AGENDA

SUPREME COURT'S ADVISORY COMMITTEE
ON THE
RULES OF JUVENILE PROCEDURE

Matheson Courthouse
Conference Rooms B & C (1st Floor W-19)
August 2, 2019
Noon – 2:00 p.m.

12:00-12:10	**Welcome and Approval of Minutes** *(Draft Minutes of June 7, 2019—Tab 1)*	David Fureigh
12:10-12:15	**Introductions of New Members and Professional Practice Disclosures**	David Fureigh
12:15-12:40	**Rule 27A-Admissibility of Statements Given by Minors** *(Current Draft of Rule 27A-Tab 2)*	David Fureigh
12:40-1:50	**Rule 9-Detention Hearings; scheduling; hearing procedure** *(Current Draft of Rule 9,* *Comment Received Pertaining to Rule 9,* *Memorandum Summarizing History of Warrantless Arrests of Minors, and* *Memorandum from Board of Juvenile Court Judges -Tab 3)*	David Fureigh
1:50-2:00	**Old or New Business**	All
2:00	**Adjourn**	

Next Meeting: September 6, 2019

TAB 1

Utah Rules of Juvenile Procedure Committee- Meeting Minutes

June 7, 2019	Noon to 2:00 p.m.	Education Room
MEETING DATE	TIME	LOCATION

MEMBERS:	Present	Absent	Excused	MEMBERS:	Present	Absent	Excused
Carol Verdoia	☒	☐	☐	Daniel Gubler	☒	☐	☐
Judge Elizabeth Lindsley	☒	☐	☐	Sophia Moore	☐	☐	☒
Judge Mary Manley	☒	☐	☐	Daniel Meza Rincon for Mikelle Ostler	☒	☐	☐
Arek Butler	☒	☐	☐	Jordan Putnam	☒	☐	☐
Trish Cassell	☐	☐	☒	Chris Yannelli	☒	☐	☐
Monica Diaz	☒	☐	☐		☐	☐	☐
Kristin Fadel	☒	☐	☐		☐	☐	☐
David Fureigh	☒	☐	☐		☐	☐	☐
AOC STAFF:	**Present**	**Excused**		**GUESTS:**	**Present**	**Absent**	
Katie Gregory	☒	☐		Chief Justice Durrant	☒	☐	
Jean Pierce	☒	☐		Joseph Wade	☒	☐	
Keegan Rank	☒	☐		Jacqueline Carlton	☒	☐	
					☐	☐	

AGENDA TOPIC

I. Welcome & Approval of Minutes	**CHAIR: CAROL VERDOIA**

Carol Verdoia welcomed members and called for approval of the May minutes. Chief Justice Durrant addressed the Committee and provided a special recognition of Carol Verdoia's years of service to the Committee. Ms. Verdoia has been a committee member for 23 years and has served as Chair for 22 years. She will conclude her service as Chair on June 30, 2019 and become an Emeritus Member of the Committee. David Fureigh will become the new Chair on July 1, 2019. Chief Justice Durrant thanked Ms. Verdoia and the members of Committee for their service. He also acknowledged Trish Cassell who is completing her term on the Committee.

Motion: To approve the minutes of May 3, 2019	By: Judge Manley	Second: Arek Butler
Approval	☒ Unanimous	☐ Vote: In Favor_____ Opposed _____

AGENDA TOPIC

II. Rule 9-Detention Hearings; scheduling; hearing procedure	**CAROL VERDOIA**

Members reviewed the Committee's discussions on revisions to Rule 9, which have been out for public comment on three occasions. The Committee is currently focused on two issues: 1) whether the standard for a youth to be detained after a warrantless arrest should be reasonable basis or probable cause; and 2) if a youth is detained on either standard, how soon must a hearing occur. The Board of Juvenile Court Judges has a subcommittee that is also reviewing issues pertaining to Rule 9.

In addition to materials previously discussed, the Committee received a copy of a public comment from Judge Steven Beck dated April 18, 2019 and a legal memorandum from Juvenile Court Law Clerk, Jean Pierce, regarding the history of statutes governing warrantless arrests.

The Committee discussed whether it is appropriate to create a rule that conflicts with statute and detention hearing standards already in place. Questions were raised as to whether the issues discussed are procedural or substantive in nature. Additional discussion took place concerning the logistics of transport, detention hearing practice, video hearings and additional impacts to rural areas of the state versus concerns raised in the Third District. The Committee tabled further discussion until the August 2, 2019 meeting to allow Sophia Moore and the Committee's two new members to be present for the discussion and to allow time for the Board's Subcommittee to provide its comments to the Committee.	
Action Items:	Place the Rule 9 discussion on the agenda for August 2, 2019. Distribute any feedback received from the Board of Juvenile Court Judges' Rule 9 Subcommittee.

AGENDA TOPIC

III. Tribal Participation in Juvenile Court	**CAROL VERDOIA**
Arek Butler is continuing to work on a draft rule for presentation at a future meeting. Bridget Koza researched practices in other states and provided examples of notices or motions to intervene from Kansas and Alaska, which were included in the meeting materials. Katie Gregory distributed an additional form from California. Judge Lindsley also serves on the Court's Forms Committee and reviewed the process by which forms are approved for public posting. Members discussed current practices and processes tribes use to intervene and how a form on the Court's website might be utilized. The AG's office may also assist in facilitating the use of the form(s) by tribes. The Committee discussed what type of access in CARE is available to tribes who intervene in a case. Judge Lindsley will draft a proposed form or forms for Committee review. The Committee also considered that any form created should also contemplate the rule being drafted by Mr. Butler. Forms approved by the Committee must be reviewed by the Court's Forms Committee. Alisa Lee at DCFS may send approved forms to the tribes with whom she works on a regular basis. Katie Gregory will continue to work on communications with the Utah State Bar recommending the waiver of *pro hac vice* fees for tribal attorneys. Ms. Gregory will draft a proposed letter for consideration by the Supreme Court prior to approaching the appropriate Bar committee. Ms. Gregory will report back at a future meeting.	
Action Items:	• Continue drafting tribal participation rule-Arek Butler • Draft form for intervention-Judge Lindsley • Prepare Letter to Bar regarding waiver of *pro hac vice* fees-Katie Gregory

AGENDA TOPIC

IV. Rule 27A-Admissibility of Statements Given by Minors	**CAROL VERDOIA**
The Supreme Court requested the Committee consider policy issues related to the age at which juveniles are considered capable of waiving their *Miranda* rights and asked the Committee to consider several articles cited in footnote 6 to *R.G. v. State*, 416 P.3d 478 (Utah 2017). The following points were discussed: • The current rule does not prevent an attorney from filing a Motion to Suppress and arguing	

the waiver is not valid. Most of the literature suggested to the Committee expressed a need to rewrite *Miranda* warnings and make them more understandable to youth. The Committee is not in the position to rewrite *Miranda* warnings.

- Whether or not there should be an age limit to the protection given to youth in the Rule and what the Supreme Court meant in its comments in the *R.G.* case. Discussion included a consideration of the impact on law enforcement.
- Having a parent present during a police interview is not always helpful to the juvenile since some parents pressure the youth to admit, etc.
- Some children in foster care experience trauma by being interrogated, even if the evidence is later suppressed. Statute does not allow DCFS to consent for a child in foster care and a GAL should be present when possible.
- Many thought that the issues presented in the suggested literature was already taken into consideration when previous changes were made to the Rule. A Motion to Suppress gives the court the opportunity to look at each case and waiver on an individual basis to decide validity.

The Committee decided that it would relay to the Supreme Court that the Committee reviewed the literature, but feels absent a rewrite of the entire *Miranda* warning itself, the issues raised in the literature will not be resolved. Further, the Committee was unable to come to a consensus about whether an age cut off is appropriate. Protections exist through the procedure for filing a motion to suppress when an interrogation is inappropriate. Further, removing paragraph (a)(2) is needed to eliminate the potential for an unconstitutional burden shift to the juvenile. Law enforcement is trained on the issues and if the waiver is not valid, a motion to suppress can be filed. When a Motion to Suppress is filed in a case, the court closely examines the standard set in case law when deciding whether a waiver is valid.

Action Item:	Carol Verdoia will report the Committee's discussions to the Supreme Court.

TAB 2

Rule 27A. Admissibility of statements given by minors.

(a) If a minor is in custody for the alleged commission of an offense that would be a crime if committed by an adult, any statement given by a minor in response to questions asked by a police officer is inadmissible unless the police officer informed the minor of the minor's rights before questioning begins. ~~(a)(1)~~ If the child is under 14 years of age, the child is presumed not adequately mature and experienced to knowingly and voluntarily waive or understand a child's rights unless a parent, guardian, or legal custodian is present during waiver.

~~(a)(2) If the minor is 14 years of age or older, the minor is presumed capable of knowingly and voluntarily waiving the minor's rights without the benefit of having a parent, guardian, or legal custodian present during questioning.~~

(b) The presumption~~s~~ outlined in paragraph~~s~~ (a~~)(1) and (a)(2)~~ may be overcome by a preponderance of the evidence showing the ability ~~or inability~~ of a minor to comprehend and waive the minor's rights.

~~**Advisory Committee Notes**~~

~~This rule is intended to recognize the right to counsel, and the right against self-incrimination as established by statute, constitution, or caselaw.~~

TAB 3

Draft: March 1, 2019

Rule 9. Detention hearings; scheduling; hearing procedure.

(a) The officer in charge of the detention facility shall provide to the court a copy of the report required by Section 78A-6-112. ~~At a detention hearing, the court shall order the release of the minor to the parent, guardian or custodian unless there is reason to believe:~~

~~(a)(1) the minor will abscond or be taken from the jurisdiction of the court unless detained;~~

~~(a)(2) the offense alleged to have been committed would be a felony if committed by an adult;~~

~~(a)(3) the minor's parent, guardian or custodian cannot be located;~~

~~(a)(4) the minor's parent, guardian or custodian refuses to accept custody of the minor;~~

~~(a)(5) the minor's parent, guardian or custodian will not produce the minor before the court at an appointed time;~~

~~(a)(6) the minor will undertake witness intimidation;~~

~~(a)(7) the minor's past record indicates the minor may be a threat to the public safety;~~

~~(a)(8) the minor has problems of conduct or behavior so serious or the family relationships are so strained that the minor is likely to be involved in further delinquency; or~~

~~(a)(9) the minor has failed to appear for a court hearing within the past twelve months.~~

(b) The court shall hold a detention hearing within 48 hours of the minor's admission to detention~~,~~. ~~weekends and holidays excluded.~~ A minor may not be held in a detention facility longer than 48 hours before a detention hearing, excluding weekends and holidays, unless the court has entered an order for continued detention. The officer in charge of the detention facility shall notify the minor, parent, guardian or custodian and attorney of the date, time, place and manner of such hearing.

(c) The court may at any time order the release of a minor whether a detention hearing is held or not.

(d) The court may order a minor to be held in the detention facility or be placed in another appropriate facility, subject to further order of the court, only if the court finds at a detention hearing that:

(d)(1) releasing the minor to minor's parent, guardian, or custodian presents an unreasonable risk to public safety;

(d)(2) less restrictive non-residential alternatives to detention have been considered and, where appropriate, attempted; and

(d)(3) the minor is eligible for detention under the division guidelines for detention admissions established by the Division of Juvenile Justice Services, under Section 62A-7-202 and under Section 78A-6-112.

(ed) At the beginning of the detention hearing, the court shall advise all persons present as to the reasons or allegations giving rise to the minor's admission to detention and the limited scope and purpose of the hearing as set forth in paragraph (g). If the minor is to be arraigned at the detention hearing, the provisions of Rules 24 and 26 shall apply.

(fe) The court may receive any information, including hearsay and opinion, that is relevant to the decision whether to detain or release the minor. Privileged communications may be introduced only in accordance with the Utah Rules of Evidence.

(gf) A detention hearing may be held without the presence of the minor's parent, guardian or custodian if they fail to appear after receiving notice. The court may delay the hearing for up to 48 hours to permit the parent, guardian or custodian to be present or may proceed subject to the rights of the parent, guardian or custodian. The court may appoint counsel for the minor with or without the minor's request.

(hg) If the court determines that no reasonable basis exists for the offense or condition alleged as required in Rule 6 as a basis for admission, it shall order the minor released immediately without restrictions.

(i) If the court determines that ~~reasonable cause exists for continued detention,~~ a less restrictive alternative to detention is appropriate it may ~~order continued detention,~~ place the minor on home detention, another alternative program, or order the minor's release upon compliance with certain conditions pending further proceedings. Such conditions may include:

(i~~hg~~)(1) a requirement that the minor remain in the physical care and custody of a parent, guardian, custodian or other suitable person;

(i~~hg~~)(2) a restriction on the minor's travel, associations or residence during the period of the minor's release; and

(i~~hg~~)(3) other requirements deemed reasonably necessary and consistent with the criteria for detaining the minor.

(ji~~h~~) If the court determines that a reasonable basis exists as to the offense or condition alleged as a basis for the minor's admission to detention but that the minor can be safely left in the care and custody of the parent, guardian or custodian present at the hearing, it may order release of the minor upon the promise of the minor and the parent, guardian or custodian to return to court for further proceedings when notified.

(k~~ji~~) If the court determines that the offense is one governed by Section 78A-6-701, Section 78A-6-702, or Section 78A-6-703, the court may by issuance of a warrant of arrest order the minor committed to the county jail in accordance with Section 62A-7-201.

(l~~kj~~) Any predisposition order to detention shall be reviewed by the court once every seven days, unless the minor is ordered to home detention or an alternative detention program. Predisposition orders to home detention or an alternative detention program shall be reviewed by the court once every 15 days. The court may, on its own motion or on the motion of any party, schedule a detention review hearing at any time.

~~Advisory Committee Notes~~

~~Paragraph (j) of this Rule is a change to permit the court to review the detention order without waiting for a party to bring the issue to the court.~~

Steven Beck
April 18, 2019 at 10:21 pm

I urge the Committee on the Rules of Juvenile Procedure to change Rule 9 to require a judicial finding of probable cause within 48 hours, including weekends and holidays, of when a child is admitted to detention without a warrant. Furthermore, I recommend that the rule either use the term "probable cause" or define the term "reasonable basis."

THE UNITED STATES SUPREME COURT HAS HELD THAT INDIVIDUALS SUBJECT TO A WARRANTLESS ARREST SHOULD RECEIVE A JUDICIAL DETERMINATION OF PROBABLE CAUSE WITHIN 48 HOURS INCLUDING WEEKENDS AND HOLIDAYS

For decades, United States Supreme Court precedent has held that individuals subject to a warrantless arrest should receive a judicial determination of probable cause within 48 hours, including weekends and holidays. In Gerstein v. Pugh, 420 U.S. 103, 126 (1975), the Court held that "the Fourth Amendment requires a timely judicial determination of probable cause as a prerequisite to detention…." In County of Riverside v. McLaughlin, 500 U.S. 44, 56 (1991), the Court held that "a jurisdiction that provides judicial determinations of probable cause within 48 hours of arrest will, as a general matter, comply with the promptness requirement of Gerstein." Furthermore, while noting that some extraordinary circumstances may justify additional delay, the Court held "[t]he fact that in a particular case it may take longer than 48 hours to consolidate pretrial proceedings does not qualify as an extraordinary circumstance. Nor, for that matter, do intervening weekends. A jurisdiction that chooses to offer combined proceedings must do so as soon as is reasonably feasible, but in no event later than 48 hours after arrest." Id. at 57.

Rule 9 of the Utah Rules of Criminal Procedure recognizes this precedent and provides for a judicial determination of probable cause for all adults in the State of Utah within 24 hours of arrest. However, despite the fact that this issue was raised – at least 15 months ago – at the Committee on the Rules of Juvenile Procedure and more recently as a comment to the last proposed (but not adopted) version of Rule 9, the Committee has refused to propose a version of Rule 9 that would provide for a judicial determination of probable cause for all juveniles in the State of Utah within 48 hours of arrest. Without a rule providing for a probable cause determination within 48 hours, according to data recently provided to the Utah Board of Juvenile Court Judges, on average, 59 children per month are held for more than 48 hours before they have a probable cause determination. Additionally, on average, 8 children per year are held in detention for longer than 48 hours when there was not a "reasonable basis" (to use the term in the current and proposed rule) for them to be admitted to detention in the first place.

THE CURRENT AND PROPOSED VERSIONS OF RULE 9 CONFLATE THE CONSTITUTIONALLY-REQUIRED PROBABLE CAUSE DETERMINATION WITH THE STATUTORILY-MANDATED DETENTION HEARING

It has been suggested that the juvenile court may not make a probable cause determination outside of the statutorily-mandated detention hearing. While Rule 9 currently combines the constitutionally-required probable cause determination with the statutorily-mandated detention hearing, nothing requires them to occur simultaneously. In fact, Utah Code Ann. 78A-6-

113(3)(d) explicitly recognizes that in some cases, a juvenile court may need to order the release of a child prior to a detention hearing: “The court may, at any time, order the release of the minor, whether a detention hearing is held or not.”

The combination of pretrial proceedings (such as the detention hearing) with the probable cause determination was exactly the issue that was before the United States Supreme Court in County of Riverside v. McLaughlin. In that case, the United State Supreme Court said, “Gerstein permits jurisdictions to incorporate probable cause determinations into other pretrial procedures” such as the detention hearing in juvenile court. Id. at 55. “But flexibility has its limits; Gerstein is not a blank check. A State has no legitimate interest in detaining for extended periods individuals who have been arrested without probable cause.” Id.

Again, while Rule 9 in its current and proposed forms combines the probable cause determination with the detention hearing, nothing in statute requires that combination. During weekdays, detention hearings are routinely scheduled within 48 hours after arrest. However, by excluding weekends and holidays from the calculation, Rule 9 – in both its current and proposed form – justifies routine delays of the probable cause determination merely to facilitate its combination with the detention hearing in violation of United States Supreme Court precedent.

It has been suggested that a separate probable cause determination by a judge that results in continued detention of a child would trigger the need for a detention hearing in order to make the statutorily-required findings for continued detention. That is not correct and is evidence of the conflation of the probable cause determination with the detention hearing. If a judicial officer makes a probable cause determination prior to a detention hearing, there is no order – implied or otherwise – that the minor is held subject to further order of the court. Rather, a finding of probable cause is just that – a finding of probable cause. Even if a judicial officer makes a finding of probable cause prior to a detention hearing, the minor only remains detained on the authority of the “designated facility staff person” pursuant to UCA 78A-6-112(5)(b)(i) and the minor may, in fact, still be released by a probation officer pursuant to UCA 78A-6-113(2) and Probation Policy 2.9(3) (“The probation officer may review the minor’s detention status and determine if it is appropriate to release the minor to the minor’s parent/guardian/custodian prior to the initial detention hearing”) (approved by the Judicial Council and effective December 17, 2018).

The proposed probable cause determination could take place electronically. For example, the probable cause statement could be communicated electronically from the detention center to the on-call judge (in those districts which have adopted a magistrate rotation). The result of the probable cause determination could be electronically communicated from the on-call judge back to the detention center. See generally Rule 9 of the Utah Rules of Criminal Procedure. Furthermore, since detention hearings are routinely scheduled within 48 hours after arrest during weekdays, the electronic probable cause determinations could be limited to weekends and holidays.

While Utah Code Ann. 78A-6-113(4) excludes weekends and holidays from the calculation of when a detention hearing must occur, it does not prohibit a judicial determination of probable cause during that time period. I would urge the Committee to enact a version of Rule 9 that

would require a judicial determination of probable cause within 48 hours including weekends and holidays. In the alternative, I would urge the Committee to end the debate about whether Gerstein and County of Riverside apply to juveniles in the State of Utah by including a definitive statement within Rule 9 explaining why juveniles are not entitled to a probable cause determination within 48 hours of arrest, especially in light of recent juvenile justice statutory reform efforts as discussed in the next section.

THE COMMITTEE'S DEFERENCE TO STATUTE IN MATTERS OF COURT PROCEDURE IS IMPROPER GIVEN THE SUPREME COURT'S CONSTITUTIONAL MANDATE TO "ADOPT RULES OF PROCEDURE…TO BE USED IN THE COURTS OF THE STATE"

It has been suggested that since the current and proposed versions of Rule 9 use the same or similar language contained in the Utah Code, the Committee cannot make certain changes to Rule 9 without a legislative change. That suggestion is directly contradictory to the Utah Supreme Court's constitutional mandate found in Article VIII, Section 4 of the Utah Constitution: "The Supreme Court shall adopt rules of procedure and evidence to be used in the courts of the state and shall by rule manage the appellate process. The Legislature may amend the Rules of Procedure and Evidence adopted by the Supreme Court upon a vote of two-thirds of all members of both houses of the Legislature…." See also Maxfield v. Herbert, 2012 UT 44, ¶15 ("[W]e note that our rules of procedure are not necessarily subordinate to the provisions of state statutes. It is this court's constitutional prerogative to 'adopt rules of procedure and evidence to be used in the courts of the state,' subject to the legislature's power to 'amend' our rules 'upon a vote of two-thirds of all members of both houses.'‖ UTAH CONST. art. VIII, § 4").

Furthermore, even if the Legislature proposed new detention hearing procedures by amending current statutes, it's entirely likely that the Judicial Council through its Liaison Committee would oppose such legislation on grounds that it encroaches on the Court's constitutional authority to "adopt rules of procedure…to be used in the courts of the state." See Rule 3-106(1)(D) of the Utah Code of Judicial Administration ("The Council may endorse, oppose, amend or take no position on proposed legislative initiatives. The Council shall limit its consideration of legislative matters to those which affect the Constitutional authority, the statutory authority, the jurisdiction, the organization or the administration of the judiciary"). Additionally, the enactment of a rule providing for the protections outlined in Gerstein and County of Riverside is entirely consistent with the philosophy underlying recent juvenile justice statutory reform efforts. See generally, Utah Juvenile Justice Working Group Final Report (accessible at **https://justice.utah.gov/Documents/CCJJ/Justice%20Policy/Research/Final%20Report/Utah%20JJ%20Final%20Report.pdf**).

THE COMMITTEE SHOULD ACTIVELY INDICATE WHETHER PROBABLE CAUSE OR REASONABLE BASIS IS REQUIRED FOR WARRANTLESS ADMISSION OF CHILDREN TO DETENTION

Utah Code Ann. 78A-6-112(1)(b) provides that "A minor may be taken into custody by a peace officer without order of the court if there are reasonable grounds to believe the minor has committed an act which if committed by an adult would be a felony." The authority for peace officers to take minors into custody without order of the court also extends to misdemeanor

offenses in which "the minor is seriously endangered in the minor's surroundings; or seriously endangers others; and immediate removal appears to be necessary for the minor's protection or the protection of others." (See UCA 78A-6-112(1)(c) and Rule 6 of the Utah Rules of Juvenile Procedure).

Notwithstanding the fact that the lesser standard of "reasonable grounds" is usually reserved for those with a diminished liberty interest, such as for those on probation or parole, the Committee has extended the term "reasonable basis" as the standard to apply to all children booked into detention without a warrant by incorporating it into the current and proposed versions of Rule 9. See State v. Burningham, 2000 UT App 229 at ¶9. The United States Supreme Court has emphasized that in juvenile cases, "it would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase 'due process.'" In re Gault, 387 U.S. 1, 27-28 (1967). While the United States Supreme Court has undoubtedly recognized that juveniles have a diminished privacy interest in certain circumstances (with regard to searches at school, for example; see New Jersey v. T.L.O., 469 U.S. 325 (1985)), the Committee's adoption of the "reasonable basis" standard in Rule 9 affects the liberty interest of all juveniles admitted to detention without the benefit of a warrant. Additionally, the impact extends to the liberty interests of parents, as well, since it allows for the admission of their children to detention under a standard lower than probable cause. See In re D.G., 2017 UT 79, fn. 5 ("While not raised in this case, we note that juveniles are not entirely 'independent actors with individual rights. . . . [P]olice questioning of minors also threatens the rights of parents, "perhaps the oldest of the fundamental liberty interests recognized by [the Supreme] Court."' Note, Juvenile Miranda Waiver and Parental Rights, 126 HARV. L. REV. 2359, 2359 (2013) (third alteration in original) (quoting Troxel v. Granville, 530 U.S. 57, 65 (2000) (plurality opinion)). When government actors 'threaten[] to break "familial bonds, [they] must provide the parents with fundamentally fair procedures."' Id. (quoting Santosky v. Kramer, 455 U.S. 745, 754 (1982)). Interrogation without the presence of an interested adult 'creates a substantial risk that children will be removed from their parents after confessing falsely' and may also 'cause psychological harm that damages the parent-child relationship.' Id.").

The use of the term "reasonable basis" in the current and proposed versions of Rule 9 adds further confusion given the use of "probable cause" in Rule 7. Under Rule 7, a judge may issue a warrant based on the standard of probable cause. However, under the current and proposed versions of Rule 9, continued detention after a warrantless arrest is based on the standard of "reasonable basis."

As such, if the Committee intends for a lower standard than probable cause to apply to children admitted to detention without a warrant, I would recommend that said intention be expressed actively by defining "reasonable basis" rather than passively expressing such intention by enacting the proposed rule which does not define that term. If the Committee does not intend for a lower standard than probable cause to apply to children admitted to detention without a warrant, I would recommend that Rule 9 be amended to use the term "probable cause" rather than "reasonable basis."

In conclusion, for the reasons stated above, I would strongly urge the Committee on the Rules of Juvenile Procedure to change Rule 9 to require a judicial finding of probable cause within 48

hours, including weekends and holidays, of when a child is admitted to detention without a warrant. On the other hand, if it is the Committee's position that juveniles in the State of Utah are not entitled to a probable cause determination within 48 hours of a warrantless arrest, I would recommend a change to the rule to affirmatively express that conclusion. Furthermore, if it is the Committee's intention for a lower standard than probable cause to apply to children admitted to detention without a warrant, I would recommend that said intention be expressed actively by defining the term "reasonable basis," rather than passively expressing such intention by enacting the proposed rule which does not define "reasonable basis." The changes I propose are not prohibited by Utah statute. Rather, they are consistent with the constitutionally-mandated role of the Utah Supreme Court to adopt rules of procedure to be used in the juvenile courts of the state.

Law Clerk Memorandum

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

From: Jean Pierce, Juvenile Court Law Clerk

Re: History on the Statute Governing Warrantless Arrests of Juveniles

Date: May 30, 2019

This memo provides the history of the Utah statute authorizing the warrantless arrest of a juvenile, the Utah case law examining the statute in question, the case law establishing the meaning of the probable cause and reasonable grounds standards, and the summaries of several United States Supreme Court decisions impacting the juvenile court.

I. History of Utah Statutes Authorizing the Warrantless Arrests of Juveniles

In the 1943 Utah Code, **Arrest of a Child** was coded as section 14-7-19 and **Without Warrant** was coded as 14-7-21. However, both sections read exactly the same as the 1953 Utah Code version except for the explanation titled **Right to custody of child** which was added to the 1953 Utah Code.

1953	1965
Utah Code § 55-10-20 and § 55-10-22	Utah Code § 55-10-90
Arrest of a child. – Whenever any officer takes a child into custody he shall, unless it is impracticable or has been otherwise ordered by the court, accept the written promise of the parent, guardian or custodian to bring the child to the court at the time fixed. Whereupon such child may be released to the custody of the parent, guardian or custodian. If not so released, such child shall be placed in the custody of a probation officer or other person designated by the court, or taken immediately to the court or place of detention designated by the court, and the officer taking him shall immediately notify the court and shall file a petition when directed to do so by the court. (**Right to custody of child.** This section recognizes the preferential right of a parent to the custody of the child until adjudicated otherwise. Throughout the Juvenile Code of this state repeated warnings are given of this preferential right, and such emergency provisions as section 55-10-22 . . . were not intended as a convenient	**Child taken into custody by peace officer, private citizen or probation officer –Grounds– Notice Requirements–Release or detention. -** A child may be taken into custody by a peace officer without order of the court (a) when in the presence of the officer the child has violated a state law, federal law or local law or, municipal ordinance; (b) when there are reasonable grounds to believe that he has committed an act which if committed by an adult would be a felony; (c) when he is seriously endangered in his surroundings, or when he seriously endangers others, and immediate removal appears to be necessary for his protection or the protection of others; (d) when there are reasonable grounds to believe that he has run away or escaped from his parents, guardian, or custodian. . . When an officer or other person takes a child into custody, he shall without unnecessary delay notify the parents, guardian, or custodian. The child shall then be released to the care of his parent or other responsible adult unless his

vehicle for nullifying that preference.) **Without warrant. –** Any peace officer, police officer or probation officer may immediately take into custody, without a warrant, any child who is found violating any law or ordinance , or who is reasonably believed to be a fugitive from his parents or from justice, or whose surroundings are such as to endanger his health, morals or welfare unless immediate action is taken. In every such case the officer taking the child into custody shall immediately report the fact to the court and the case shall then be proceeded with as provided in this chapter.	immediate welfare or protection of the community requires that he be detained. Before the child is released, the parent or other person to whom the child is released may be required to sign a written promise, on forms supplied by the court, to bring the child to the court at a time set or to be set by the court. A child shall not be detained by the police any longer than is reasonably necessary to obtain his name, age, residence and other necessary information, and to contact his parents, guardian or custodian. If he is not thereupon released as provided in the preceding paragraph, he must be taken to the court or to the place of detention or shelter designated by the court without unnecessary delay. The officer or other person who takes a child to a detention or shelter facility must notify the court at the earliest opportunity that the child has been taken into custody and where he was taken; he shall also promptly file with the court a brief written report stating the facts which appear to bring the child within the jurisdiction of the juvenile court and giving the reason why the child was not released.

Highlights

- The 1965 Utah Code is when the reasonable grounds standard for arrest of a minor is set pertaining to felony offenses and if the child is a runaway.
- Prior to 1965, a minor could be taken into custody without a warrant for violating any law or ordinance or if it was reasonably believed that the minor was a fugitive from justice or his parents.
- Release of the child to the parents is preferred unless the child's welfare or protection of the community requires detainment.

Case Law

Myers v. Collett, 268 P.2d 432 (Utah 1954).

Three boys were arrested for a "violation of curfew and investigation of activities" by police officers investigating a prowler complaint. *Id.* at 433. The boys' parents were telephoned informing them that their sons were in custody. The boys were confined in a detention home and not released until the next day even though one father asked for his son to be immediately released to his custody. *Id.* There was considerable evidence that the boys would not have been detained if it had not been for the antagonism felt by one of the officers because of the attitude of one of the boys. One boy brought an action for damages for false arrest and false imprisonment.

The Court held there was no question that the statute gave officers the power to arrest the boys because the boys were violating the curfew ordinance in the presence of the officers. *Id.*

Also, the statute gives arresting officers “a certain amount of discretion” in deciding whether or not to release a child to the custody of their parents, but “the officer's discretion will not extend so far as to allow him to impose a policeman's sentence.” *Id.* at 435. In the present case, the plaintiff is the father of one of the other boys detained and not the not the father who requested the release of his son; thus, the plaintiff cannot prevail in the action for false imprisonment. *Id.*

1983	1996
Utah Code § 78-3a-29	Utah Code § 78-3a-508
Child taken into custody by peace officer, private citizen or probation officer–Grounds–Notice requirements–Release or detention. (1) A child may be taken into custody by a peace officer without order of the court: (a) If in the presence of the officer the child has violated a state law, federal law, local law, or municipal ordinance; (b) If there are reasonable grounds to believe that the child has committed an act which if committed by an adult would be a felony; (c) If the child is seriously endangered in his surroundings, or if the child seriously endangers others, and immediate removal appears to be necessary for his protection or the protection of others; (d) If there are reasonable grounds to believe that the child has run away or escaped from his parents, guardian, or custodian ; or (c) under section 53-24-2.3. . . (3) If an officer or other person takes a child into custody, he shall without unnecessary delay notify the parents, guardian, or custodian. The child shall then be released to the care of his parent or other responsible adult unless his immediate welfare or the protection of the community requires his detention. Before the child is released, the parent or other person to whom the child is released may be required to sign a written promise, on forms supplied by the court, to bring the child to the court at a time set or to be set by the court. (4) A child shall not be detained any longer than is reasonably necessary to obtain his name, age, residence, and other necessary information, and to contact his parents, guardian, or custodian. If the child is not then released as provided in subsection (3), he must be taken to the court or to	**Minor taken into custody by peace officer, private citizen, or probation officer - Grounds - Notice requirements - Release or detention - Grounds for peace officer to take adult into custody.** (1) A minor may be taken into custody by a peace officer without order of the court if: (a) in the presence of the officer the minor has violated a state law, federal law, local law, or municipal ordinance; (b) there are reasonable grounds to believe the minor has committed an act which if committed by an adult would be a felony; (c) the minor is seriously endangered in his surroundings or if the minor seriously endangers others, and immediate removal appears to be necessary for his protection or the protection of others; (d) there are reasonable grounds to believe the minor has run away or escaped from his parents, guardian, or custodian; or (e) there is reason to believe the minor is subject to the state's compulsory education law and that the minor is absent from school without legitimate or valid excuse, subject to Section 53A-11-105. . . (3) (a) If an officer or other person takes a minor into temporary custody, he shall without unnecessary delay notify the parents, guardian, or custodian. The minor shall then be released to the care of his parent or other responsible adult, unless his immediate welfare or the protection of the community requires his detention. (b) Before the minor is released, the parent or other person to whom the minor is released shall be required to sign a written promise on forms

the place of detention or shelter designated by the court without unnecessary delay. (5) The person who takes a child to a detention or shelter facility must notify the court at the earliest opportunity that the child has been taken into custody and where he was taken. The person shall also promptly file with the court a brief written report stating the facts which bring the child within the jurisdiction of the juvenile court and the reason why the child was not released.	supplied by the court to bring the minor to the court at a time set or to be set by the court. (4) (a) A minor may not be held in temporary custody by law enforcement any longer than is reasonably necessary to obtain his name, age, residence, and other necessary information and to contact his parents, guardian, or custodian. (b) If the minor is not released under Subsection (3), he shall be taken to a place of detention or shelter without unnecessary delay. (5) (a) The person who takes a minor to a detention or shelter facility shall promptly file with the detention or shelter facility a written report on a form provided by the division stating the details of the presently alleged offense, the facts which bring the minor within the jurisdiction of the juvenile court, and the reason the minor was not released by law enforcement. (b) (i) The designated youth corrections facility staff person shall immediately review the form and determine, based on the guidelines for detention admissions established by the Division of Youth Corrections under Sections 62A-7-104 and 62A-7-205, whether to admit the minor to secure detention, admit the minor to home detention, place the minor in a placement other than detention, or return the minor home upon written promise to bring the minor to the court at a time set, or without restriction.

Highlights

- The 1983 version of the statute is when the authority to take a child into custody for truancy is given.
- The 1996 statute mandates that admission of the minor into detention must adhere to the guidelines established by the Division of Youth Corrections.
- The 1996 statute is when the option of placing the minor on home detention or another placement is first allowed.

Case Law

State v. Hunt, 607 P.2d 297 (Utah 1980).

Defendant, at the age of 16 years and 11months, was tried as an adult and convicted of aggravated robbery. *Id*. at 298. Defendant appeals contending that the interrogation by police during the six and a half hour drive from Colorado violates Utah Code section 78-3a-29 (the warrantless arrest of a minor statute) and makes the juvenile's statements during that time inadmissible. *Id.* In subsection 4, the statute in question mandates that any minor not released to the custody of a parent "must be taken to the court or to the place of detention or shelter

designated by the court without unnecessary delay," and Defendant would like the Court to interpret the statute to mean the police can *only* interrogate a juvenile after the "juvenile has been presented to the juvenile authorities." *Id.* at 301-2.

The court holds that the statute in question does not govern police interrogation of juveniles. *Id.* at 302. "The statute provides for arrest and detention of juveniles on four separate and dissimilar grounds; i.e., when a child has committed (a) a misdemeanor, (b) a felony, (c) is abused, and is in need of protection, or (d) has committed a status offense." *Id.* The statute dictates that detention by police of a juvenile for interrogation must not extend past what is "reasonably necessary," and the drive from Colorado was done within normal driving time and was not unreasonable under the circumstances. *Id.*

In re K.K.C., 636 P.2d 1044 (Utah 1981).

Juvenile appeals the finding of the juvenile court that he was in unlawful possession of a controlled substance, an alcoholic beverage and tobacco. *Id.* at 1045. The juvenile appeals the subsequent search of his truck upon arrest under the Fourth Amendment right to be free from unreasonable searches and seizures. *Id.* Although a juvenile adjudication is not a criminal conviction, "courts have extended many protections of the criminal justice system to juveniles who have allegedly violated the law," so the Court decides to address the juvenile's purported constitutional infringement in the present case. *Id.*

Officers approach the juvenile's truck when he and a friend were seated and parked in a junior high school parking lot after 11:00 p.m. *Id.* An officer approached the driver's side of the truck, shined a flashlight in the window, and knocked on the window. *Id.* When the juvenile rolled down the window, the officer could see "two open and partially empty bottles of beer on the seat between the juveniles" and "a 'roach clip' hanging from the vehicle's rear view mirror." *Id.* When the two occupants were out of the truck, officers searched the cab and bed of the truck and found two bags of marijuana and several unopened bottles of beer. *Id.* The juvenile challenges the search of the pickup. *Id.* at 1046.

The general rule is that searches without a warrant are per se unreasonable. *Id.* One exception to this rule is a warrantless search and seizure incident to a lawful arrest. *Id.* The Court then analyzes whether the juveniles arrest was lawful; however the Court cites the statute giving police the authority to make a warrantless arrest in the Code of Criminal Procedure rather than the statute in the Juvenile Court Act which provides the standard for a minor to be taken into custody without a court order. *Id.* The Court holds that the warrantless arrest of the juvenile was appropriate under the Code of Criminal Procedure statute. *Id.* at 1047.

2008	**2019**
Utah Code § 78A-6-112	Utah Code § 78A-6-112
Minor taken into custody by peace officer, private citizen, or probation officer–Grounds–Notice requirements–Release or detention–Grounds for peace officer to take adult into custody. (1) A minor may be taken into custody by a peace officer without order of the court if:	**Minor taken into custody by peace officer, private citizen, or probation officer–Grounds–Notice requirements–Release or detention–Grounds for peace officer to take adult into custody.** (1) A minor may be taken into custody by a peace officer without order of the court if:

(a) in the presence of the officer the minor has violated a state law, federal law, local law, or municipal ordinance; (b) there are reasonable grounds to believe the minor has committed an act which if committed by an adult would be a felony; (c) the minor: (i) (A) is seriously endangered in the minor's surroundings; or (B) seriously endangers others; and (ii) immediate removal appears to be necessary for the minor's protection or the protection of others; (d) there are reasonable grounds to believe the minor has run away or escaped from the minor's parents, guardian, or custodian; or (e) there is reason to believe that the minor is: (i) subject to the state's compulsory education law; and (ii) absent from school without legitimate or valid excuse, subject to Section 53A-11-105. . . (3) (a) (i) If an officer or other person takes a minor into temporary custody, he shall without unnecessary delay notify the parents, guardian, or custodian. (ii) The minor shall then be released to the care of the minor's parent or other responsible adult, unless the minor's immediate welfare or the protection of the community requires the minor's detention. . . (d) Before the minor is released, the parent or other person to whom the minor is released shall be required to sign a written promise on forms supplied by the court to bring the minor to the court at a time set or to be set by the court. (4) (a) A child may not be held in temporary custody by law enforcement any longer than is reasonably necessary to obtain the child's name, age, residence, and other necessary information and to contact the child's parents, guardian, or custodian. (b) If the minor is not released under Subsection (3), the minor shall be taken to a place of detention or shelter without unnecessary delay. (5) (a) The person who takes a minor to a detention or shelter facility shall promptly file	(a) in the presence of the officer the minor has violated a state law, federal law, local law, or municipal ordinance; (b) there are reasonable grounds to believe the minor has committed an act which if committed by an adult would be a felony; (c) the minor: (i)(A) is seriously endangered in the minor's surroundings; or (B)seriously endangers others; and (ii) immediate removal appears to be necessary for the minor's protection or the protection of others; (d) there are reasonable grounds to believe the minor has run away or escaped from the minor's parents, guardian, or custodian; or (e) there is reason to believe that the minor is: (i) subject to the state's compulsory education law; and (ii) absent from school without legitimate or valid excuse, subject to Section 53G-6-208. . . (3) (a) (i) If an officer or other person takes a minor into temporary custody under Subsection (1) or (2), the officer or person shall without unnecessary delay notify the parents, guardian, or custodian. (ii) The minor shall then be released to the care of the minor's parent or other responsible adult, unless the minor's immediate welfare or the protection of the community requires the minor's detention. . . (d) Before the minor is released, the parent or other person to whom the minor is released shall be required to sign a written promise on forms supplied by the court to bring the minor to the court at a time set or to be set by the court. (4) (a) A child may not be held in temporary custody by law enforcement any longer than is reasonably necessary to obtain the child's name, age, residence, and other necessary information and to contact the child's parents, guardian, or custodian. (b) If the minor is not released under Subsection (3), the minor shall be taken to a place of detention or shelter without unnecessary delay. (5) (a) The person who takes a minor to a

with the detention or shelter facility a written report on a form provided by the division stating the details of the presently alleged offense, the facts which bring the minor within the jurisdiction of the juvenile court, and the reason the minor was not released by law enforcement. (b) (i) The designated youth corrections facility staff person shall immediately review the form and determine, based on the guidelines for detention admissions established by the Division of Juvenile Justice Services under Section 62A-7-202, whether to admit the minor to secure detention, admit the minor to home detention, place the minor in a placement other than detention, or return the minor home upon written promise to bring the minor to the court at a time set, or without restriction.	detention or shelter facility shall promptly file with the detention or shelter facility a written report on a form provided by the division stating: (i) the details of the presently alleged offense; (ii) the facts that bring the minor within the jurisdiction of the juvenile court; (iii) the reason the minor was not released by law enforcement; and (iv) the eligibility of the minor under the division guidelines for detention admissions established by the Division of Juvenile Justice Services under Section 62A-7-202 if the minor is under consideration for detention. (b) (i) The designated facility staff person shall immediately review the form and determine, based on the guidelines for detention admissions established by the Division of Juvenile Justice Services under Section 62A-7-202, the results of the detention risk assessment, and the criteria for detention eligibility under Section 78A-6-113, whether to: (A) admit the minor to secure detention; (B) admit the minor to home detention; (C) place the minor in another alternative to detention; or (D) return the minor home upon written promise to bring the minor to the court at a time set, or without restriction. . . (iv) The person who takes a minor to a detention facility or the designated facility staff person may release a minor to a less restrictive alternative even if the minor is eligible for secure detention under this Subsection (5).

Highlights

- In 2008, the name of the organization establishing the guidelines for detention admission is changed from the Division of Youth Corrections to the Division of Juvenile Justice Services.
- The additional pre-detention step of the detention risk assessment and the adherence to the statutory guidelines in the Juvenile Court Act became part of the statute in 2018.
- The option for the facility person to release the minor to a less restrictive alternative even when the minor is eligible for admission went into effect in 2018.

Utah Administrative Code

1996	2019
R547-13. Guidelines for Admission to Secure Detention Facilities.	R547-13. Guidelines for Admission to Secure Youth Detention Facilities.
R547-13-3. General Rules. (1) A youth may be detained in a secure detention facility: (a) if the alleged offense is on the Holdable Offense List, Section R547-13-14: (b) if none of the offenses are on the Holdable Offense List but three or more non-status criminal offenses are currently alleged in a single criminal episode; (c) if one or more of the following conditions exist: (i) The youth is an escapee from a Youth Corrections' observation and assessment unit. (ii) The youth has been verified as a fugitive (absconder from probation or parole) or a runaway from another state and a formal request has been received (such as a TWX/National Crime Information Center (NCIC) or a telephone call/FAX from a law enforcement officer or a verified call/FAX/ from the institution) to hold pending return to the other jurisdiction, whether or not an offense is currently charged. (d) If a youth is not detainable under any of the above criteria, but a non-status law violation has been alleged and one of the following document conditions exists; (i) The youth's record discloses two or more prior adjudicated offenses on the Holdable Offense List in which the offenses were found to be true in the past twelve months. (ii) The youth, under continuing court jurisdiction (excluding those whose ONLY involvement is as a victim of abuse, neglect, abandonment, or dependency), has run away from court-ordered placement, including his own home. (iii) The youth has failed to appear at a court hearing within the past twelve months after receiving legal notice and officials have reason to believe that the youth is likely to abscond unless held.	**R547-13-4. General Rules** (1) A youth age 10 or 11 may be detained in a secure detention facility if arrested for any felony violation of Section 76-3-203.5(c), violent felony (2) A youth age 12 or over may be detained in a secure detention facility if: (a) A youth is arrested for any of the following state or federal equivalent criminal offenses: (i) Any offense which would be a felony if committed by an adult; (ii) Any attempt, conspiracy, or solicitation to commit a felony offense; (iii) Any class A misdemeanor violation of 76-5 Part 1, offense against the person; assault and related offenses; (iv) Any class A or B misdemeanor violation of 76-10 Part 5, offenses against public health, safety, welfare, and morals; weapon offenses; (v) A class A misdemeanor violation of Section 76-5-206, negligent homicide; (vi) A class A misdemeanor violation of Section 58-37-8(1)(b)(iii), a controlled substance violation; (vii) Any criminal offense defined as domestic violence (cohabitant) by 77-36-1(4), and 78B-7-102(2) and (3); (viii) A class A or B misdemeanor violation of Section 76-6-104(1)(a) or (b), reckless burning which endangers human life; (ix) A class A misdemeanor violation of Section 76-6-105, causing a catastrophe; (x) A class A misdemeanor violation of Section 76-6-106(2)(b)(i)(a), criminal mischief involving tampering with property that endangers human life; (xi) A class A misdemeanor violation of Section 76-6-406, theft by extortion; (xii) A class A misdemeanor violation of Section 76-9-702.1, sexual battery;

(2) A youth not otherwise qualified for detention in a secure detention facility shall not be detainable for any of the following: (a) ungovernable or runaway behavior; (b) neglect, abuse, abandonment, dependency, or other status requiring protection for any other reason; (c) status offenses such as curfew, possession/consumption of alcohol, tobacco, minor-in-a-tavern, truancy; (d) attempted suicide. (3) No youth under the age of ten years may be detained in a secure detention facility. **R547-13-14. Holdable Offense List.** 110 Offenses are listed.	(xiii) A class A misdemeanor violation of Section 76-5-401.3(2)(c) or (d), unlawful adolescent sexual activity; (xiv) A class A misdemeanor violation of Section 76-9-702.5, lewdness involving a child; (xv) A class A misdemeanor violation of Section 76-9-702.7(1), voyeurism with recording device; (xvi) A class A misdemeanor violation of Section 41-6A-401.3(2), leaving the scene of an accident involving injury; and (xvii) A class A misdemeanor violation of Section 41-6A-503(1)(b)(i) or (ii), driving under the influence involving injury; driving under the influence with a passenger under 16 years of age. (b) The youth is an escapee or absconder from a Juvenile Justice Services secure facility or community placement. (c) The youth has been verified as a fugitive (absconder from probation or parole) or a runaway from another state and a formal request has been received (such as a TWX/National Crime Information Center (NCIC) or a telephone call/FAX/email from a law enforcement officer or a verified call/FAX/email from the institution) to hold, pending return to the other jurisdiction, whether or not an offense is currently charged. (3) A youth not otherwise qualified for admission to a secure detention facility shall not be detained for any of the following: (a) ungovernable or runaway behavior; (b) neglect, abuse, abandonment, dependency, or other status requiring protection for any other reason; (c) status offenses such as curfew, possession/consumption of alcohol, tobacco, minor-in-a-tavern, truancy; or (d) attempted suicide. (4) No youth under the age of ten years may be detained in a secure detention facility.

II. Case Law Establishing the Reasonable Cause/Probable Cause Standard

State v. Hatcher, 495 P.2d 1259 (Utah 1972).

When pertaining to the authority of an officer to make a warrantless arrest, "reasonable cause" is an objective standard based on "whether from the facts known to the officer, and the inferences which fairly might be drawn therefrom, a reasonable and prudent person in his position would be justified in believing that the suspect had committed the offense." *Id.* at 1260.

Draper v. United States, 358 U.S. 307 (1959).

"Probable cause exists where the facts and circumstances within (the arresting officers') knowledge and of which they had reasonably trustworthy information (are) sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *Id.* at 313 (quoting Carroll v. United States, 267 U.S. 132, 162 (1924)).

III. Case Law Establishing the Reasonable Grounds Standard

State v. Velasquez, 672 P.2d 1254 (Utah 1983).

Parole officers failed to obtain a warrant before searching a parolee's apartment. *Id.* at 1256. The Utah Supreme Court held that while warrantless searches usually require probable cause, a parole officer need only have reasonable grounds to believe the parolee has committed a crime to conduct a search. *Id.* at 1260. In defining the standard of "reasonable grounds," the Utah Supreme Court considered the standard to be the "middle ground approach." *Id*. The Court further explained, "The term 'reasonable grounds' does not mean that which would be necessary for probable cause. Rather, it means a reasonable suspicion that a parolee has committed a parole violation or crime." *Id.*

New Jersey v. T.L.O., 469 U.S. 325 (1985).

This U.S. Supreme Court case involved the standard for searching a student's property when the search is done by a public school official. The Supreme Court held there is no violation of a student's Fourth Amendment right when a search of a student by a teacher or other school official is done when "there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school." *Id.* at 342. The Court reasoned that lessor standard of reasonable grounds, rather than the higher standard of probable cause, balanced the need of accommodating "the privacy interests of schoolchildren with the substantial need of teachers and administrators . . . to maintain order in the schools." *Id*. at 341.

IV. United States Supreme Court Juvenile Cases

Kent v. United States, 383 U.S. 541 (1966).

A 16-year-old minor was tried and convicted as an adult in the District of Columbia for housebreaking and robbery. The defendant appealed challenging compliance of the required procedure for the juvenile court to waive jurisdiction. The Court held that "the Juvenile Court should have considerable latitude within which to determine whether it should retain jurisdiction over a child or—subject to the statutory delimitation—should waive jurisdiction. But this latitude

is not complete. At the outset, it assumes procedural regularity sufficient in the particular circumstances to satisfy the basic requirements of due process and fairness." *Id.* at 552-3.

In re Gault, 387 U.S. 1 (1967).

This case arose on appeal of the dismissal of a petition for a writ of habeas corpus seeking the release of a 15-year-old boy who had been committed to the State Industrial School on delinquency charges. *Id.* at 4. The Court concludes that previous U.S. Supreme Court cases involving juveniles "unmistakably indicate" that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." *Id.* at 13. The Court closely examines the juvenile court system and determines there are legitimate reasons for treating juveniles and adults differently. *Id.* at 14-17.

Ultimately, though, the Supreme Court holds, "Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the state may exercise." *Id.* at 20. Thus, juveniles facing delinquency charges have many of the same legal rights as adults in criminal court, including the right to notice of charges filed against them, the right to counsel, the right to confrontation of witnesses, the right against self-incrimination, the right to cross-examine witnesses, and the right to appellate review and a transcript of the proceedings. *Id.* at 31, 34, 42, 57.

In re Winship, 397 U.S. 358 (1970).

At 12-years-old, appellant was found delinquent to a charge of larceny based on the preponderance of the evidence standard. *Id.* at 360. The Supreme Court held "the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt" and an adjudication of delinquency requires the same proof standard as criminal cases or proof beyond a reasonable doubt. *Id.* at 364.

McKeiver v. Pennsylvania, 403 U.S. 528 (1971).

Several juveniles charged with varying acts of juvenile delinquency request jury trials which are denied. Juveniles appeal the denials and inquire whether there is a constitutional right to a jury trial in juvenile court. *Id.* at 535. The Supreme Court discusses previous cases which have emphasized due process factors protecting juveniles and emphasizes, "The Court, however, has not yet said that all rights constitutionally assured to an adult accused of crime also are to be enforced or made available to the juvenile in his delinquency proceeding. Indeed, the Court specifically has refrained from going that far." *Id.* at 533. Additionally, the Court found that "the applicable due process standard in juvenile proceedings, as developed by *Gault* and *Winship*, is fundamental fairness." *Id.* at 543. The Court ultimately concludes that jury trials are not constitutionally required in juvenile court adjudications. *Id.* at 545.

Schall v. Martin, 467 U.S. 253 (1984).

Juveniles in New York brought a habeas corpus action asserting a statute allowing for pretrial detention violates the Due Process Clause of the Fourteenth Amendment. *Id.* The New York statute in question allows for a juvenile to be detained at an initial appearance until a probable cause hearing is held "not more than three days after the conclusion of the initial appearance or four days after the filing of the petition, whichever is sooner." *Id.* at 270. The Court begins its decision by reviewing past Supreme Court decisions on juveniles and states:

> There is no doubt that the Due Process Clause is applicable in juvenile proceedings. The problem, we have stressed, is to ascertain the precise impact of the due process requirement upon such proceedings. We have held that certain basic constitutional protections enjoyed by adults accused of crimes also apply to juveniles. But the Constitution does not mandate elimination of all differences in the treatment of juveniles. The State has a *parens patriae* interest in preserving and promoting the welfare of the child which makes a juvenile proceeding fundamentally different from an adult criminal trial. We have tried, therefore, to strike a balance—to respect the informality and flexibility that characterize juvenile proceedings, and yet to ensure that such proceedings comport with the fundamental fairness demanded by the Due Process Clause.

Id. at 263 (internal citations and quotation marks omitted).

In the present case, the Court must decide if the statute allowing for preventative detention of juveniles both serves a legitimate state objective and provides adequate procedural protection. *Id.* at 263-64. While examining the adequacy of the procedural protections, the Court addresses the appellees' argument that the decision in *Gerstein v. Pugh* required a probable cause finding before any incarceration. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). The Court noted, in *Gerstein*, the Court held "a judicial determination of probable cause is a prerequisite to any extended restraint on the liberty of an adult accused of a crime." *Schall*, 467 U.S. at 274-75.

However, the Court concludes that New York statute in question provides more procedural protection than the Court had required in *Gerstein* and these preventative procedures are constitutionally adequate under the Fourth Amendment and the Due Process Clause. *Id.* at 276-77. The procedures afforded to juveniles that protect against an "erroneous and unnecessary deprivation of liberty" include notice, a hearing, a statement of facts and reasons prior to any detention, and a formal probable cause hearing "if the factfinding hearing is not itself scheduled within three days." *Id.*

MEMO

Date: July 12, 2019

To: Committee for the Utah Rules of Juvenile Procedure

From: Utah Board of Juvenile Court Judges

Re: Amending the Utah Rules of Juvenile Procedure to Require a Probable Cause Determination and a Review Sooner than 48 Hours Excluding Weekends and Holidays for Juveniles Arrested Without a Warrant.

Members of the Rules Committee:

You have requested that the Board of Juvenile Court Judges ("Board") provide a response to the following questions:

1. Should the standard to hold a youth in detention following a warrantless arrest be that of "reasonable basis" or the higher standard of "probable cause"?
2. If a determination is made by some type of telephonic or electronic procedure, must a detention hearing be held within 48 hours, excluding weekends and holidays?

In response, the Board appointed a subcommittee to research these issues and provide the Board with its findings. Judge Rick Smith chaired the committee, joined by Judges Doug Nielson and Mike Leavitt, Keegan Rank and Jean Pierce, our juvenile court law clerks, and Katie Gregory, deputy juvenile court administrator. The subcommittee researched relevant federal and state statutes and case law, information from other states, and other relevant materials. The subcommittee then provided its research to the Board. The Board members also polled the judiciary in general and received comments and feedback.

After gathering this information, the Board responds as follows:

1. Should the standard to hold a youth in detention following a warrantless arrest be "reasonable basis" or "probable cause."

Utah Code §78A-6-112 authorizes law enforcement to make an arrest without a warrant, in part, based upon "reasonable grounds" that the child has committed a felony. Because the language of this statute does not require a probable cause determination, and there is no specific directive by either the Utah Supreme Court or the United States Supreme Court either directly finding that juveniles are entitled to a probable cause finding for a warrantless arrest, or any indication that that a failure to find probable

cause for a warrantless arrest is a denial of due process, the Board does not recommend that the Rules Committee promulgate a rule that directly contradicts the language of Utah Code §78A-6-112. The Board does not take a position on whether the difference between a reasonable grounds finding versus a probable cause finding amounts to either a substantive or procedural right; but rather, would seek to avoid creating a rule that is not consistent with the statute. In fact, because there is some debate among judges and others as to whether this is a substantive or procedural question, and therefore, whether the statute or rule controls, creating a rule with contradictory language will expose young people to inconsistent treatment in our juvenile courts and confusion for our judges. Some judges will feel compelled to follow the statute and others the rule.

2. If a determination is made by some type of telephonic or electronic procedure, must a detention hearing be held within 48 hours, excluding weekends and holidays?

The Board recommends that the Rules Committee amend Rule 9 of the Utah Rules of Juvenile Procedure to require a review of the basis for a warrantless arrest to be within 24 hours of arrest, including weekends and holidays. The Board recommends that the amended rule solely require the judge to determine whether an arrest without warrant met the grounds articulated in Utah Code §78A-6-112(1) and the requirements of R547-13-4 of the Utah Administrative Code because these sources of law deal solely with admission, not continued detention.

Amending Rule 9 to make this finding within 24 hours would not obviate the need for the court to later make a determination regarding continued detention as specified in Utah Code §78A-6-113(4)(d), which requires that the court find that (a) the juvenile poses an unreasonable risk to public safety, (b) there are no other alternative placements available, and (c) the minor is eligible for detention under the admission guidelines, meaning a finding that the underlying charges are among those listed in R547-13-4 of the Utah Administrative Code. This hearing could still be held within 48 hours, excluding weekends and holidays as the current rule requires.

Stated more plainly, the Board views this 24–hour review after a warrantless arrest as the same review a judge should make prior to a warranted arrest. This is not the same analysis outlined in Utah Code §78A-6-113(4)(d), which is not concerned with admission, but rather with continued detention, and therefore, the amended rule and statute could be in read in harmony.

The Board believes that determining that there was a lawful basis for a warrantless arrest within 24 hours is consistent with the framework the United States Supreme Court has created requiring due process or “fundamental fairness” when determining which constitutional rights should be afforded to juveniles, and is also consistent with the policy promulgated by the State of Utah in keeping juveniles unnecessarily out of detention, as made abundantly clear in the recent amendments to the Juvenile Court Act.