

# AGENDA

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

Matheson Courthouse  
Large Conference Room A (1st Floor-Enter through W19)  
November 1, 2019  
Noon – 2:00 p.m.

- |             |   |               |
|-------------|---|---------------|
| 12:00-12:10 | <b>Welcome and Approval of Minutes</b><br><i>(Draft Minutes of August 2, 2019—Tab 1)</i>  | David Fureigh |
| 12:10-1:00  | <b>Rule 27A-Admissibility of Statements Given by Minors</b><br><i>The Committee will review and discuss questions from the Supreme Court. (Memo-Tab 2)</i>  | Katie Gregory |
| 1:00-1:35   | <b>Rule 9-Detention Hearings; scheduling; hearing procedure</b><br><i>The Utah Supreme Court has directed the committee to give additional consideration to how the standard of “reasonable basis” is defined in Rule 9 and its comparison to the adult standard of “probable cause.” (Current Draft of Rule 9-Tab 3)</i>   | David Fureigh |
| 1:35-1:55   | <b>Continued Discussion of Tribal Participation in Juvenile Court</b><br><i>Draft Letter to State Bar regarding pro hac vice fees (Katie Gregory)<br/>URJP Rule regarding participation (Arek Butler) (Hold for December meeting)<br/>Juvenile Court Form for Intervention (Judge Lindsley) (Hold for December meeting)</i> |               |
| 1:55-2:00   | <b>Old or New Business</b>  | All           |
| 2:00        | <b>Adjourn</b>  |               |

**Next Meeting: December 6, 2019**

# **TAB 1**



need to be present during the waiver.”

- 3) Revise paragraph (b) to read: “The presumption outlined in paragraph (a)(1) may be overcome by a preponderance of the evidence showing the ability of a minor to comprehend and waive the minor's rights.”

Michelle Jeffs seconded the motion. The Committee discussed the proposal and alternatives, emphasizing the importance of simplicity and clarity for law enforcement. Some members expressed concern regarding whether the revised language would discourage law enforcement from seeking to have a parent present during questioning. Members also considered adding an Advisory Committee note, but ultimately determined it could be more confusing than helpful.

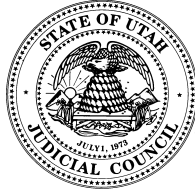
The Committee voted in favor of the motion by a vote of 8 to 3 with Ms. Moore, Ms. Diaz and Mr. Gubler voting against the motion.

Action Item:	Review the revisions to Rule 27A with the Supreme Court and seek further direction.
<ol style="list-style-type: none"><li>1) <b>Motion:</b> to reinstate the numbering of paragraph (a)(1) and (a)(2), which was deleted in the prior draft;</li><li>2) Replace the previously deleted language of (a)(2) with the following new language: “If the minor is 14 years of age or older, a parent, guardian, or legal custodian does not need to be present during the waiver.”</li><li>3) Revise paragraph (b) to read: “The presumption outlined in paragraph (a)(1) may be overcome by a preponderance of the evidence showing the ability of a minor to comprehend and waive the minor's rights.”</li></ol>	By: Judge Lindsley                      Second: Michelle Jeffs
Approval	<input type="checkbox"/> Unanimous <input checked="" type="checkbox"/> Vote: In Favor 8: Opposed 3 (with Sophia Moore, Monica Diaz and Daniel Gubler voting in opposition).





# **TAB 2**



# Administrative Office of the Courts

Chief Justice Matthew B. Durrant  
Utah Supreme Court  
Chair, Utah Judicial Council

October 24, 2019

Hon. Mary T. Noonan  
State Court Administrator  
Catherine J. Dupont  
Deputy Court Administrator

## MEMORANDUM

**TO: Advisory Committee on the Rules of Juvenile Procedure**

**FROM: Katie Gregory, Committee Staff**

**RE: Rule 27A-Request from the Supreme Court for Additional Information**

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Committee Members:

On October 22, 2019 the Utah Supreme Court sent a request to David Fureigh, as Committee Chair, to request that the Committee consider additional questions pertaining to Rule 27A-Admissibility of Statements Given by Minors. David asked me to send these to you in advance of the November 1, 2019 meeting.

Email Dated October 22, 2019:

David,

Thanks to you and your committee for the time and effort you dedicate to the advisory committee. To a person, we are grateful for the service you and your committee render.

As the court discussed the potential amendment to Rule 27A, the court began to think about the assumptions that underlie Rule 27A and the policy it is meant to promote. We would appreciate it if your committee could consider the following questions and report back to us.

(1) What is the basis for making 14 the age at which we will presume that a minor is sufficiently mature to knowingly and voluntarily waive her rights without a parent, guardian, or legal custodian? Do we know if that decision was based on scientific studies? If so, do we know if that continues to reflect the best thinking on the subject? In either case, what does the current literature addressing that question say?

(2) Is there a reason why that presumption should not apply to all minors?

**The mission of the Utah judiciary is to provide an open, fair,  
efficient, and independent system for the advancement of justice under the law.**



(3) Conversely, is there a reason that we should have any presumption at all given the ultimate burden on the state to show that the waiver was knowing and voluntary?

(4) How do other states address the issue?

(5) Is there any other background or information that the court should have to better understand the thinking behind the rule.

Thank you very much.

# TAB 3

**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) If a minor is admitted into a detention facility without a warrant, the court shall make a determination whether there are reasonable grounds for admission within 24 hours including weekends and holidays.

(c)(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

25 shall notify the minor, parent, guardian or custodian and attorney of the date, time, place and  
26 manner of such hearing.

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

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

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

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

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

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

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

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

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

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

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

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

63 | ~~(j)(hg)~~(3) other requirements deemed reasonably necessary and consistent with the criteria for  
64 | detaining the minor.

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

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

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

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Advisory Committee Notes

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~~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.~~