials in the past 10 years, with at least six of the 15 cases as defense counsel or defense co-counsel;

(2) at least one of the appointed attorneys must have appeared as defense counsel or defense co-counsel in a transfer case before the juvenile court which was submitted for decision and final ruling on both the probable cause and retention/transfer phases of the preliminary hearing;

(3) within the last five years, at least one of the appointed attorneys must have completed or taught at least eight hours of approved continuing legal education which dealt, in substantial part, with the representation of youth in transfer cases; and

(4) at least one of the appointed attorneys must have at least five years of experience in the active practice of juvenile defense.

(b) **Transfer case appointment considerations.** In making its selection of attorneys for appointment in a specific transfer case, the juvenile court will also consider at least the following factors:

(1) whether the attorneys under consideration for appointment under this rule are members in good standing with the Utah Bar;

- (2) whether the attorneys under consideration for appointment under this rule have ever been the subject of a disciplinary proceeding and if so, when did the proceedings take place and for what reason;
- (3) whether one or more of the attorneys under consideration have previously appeared as defense counsel or defense co-counsel in a transfer case in the past five years;
- (4) the extent to which the attorneys under consideration have sufficient time and support and can dedicate those resources to the representation of the minor in the transfer case now pending before the court with undivided loyalty to the minor;
- (5) the extent to which the attorneys under consideration have engaged in the active practice of juvenile defense in the past five years;
- (6) the diligence, competency, the total workload, and ability of the attorneys being considered; and
- (7) any other factor which may be relevant to a determination that counsel to be appointed will fairly, efficiently, and effectively provide representation to the minor.

(c) **Transfer case bindover appeals.** In all cases where a minor is bound over to the district court in a transfer case, if appellate review of the bindover order is sought, the court will appoint one or more attorneys to represent the minor on such appeal who are currently on the Appellate Roster under Rule 11-401 of the Code of Judicial Administration.



## **STATE OF UTAH**

**Indigent Defense Commission**  
**Matthew Barraza, Executive Director**  
370 East South Temple, Suite 500  
Salt Lake City, UT 84111  
Cell: 801-707-4440  
MBarraza@utah.gov

To: Supreme Court Advisory Committee on the Rules of Juvenile Procedure

Re: Transfer Qualifications

March 27, 2025.

Dear Committee Members,

The Utah Legislature created the Indigent Defense Commission to provide support for the delivery of effective indigent defense services throughout the state. That mandate includes working to establish standards of practice. In 2018, we adopted our Core Principles for Appointed Attorneys Representing Youth in Delinquency Hearings (attached). Principle 8, Clients Facing Risk of Adult Representation, addresses the need for attorneys appointed to certification or transfer cases to have the training, experience, and resources necessary to effectively handle these serious cases. We believe that promulgating a rule for qualifications in transfer cases, similar to Rule 8(b) of Criminal Procedure for Capital cases, is appropriate and necessary. We respectfully ask the Committee to consider creating such a rule.

Sincerely,

//s// Matthew Barraza

Executive Director



CORE PRINCIPLES FOR  
APPOINTED ATTORNEYS  
REPRESENTING YOUTH IN  
DELINQUENCY PROCEEDINGS

## DRAFTING AND REVIEW COMMITTEE

Pam Vickrey	Elizabeth Hunt	Andrea Martinez-Griffin
Margaret Lindsay	J. Robert Latham	Jojo Liu
Mark Moffat	Erin Hill	

## USER STATEMENT

The Utah Indigent Defense Commission promulgated the Core Principles for Appointed Attorneys Representing Youth in Delinquency Proceedings in February 2018 to provide advisory guidance to indigent defense systems, delinquency defense attorneys, and other juvenile court stakeholders. Nothing in these core principles is considered the rendering of legal advice with respect to specific cases.

## UTAH INDIGENT DEFENSE COMMISSION

The Utah Indigent Defense Commission was created by legislation in 2016 to help the state ensure its indigent defense services are consistent with the United States and Utah Constitutions.

The membership of the Commission includes key leaders in state and local government, criminal defense, indigent defense services, and the courts.

The Commission works with the state, local governments, indigent defense providers, and other stakeholders to: provide guidance on standards for constitutional representation, gather data and information about local indigent defense services, award grants to improve local indigent defense services, and encourage and aid in the regionalization of indigent defense services throughout the state.



## Principle 1/ ROLE OF THE ATTORNEY

The central role of the delinquency defense attorney is the protection of the client's procedural and substantive rights through ethical, competent, and effective representation.

Ethical, competent, and effective representation is independent, conflict-free, individualized, developmentally appropriate, and based on the client's expressed wishes.<sup>1</sup>

## Principle 2/ DUTIES TO CLIENT

Ethical representation by the delinquency defense attorney encompasses the same type of duties owed to adult clients, in addition to duties that arise from the youth status of the client.

The attorney's duties include:

- undivided loyalty, which includes identifying and addressing any conflicts of interest<sup>2</sup>;
- confidentiality<sup>3</sup>;
- regular, developmentally appropriate communication sufficient to enable:
  - the attorney's understanding of the client's expressed wishes;
  - the client's understanding of the allegations, court proceedings, case developments, available evidence, likelihood that the allegations would be found true at trial, and likely dispositional options; and
  - the client's knowing and voluntary decisions regarding plea offers;
- an obligation to monitor the competency of the client throughout the pendency of the delinquency case and to litigate issues of competency, where appropriate; and
- a responsibility to gather, in each individual case, the relevant client background information, which commonly includes education history, mental health history, medical history, immigration status, and family history.

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<sup>1</sup> The delinquency defense attorney acts as the client's voice in the proceedings, advocating for the client's expressed interests, not the client's "best interests" as determined by counsel or any other interested party. *See*, Rule 1.14(a) "Client with Diminished Capacity" and Rule 1.2(a) "Scope of Representation and Allocation of Authority between Client and Lawyer" of the Utah Rules of Professional Conduct.

<sup>2</sup> At minimum, the attorney should maintain a case and file management system sufficient to enable conflict checks. The attorney should operate under the presumption that representing co-minors is likely to harm the quality of representation of one or both clients.

<sup>3</sup> Effective representation generally requires robust communication with the client's parent(s). However, the attorney should be mindful there exists no exception to the duty of confidentiality for parent communications. Relatedly, attorney-client communications in the presence of parents are likely not protected by the attorney-client privilege.

### Principle 3/ AREAS OF KNOWLEDGE AND EXPERTISE

The specialized nature of delinquency defense practice requires knowledge in several areas of law, policy, research, and practice, including:

- constitutional law as it relates to criminal procedure and issues of due process;
- the Utah Rules of Juvenile Procedure, the Utah Rules of Civil Procedure, the Juvenile Court Act, the Utah Criminal Code, the Utah Rules of Evidence, and the Utah Rules of Appellate Procedure;
- relevant federal and state caselaw;
- court rules and local court protocols;
- collateral consequences of allegations adjudicated to be true in juvenile court;
- collateral consequences of arrest and referral, whether or not adjudicated;
- relevant agency procedures, including those of school systems, Department of Human Services, Juvenile Justice Services, Department of Children and Family Services, Probation, Department of Mental Health, and local mental health authorities;
- law, rules, and procedures related to competency in juvenile court;
- adolescent development concepts as they relate to client relations, competency issues, suppression issues, culpability, and dispositional advocacy; and
- related areas of law, including immigration law and education law, sufficient to allow the attorney to identify issues and make appropriate referrals.

### Principle 4/ QUALIFICATIONS, TRAINING, AND ONGOING EDUCATION

Delinquency defense is a complex specialty, requiring specialized training and ongoing legal education.

The delinquency defense attorney should limit their representation to cases for which they have the requisite expertise and qualifications.

On an ongoing basis, the attorney should:

- seek and participate in training in areas of law and practice that specifically impact delinquency defense practice (see “Principle 4/ Areas of Knowledge and Expertise,” above);
- seek consultation and mentorship from experienced practitioners in areas of law and practice less familiar to the attorney;
- become familiar with available resources and experts with whom they can consult on related areas of expertise, including but not limited to immigration law, educational advocacy, mental health services, and treatment options; and
- seek affiliation and mutually supportive relationships with other delinquency practitioners.

## Principle 5/ SCOPE OF REPRESENTATION

Effective representation commences in a timely manner, extends for the proper period of representation, and proceeds with reasonable continuity. The attorney should:

- represent the client from the initial court proceeding through all subsequent delinquency proceedings until court jurisdiction is terminated, including at detention hearings, post-dispositional hearings, contempt proceedings, in-court reviews, and restitution hearings<sup>4</sup> ;
- be present at all court hearings and avoid continuances unless there is a benefit for the client; and
- maintain continuity of representation, avoiding substitutions of counsel whenever possible.

## Principle 6/ ADDRESSING THE ALLEGATIONS

Effective delinquency defense necessarily means meaningfully addressing the allegations faced by the client. The attorney should:

- develop a theory of the case that guides the case strategy;
- pursue available evidence through discovery and investigation;
- examine and review all available evidence;
- file appropriate motions;
- advise the client on the strengths and weaknesses of the state's case and on all implications of a plea offer, including direct and collateral consequences of accepting the plea offer;
- adjudicate the allegations against the client unless the plea offer is consistent with the client's expressed wishes and represents a benefit to the client;
- use expert and other defense resources, as appropriate; and
- utilize an multidisciplinary defense team model, where those services are available.

## Principle 7/ DISPOSITIONAL ADVOCACY

Dispositional advocacy is a core aspect of delinquency defense. Effective dispositional advocacy requires that the attorney:

- advocate for treatment and placements that serve the needs of the individual client, leverage pre-existing strengths and supports, and are consistent with the client's expressed interests;
- actively research all available dispositional options, not limited to only those proposed by the probation department;
- present meaningful dispositional alternatives for the court's consideration, when available; and
- ensure court-ordered services are delivered in the least restrictive setting possible.

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<sup>4</sup> Utah Code §77-32-804(1)(a)(ii)(C) ("an indigent defense system shall ensure (...) the ability to provide representation(...) at all stages to indigent parties in juvenile delinquency and child welfare proceedings.")

## Principle 8/ CLIENTS FACING RISK OF ADULT PROSECUTION

Cases where the client faces the possibility of adult prosecution—i.e., Serious Youth Offender (SYO) and “certification” cases—are necessarily high stakes, complex, labor-intensive, and require additional practice considerations.

The attorney handling an SYO case or “certification” case should:

- possess prior experience with such cases or seek the involvement of another attorney who has such experience;
- utilize investigators to address the factual issues in the case<sup>5</sup>;
- have authoritative knowledge of the SYO and “certification” statutes, including the provisions on retention criteria, burdens of proof, and standards of proof;
- thoroughly pursue documentation for each retention factor;
- utilize an expert or experts to develop a social and psychological history and provide assessments regarding any mental or behavioral impairments, including cognitive deficits, mental illness, developmental disabilities, and neurological deficits;
- consult with a criminal defense attorney regarding district court practices that may inform case planning;
- if the client is bound over to district court, advocate for the client to remain housed in juvenile detention during the pendency of the district court case and cooperate with the attorney handling the district court case; and
- attend any available training or CLE on topics relevant to SYO and “certification” cases.

## Principle 9/ WORKLOAD

The delinquency defense attorney should not carry a total workload that interferes with the ability to render effective assistance of counsel to the client in every case.

## Principle 10/ APPELLATE REPRESENTATION

The delinquency defense attorney must preserve and protect a client’s right to appeal. The attorney should:

- be familiar with the rules of appellate procedure;
- preserve issues for appeal, including through motions practice and clear objections;
- counsel the client regarding appellate rights and guide the client through the decision making process regarding possible appeal;
- file the Notice of Appeal, if the client chooses to appeal; and
- cooperate with appellate counsel, if applicable.

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<sup>5</sup> See, Houskeeper v. State, 197 P.3d 636 (Utah 2008) (finding that the delinquency defense attorney was ineffective by failing to investigate and by not putting on any defense witnesses.)

## Principle 11/ SYSTEM ISSUES AND IMPROVEMENT

System issues in the juvenile justice system can have a significant impact on individual case outcomes.

The delinquency defense attorney, moreover, plays an important role in ensuring that the juvenile justice system promotes accuracy, fairness, non-discrimination, and rehabilitation.

The attorney should seek to:

- participate in policy development and review;
- monitor proposals to change court rules;
- advocate for adequate resources to provide effective assistance;
- advocate for the elimination of disproportionate minority contact in the juvenile justice system;
- report any harmful conditions of confinement; and
- maintain adequate records to facilitate engagement in systems advocacy.