AGENDA

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

Matheson Courthouse
Conference Rooms B & C (1st Floor-Enter through W19)
December 6, 2019
Noon – 2:00 p.m.

12:00-12:10	**Welcome and Approval of Minutes** *(Draft Minutes of November 1, 2019—Tab 1)*	David Fureigh
12:10-12:15	**Rule 9-Detention Hearings; scheduling; hearing procedure** *Update: Rule 9 is out for public comment through January 3, 2020*	David Fureigh
12:15-1:15	**Rule 27A-Admissibility of Statements Given by Minors** *The Committee will continue its review and discussion of questions from the Supreme Court.* *(Memo re: History of Rule 27A--Tab 2)* *(Memo re: Survey of State Laws Concerning Juvenile Miranda Waivers--Tab 3)*	David Fureigh
1:15-1:55	**Proposed Form/Rule Re: Tribal Participation in Juvenile Court** *Ms. Koza will discuss a draft Intervention Form and additions to Rule 50 pertaining to tribal participation.* *(Draft Form: Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child--Tab 4)* *(Rule 50-Presence at Hearings—Tab 5)*	Bridget Koza
1:55-2:00	**Old or New Business**	All
2:00	**Adjourn**	

Future Meetings:
January 3, 2020
February 7, 2020
March 6, 2020
April 3, 2020
May 1, 2020
June 5. 2020

TAB 1

Utah Rules of Juvenile Procedure Committee- Meeting Minutes

November 1, 2019	Noon to 2:00 p.m.	Conference Room A
MEETING DATE	TIME	LOCATION

MEMBERS:	Present	Absent	Excused	MEMBERS:	Present	Absent	Excused
David Fureigh	☒	☐	☐	Michelle Jeffs	☒	☐	☐
Judge Elizabeth Lindsley	☒	☐	☐	Sophia Moore	☐	☐	☒
Judge Mary Manley	☒	☐	☐	Mikelle Ostler	☒	☐	☐
Arek Butler	☒	☐	☐	Jordan Putnam	☐	☐	☒
Monica Diaz	☒	☐	☐	Janette White	☒	☐	☐
Kristin Fadel	☐	☐	☒	Chris Yannelli	☒	☐	☐
Daniel Gubler	☐	☐	☒	Carol Verdoia (Emeritus)	☒	☐	☐
AOC STAFF:	**Present**	**Excused**		**GUESTS:**	**Present**	**Absent**	
Katie Gregory	☒	☐		Joseph Wade	☒	☐	
Jean Pierce	☒	☐		Judge Steven Beck	☒	☐	
Keegan Rank	☒	☐			☐	☐	

AGENDA TOPIC

I. Welcome & Approval of Minutes	**CHAIR: KATIE GREGORY FOR DAVID FUREIGH**
David Fureigh was briefly delayed in a court hearing so Katie Gregory welcomed members and called for approval of the minutes of August 2, 2019.	
Motion: To approve the minutes of August 2, 2019	By: Judge Lindsley Second: Michelle Jeffs
Approval	☒ Unanimous ☐ Vote: In Favor_____ Opposed _____

AGENDA TOPIC

II. Rule 27A-Admissibility of Statements Given by Minors	**DAVID FUREIGH**

- The Committee discussed the lengthy history of its work on Rule 27A and prior instructions from the Supreme Court. The Supreme Court declined to approve the most recent proposed revisions. On October 22, 2019, the Supreme Court sent an email to the Committee chair requesting that the Committee deliberate on five specific questions pertaining to Rule 27A. The questions were sent out to the Committee before the meeting and are contained in the agenda packet.
- Ms. Diaz expressed that she would like additional time to further research and prepare before definitively stating her viewpoint on the questions.
- Judge Lindsley reviewed how common law used the age of 14 to treat children as adults and how this principle has carried over into today's laws. The 14 year age distinction is evident in criminal statutes such as the statute on sexual abuse of a child and other statutes in which crimes are so egregious that more protection is given to children under 14.
- Statutorily the age of 14 is still a major distinction and is the age the court is to consider the child's preference of where to live in custody disputes.

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- Ms. Diaz expressed the opinion that common law should no longer be the controlling factor because scientific studies on adolescent brain development show that a minor's brain continues to develop beyond teenage years.
- Ms. Pierce reviewed her research on the history of Rule 27A and how the rule came about. Ms. Verdoia expanded on the history of Rule 27A from notes of committee meetings that she chaired at the time Rule 27A was drafted between 1997 and 2000. Scientific studies regarding a youth's age were not considered when the rule was established.
- Discussion took place on how adults have the added protection contained in Rule 616 of the Rules of Evidence, which requires that custodial interrogations must be recorded to be admitted in a felony criminal prosecution. Rule 616 does not currently apply to juveniles.
- Mr. Rank went over research he had done to survey other state statutes, rules, and case law on the admissibility of a minor's statement. Fifteen states, including Utah, have an age distinction, 30 states do not have an age distinction and do not require a parent present, and about five states require a parent present up to the age of 18 for interrogation. Utah is the only state where the issue is governed by a rule rather than statute or case law.
- Discussion ensued on how the research is mixed and there is no concrete and definitive answer as to how best to protect juveniles during custodial interrogation. The Committee suggested that a summary of the research studied by the Committee may be helpful to give to the Supreme Court.
- The Committee came to the consensus that eliminating the age distinction would mean less protection for children, which is not the desired outcome. No members were in favor of this option. Eliminating the age distinction would most likely create more litigation on the validity of waivers.
- Ms. Diaz expressed the opinion that she would like the rule to mandate a parent must be present for all waivers to be valid for juveniles under the age of 18.
- Judge Manley expressed her concern that the child's age is a substantive issue that should not be decided in a rule.
- Judge Lindsley suggested research should be done into the adult procedure contained in Rule 616 of the Rules of Evidence. Ms. Gregory will contact the State Law Library about the ability to access minutes from the Advisory Committee on the Rules of Evidence and any discussion of the history of this requirement in Rule 616.
- Ms. Jeffs and Mr. Yannelli will review the Utah statutes to identify laws where a 14 year old age distinction is made.
- Discussion took place on other factors, such as the impact on law enforcement, which needs to be considered before changes are made to Rule 27A.

Action Item:	Katie Gregory will forward to Committee members an email she received from Carol Verdoia containing historical information on the drafting of Rule 27A. The Committee will continue discussions on Rule 27A at its next meeting, including further discussion on the questions sent to the Committee by the Supreme Court.

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AGENDA TOPIC

III. Rule 9-Detention Hearings; scheduling; hearing procedure	DAVID FUREIGH

- Mr. Fureigh reviewed the discussion that took place with the Supreme Court on proposed revisions to Rule 9. The Court did not approve the Committee's proposed revisions.
- The Supreme Court requested the Committee provide additional information on why it selected a reasonable grounds standard rather than probable cause. The Supreme Court suggested the Committee either change the Rule's references to a standard of probable cause, or leave the standard of reasonable grounds and explain in an Advisory Committee note that the two standards are essentially the same. The reasonable grounds standard was proposed by the Committee because this is the standard stated in statute. The Committee discussed other safeguards in place such as the use of the Detention Risk Assessment Tool (DRAT), which is administered to all youth prior to admission to detention.
- The Supreme Court questioned whether a lesser standard is appropriate for juveniles. Discussion ensued on how the issue is substantive in nature and that perhaps this is not an issue that should be decided in a rule.
- In the meantime, Committee members agreed that it should move forward with a rule that is consistent with the statute on the other issues contained in Rule 9. The Committee considered whether to request that the Supreme Court send out for comment the other revisions to Rule 9 related to HB 239 while the issue of what standard to use is given more discussion. The Committee concluded that the research done about the reasonable grounds standard issue should be sent to the Supreme Court.

Action Item:	David Fureigh and Katie Gregory will address Rule 9 with the Supreme Court to seek additional guidance on the standard and to request that the remainder of the revisions to Rule 9 be sent out for public comment while the standards issue is resolved.

AGENDA TOPIC

IV. Continued Discussion of Tribal Participation in Juvenile Court	KATIE GREGORY

- Ms. Gregory discussed the letter she drafted with the assistance of Bridget Koza to be sent to the Utah State Bar. The letter recommendations waiving *pro hac vice* fees and the requirement to associate local counsel for attorneys who represent a tribe in child-custody proceedings subject to ICWA.
- Discussion took place on how the letter did not specifically limit the cases to juvenile court because district court also has ICWA cases. This is why the letter uses the broader term of "child-custody proceedings subject to ICWA."
- The eight other states that allow for *pro hac vice* fees and/or the requirement to associate local counsel to be waived in such cases are listed in the letter.
- Judge Manley made a motion to approve the letter to be sent to the Utah Supreme Court for authorization to send the letter on to the Utah State Bar for consideration. Judge Lindsley seconded the motion.
- Mr. Butler proposed a friendly amendment to the motion to add the phrase "in state child-custody proceedings subject to ICWA" to the last paragraph of the letter. Judge Manley accepted the amendment and the motion as amended passed unanimously.

Action Item:	Katie Gregory will revise the draft letter and forward it to the Supreme Court for consideration.

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Motion: To approve the letter to be sent to the Utah Supreme Court for authorization to send the letter on to the Utah State Bar for consideration.	By: Judge Manley Second: Judge Lindsley
Approval	× Unanimous ☐ Vote: # In Favor_____ # Opposed _____

AGENDA TOPIC

V. Old or New Business	ALL
The next meeting is scheduled on December 6, 2019 from Noon to 2:00 p.m. The Committee set the following dates for meetings in 2020: January 3, February 7, March 6, April 3, May 1, and June 5. All meetings will be held from Noon to 2:00 p.m.	

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TAB 2

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 Rule 27A of the Utah Rules of Juvenile Procedure

Date: November 28, 2019

Prior to 1995, the rules for juvenile court were known as the Utah Juvenile Court Rules of Practice and Procedure. The Board of Juvenile Court Judges was given rule making authority through statute to establish rules and policies for the juvenile court. Utah Code § 55-10-71(b) (1965) ("The board shall establish general policies for the operation of the juvenile courts and shall formulate uniform rules and forms governing practice and procedure . . ."). During the 1984 Second Special Legislative Session, a joint resolution of the legislature was passed that amended the Utah Constitution and gave the Utah Supreme Court the authority to "adopt rules of procedure and evidence to be used in the courts of the state . . ." S. J. Res. 1, 45th Leg., 2nd Spec. Sess. (Utah 1984). Exercising their constitutional power, the Utah Supreme Court established the Advisory Committee on the Rules of Juvenile Procedure, and, effective January 1, 1995, the Utah Rules of Juvenile Procedure were adopted and the existing Utah Juvenile Court Rules of Practice and Procedure were simultaneously repealed. Utah R. Juv. P. Rule 1- Repeals and Reenactments (1995).

When the Board of Juvenile Court Judges had rule making authority, Rule 32 of Juvenile Court Rules of Practice and Procedure explained a juvenile's right to remain silent and right to counsel. The rule read:

> A child who is the subject of a court proceeding . . . or subject to interrogation by a law enforcement officer, shall be advised as follows:
> 1. That he may remain silent as a matter or right through any or all questions posed during such proceedings or interrogatories;
> 2. That anything he says can and will be used against him in court;

3. That he has the right to be represented by counsel during such proceedings or interrogations;
4. That the court will appoint counsel for him if he cannot afford counsel.

Utah Juv. Ct. R. P. P. Rule 32 (1986).

Rule 20 of the Utah Juvenile Court Rules of Practice and Procedure was titled "Evidence," referenced the rights contained in Rule 32, and addressed the admissibility of statements made by a juvenile after waiving those rights. The rule specified:

> A statement obtained from a juvenile under 14 years of age outside the presence of his parents or guardian is not admissible because said juvenile is presumed not adequately mature and experienced to intelligently waive or understand his rights under Rule 32. A juvenile 14 years of age or older is presumed capable of intelligently comprehending and waiving his rights under Rule 32 and a statement by him not otherwise objectionable is admissible.
>
> The presumption under the above paragraph may be overcome if the evidence is sufficiently persuasive, by a preponderance thereof, showing the ability or inability of a juvenile to comprehend and waive his rights under Rule 32.

Utah Juv. Ct. R. P. P. Rule 20 (1986).

When the Utah Juvenile Court Rules of Practice and Procedure were repealed and the Utah Rules of Juvenile Procedure became effective on January 1, 1995, the rule on the admissibility of a juvenile's statement became Rule 43 and was still titled "Evidence." The rule stated:

> (c) In delinquency cases, a statement obtained from a minor under 14 years of age outside the presence of the minor's parent, guardian, custodian, or attorney is not admissible because said minor is presumed not adequately mature and experienced to intelligently waive or understand the minor's rights. A minor 14 years of age or older is presumed capable of intelligently comprehending and waiving the minor's rights, and a statement by the minor not otherwise objectionable is admissible.
>
> (d) The presumption under paragraph (c) may be overcome if the evidence is sufficiently persuasive, by a preponderance thereof, showing the ability or inability of a minor to comprehend and waive the minor's rights.

Utah R. Juv. P. Rule 43(c-d) (1995).

In May of 1997, the Supreme Court's Advisory Committee on the Rules of Juvenile Procedure was asked to revise Rule 43 when it came to the sections on the admissibility of a minor's statement because, as the rule was then written, the rule could be applied to all statements made by minors rather than only applying to statements made during custodial interrogations. Sup. Ct. Advisory Comm. R. Juv. P., *Minutes*, May 30, 1997 (2). In October of 1997, newly drafted Rule 27A was proposed to the Advisory Committee on the Rules of Juvenile Procedure. Sup. Ct. Advisory Comm. R. Juv. P., *Minutes*, Oct. 21, 1997 (1). Proposed Rule 27A removed the subsections (c) and (d) from Rule 43 on the admissibility of a minor's statement and incorporated those sections into the new Rule 27A. Sup. Ct. Advisory Comm. R. Juv. P., *Minutes*, May 22, 1998 (1). Rule 27A also clarified that the rule only applied to the admissibility of statements made by minors while in the custody of law enforcement. *Id.*

When proposed Rule 27A went out for comment in 1999, comments submitted about the rule questioned whether the fourteen years of age distinction was appropriate. Sup. Ct. Advisory Comm. R. Juv. P., *Minutes*, Dec. 3, 1999(1-2). The Committee discussed at length the reason why the fourteen years of age distinction was used in the rule including the fact that fourteen years of age was used as a threshold in both of the model juvenile court acts from the 1930's and 1960's. *Id.* at 2. The Committee also discussed how, under common law, individuals were considered to be adults after the age of fourteen. William Blackstone, *Commentaries on the Laws of England*, Vol. 4, 23 (Oxford, Clarendon 1776). Children from the ages of seven to fourteen were presumed legally incapable of having the required intent to commit a crime but evidence could be presented to prove differently. *Id.* As Blackstone explained, "Under seven years of age indeed an infant cannot be guilty of a felony; for then a felonious discretion is almost an impossibility in nature; but at eight years old he may be guilty of a felony." *Id.*

Blackstone further clarified that under age fourteen, although by law a youth may be adjudged incapable of discerning right from wrong (*doli incapax*), the youth could be found guilty if it appeared to the court and the jury that he *could* discern between good and evil (*doli capax*). *Id.* (italics in original).

The fourteen year age distinction made in Rule 27A of the Utah Rules of Juvenile Procedure has been present since the rules and policies for the juvenile court were first established by the Board of Juvenile Court Judges. The rule on the admissibility of statements made by a youth with the age division carried over and became part of the Utah Rules of Juvenile Procedure when the Utah Supreme Court was constitutionally granted the power to establish rules and procedures to govern the courts of the state.

TAB 3

MEMORANDUM

TO: Supreme Court Advisory Committee for the Utah Rules of Juvenile Procedure

FROM: Keegan Rank, Juvenile Court Law Clerk, Administrative Office of the Courts

RE: Survey of State Laws Concerning Juvenile *Miranda* Waivers and Standards of Admissibility for Custodial Statements

DATE: November 26, 2019

DISCUSSION

I. Introduction and Background

The United States Supreme Court first established the underlying constitutional standard for juvenile *Miranda* waivers in *Fare v. Michael C.* There, the United States Supreme Court extended the "totality of the circumstances" test to juvenile custodial interrogations to determine whether the juvenile knowingly and voluntarily waived his or her *Miranda* rights.[1] In this test, a court examines the circumstances surrounding an interrogation, including the "juvenile's age, experience, education, background, and intelligence."[2] Based on the analysis of the surrounding circumstances, a court can then make a determination of whether a juvenile knowingly and voluntarily waived his or her rights, deciding whether statements from the interrogation are admissible.[3] Today, this test remains the basis and constitutional floor for juvenile *Miranda* waivers, underlying the standard in each jurisdiction's statute or case law.

While the totality of the circumstances test from *Michael C.* established the minimum standard to determine whether a juvenile *Miranda* waiver was made voluntarily and knowingly, many states have created additional factors to consider in the analysis or other bars to admissibility. In spite of the differences between each state and Washington D.C., every jurisdiction can be organized into three categories based on how they treat juvenile *Miranda* waivers: (1) jurisdictions that use a general totality of the circumstances analysis, either patterned directly after *Michael C.* or with slight alterations depending on state-specific laws; (2) jurisdictions that require the presence or consent of an attorney, parent, or other interested adult, until a certain age, for a juvenile's *Miranda* waiver to be valid; and (3) jurisdictions that require the presence or consent of an attorney, parent, or other interested adult before he or she makes a waiver, until the juvenile reaches the age of majority. This memorandum will discuss each of these three groups, including similarities and trends between the states and Washington D.C.

II. Jurisdictions Exclusively Using the Totality of the Circumstances Test

In this group, each jurisdiction exclusively relies on some form of the totality of the circumstances test developed in *Michael C.* The group consists of 31 states and Washington

[1] *Fare v. Michael C.*, 442 U.S. 707, 724–25 (1979).
[2] *Id.* at 725.
[3] *Id.* at 724–25.

D.C., making it the largest group of jurisdictions in this analysis. Many of these jurisdictions have also developed additional factors for their totality of the circumstances test based on their state-specific jurisprudence.

Points of summary from Table A:

- Common additional factors used in a state's specific totality of the circumstances test include whether parents or an interested adult have the right to be present during an interrogation, whether law enforcement purposefully excluded the parents or interested adult from an interrogation, and if statutory parental notification requirements were met.
- Courts from at least eight states have examined whether to adopt some form of a "per se" rule to bar any statements collected from a juvenile during an interrogation if a parent or attorney was not present. All eight states declined to adopt this rule, agreeing that the constitutional protections in *Michael C.* were sufficient.
- Pennsylvania and Louisiana courts have overturned precedent requiring the presence of an "interested adult" during an interrogation, adopting the totality of the circumstances test instead.
- In many states, not only do courts examine whether a parent was present in a totality of the circumstances test, but also whether that parent had interests that were adverse to the interest of the juvenile.

TABLE A

Alabama	A minor has the right to communicate with a parent, guardian, or custodian, whether or not that person is present. ALA. CODE § 12-15-202(d)(1). At the same time, a parent's presence for a *Miranda* waiver is not necessary. *Id.*
Alaska	Alaskan courts have expressly rejected a "per se rule that juveniles are incapable of waiving their *Miranda* rights without the guidance of an adult, adopting instead a totality of the circumstances rule." *State v. Ridgely*, 732 P.2d 550, 556 (Alaska 1987).
Arizona	The presence of the child's parents or their consent to a minor's waiver of rights is a factor considered by a court to determine whether a confession was involuntary and thereby inadmissible. *In re Andre M.*, 88 P.3d 552, 555 (Ariz. 2004).
Arkansas	A minor has the right to request a parent, guardian, or custodian before being questioned in custody and waiving any rights. ARK. CODE ANN. § 9-27-317(i)(2)(C). The presence of a parent, however, is only a factor in a totality of the circumstances analysis. *Id.*§ 9-27-317(c).
Delaware	Delaware has explicitly rejected an "interested parent" rule, which would require that a parent or guardian be present for a *Miranda* waiver to be effective. *Smith v. State*, 918 A.2d 1144, 1149–50 (Del. 2007).
District of Columbia	A general totality of the circumstances analysis is used without any specific consideration for the presence of parents. *See In re S.W.*, 124 A.3d 89, 98 (D.C. 2015).
Florida	A variety of factors are used to determine whether custodial statements are admissible, including a juvenile's request for a parent to be present and whether the parent was allowed to be present. *J.G. v. State*, 883 So.2d 915, 923 (Fla Ct. App. 2004).
Georgia	The absence of a parent is just one of nine factors a court considers in determining whether a *Miranda* waiver was properly made for statements to be admissible but there is no requirement that a parent must be present. *McKoon v. State*, 465, S.E.2d 272, 274 (Ga. 1996).
Hawaii	A parent does not need to be present or consulted before a minor waives his or her rights but a court may review whether a parent was present in its totality of the circumstances analysis. *In re Doe*, 978 P.2d 684, 689–91 (Haw. 1999).
Idaho	Courts must look at the totality of the circumstance to determine whether the minor properly waived his or her rights in a custodial interrogation before a statement can be admissible. *State v. Doe*, 963 P.2d 392, 395 (Idaho Ct. App. 1998).

Kentucky	Statute mandates that parents must be contacted when a minor is taken into custody. A minor's waiver of his or her *Miranda* rights while in custody, however, is not dependent on a parent's presence. *Taylor v. Commonwealth*, 276 S.W.3d 800, 805 (Ky. 2008).
Louisiana	Louisiana courts overturned precedent that required the minor to consult with an attorney or interested adult before waiving his or her right, having adopted a totality of the circumstances analysis instead. *State v. Fernandez*, 712 So.2d 485, 489–90 (La. 1998).
Maryland	The absence of a parent or guardian during a juvenile's interrogation is an important factor in determining the voluntariness of the statement but their absence does not automatically make the statement inadmissible. *Jones v. State*, 535 A.2d 471, 476 (Md. 1988).
Michigan	In the totality of the circumstances analysis, courts specifically examine factors such as whether police contacted the parents of the juvenile and whether the parent or guardian was present during questioning. *People v. Givans*, 575 N.W.2d 84, 88 (Mich. Ct. App. 1997).
Minnesota	A general totality of the circumstances analysis is used without any specific consideration for the presence of parents. *See State v. Burrell*, 697 N.W. 579, 592–93 (Minn. 2005).
Mississippi	Law enforcement has to contact parents when a minor is taken into custody and the parent has the right to be present during questioning. A parent's presence, however, is not required for a *Miranda* waiver. *Evans v. State*, 109 So. 3d 1056, 1066 (Miss. Ct. App. 2011).
Missouri	A minor taken into custody has the right to have a parent, guardian, or custodian present during questioning. MO. REV. STAT. § 211.059. A parent's presence, however, is just one factor in a totality of the circumstances analysis. *State v. Barnaby*, 950 S.W.2d 1, 3 (Mo. Ct. App. 1997).
Nebraska	A general totality of the circumstances analysis is used without any specific consideration for the presence of parents. *See State v. Goodwin*, 774 N.W.2d 733, 744 (Neb. 2009).
Nevada	Courts use a totality of the circumstances analysis to determine whether admissions or statements by a juvenile are admissible as evidence, using factors such as whether parents were present during the interrogation. *Ford v. State*, 138 P.3d 500, 504–05 (Nev. 2006).
New Hampshire	Statute requires that parents must be notified when the minor is taken into custody and extra weight is given to whether the statute was followed when conducting a totality of the circumstances analysis. *State v. Farrell*, 766 A.2d 1057, 1061–63 (N.H. 2001).
New York	Parents have the statutory right to be present at an interrogation of a juvenile. N.Y. FAM. CT. ACT § 305.2(7). Moreover, they cannot be barred from an interrogation if the juvenile is less than 16 years of age and when they are present at the interrogation. *In re Jimmy D.*, 937 N.E.2d 970, 973 (N.Y. 2010). However, a parent's absence does not make a juvenile's statement inadmissible. *Id.*
Ohio	The state has explicitly chosen to not adopt an interested adult requirement that would require a parent or other adult to be present during a custodial interrogation. *State v. Pablo*, 2017-Ohio-8834, ¶ 15, 100 N.E.3d 1068.
Oregon	A general totality of the circumstances analysis is used without any specific consideration for the presence of parents. *State ex rel. Juv. Dep't of Wash. Cty. v. Deford*, 34 P.3d 673, 684–85 (Or. 2001).
Pennsylvania	Pennsylvania has rejected an "interested parent" rule, which would require that a parent or guardian be present for a *Miranda* waiver to be effective. *Commonwealth v. Williams*, 475 A.2d 1283, 1288 (Pa. 1984). It does, however, consider a parent's presence in a totality of the circumstances analysis. *Id.*
Rhode Island	The totality of the circumstances analysis specifically examines whether a parent, guardian or other interested adult was present during a custodial interrogation. *State v. Monteiro*, 924 A.2d 784, 789–90 (R.I. 2007)
South Carolina	A general totality of the circumstances analysis is used without any specific consideration for the presence of parents. *State v. Pittman*, 746 S.E.2d 144, 569 n.9 (S.C. 2007).
South Dakota	South Dakota has rejected a per se rule that would require the presence of a parent for a valid *Miranda* waiver but the ability of a juvenile to confer with a parent is an explicit factor in the totality of the circumstances analysis. *State v. Diaz*, 2014 S.D. 27, ¶ 23, 847 N.W.2d 144.
Tennessee	Courts look specifically at "the presence of a parent, guardian, or interested adult" as a factor in the totality of the circumstances analysis. *State v. Carroll*, 36 S.W.3d 854, 864 (Tenn. 1999).
Texas	Although the totality of the circumstances analysis is used, Texas is unique because written statements or confessions are only admissible if a juvenile has the opportunity to be appraised of his or her rights before a magistrate or in the presence of an attorney. TEX. FAM. CODE ANN. §§

	51.09 and 51.095.
Virginia	A general totality of the circumstances analysis is used without any specific consideration for the presence of parents. *Rodriguez v. Commonwealth*, 578 S.E.2d 78, 84 (Va. Ct. App. 2003).
Wisconsin	Wisconsin has rejected a per se rule that would require the presence of parent for a valid *Miranda* waiver but the presence of a parent during the interrogation is an explicit factor in the totality of the circumstances analysis. *In re Jerrell C.J.*, 2005 WI 105, ¶¶ 18–20, 43, 699 N.W.2d 110.
Wyoming	A general totality of the circumstances analysis is used without any specific consideration for the presence of parents. *Rubio v. State*, 939 P.2d 238, 241–42 (Wyo. 1997).

III. Jurisdictions Requiring the Presence of a Parent, Attorney, or Other Interested Adult Until a Certain Age for a Juvenile's *Miranda* Waiver to be Valid

States in this group not only follow a totality of the circumstances analysis established in *Michael C.* but they also provide additional protections to juveniles of a certain age, requiring that a parent, guardian, legal custodian, attorney, or another interested adult[4] be involved in an interrogation or before a juvenile waives his or her *Miranda* rights. If a parent or other interested adult is not present or allowed to consult with the juvenile, a juvenile's *Miranda* waiver is invalid and any statement collected by law enforcement could be inadmissible. Once a juvenile reaches a certain age, however, the presence or involvement of a parent or other interested adult is no longer required. At this point, courts then use the totality of the circumstances test to analyze whether a juvenile's waiver was knowingly and voluntarily made. There are 14 states in this group, all having unique state-specific ages at which a parent or interested adult is necessary before a juvenile can waive his or her rights.

Points of summary from Table B:

- 14 and 16 are the most common ages for a juvenile at which a parent or interested adult is no longer required to be present during an interrogation or involved in the *Miranda* waiver process.
- While each state requires the participation of a parent or interested adult, the level of participation varies. Kansas and Massachusetts, for example, require a parent or attorney to consult with the minor before a waiver is made. States such as Utah and Connecticut, however, only require a parent to be present for a waiver to be valid, without any indication of what level of participation is required.
- Out of the 14 states in this group, 11 codify the age distinction for which a parent is required to be present or involved in a custodial interrogation in statute.
- Two states, Massachusetts and New Jersey, have developed their parental presence standard in case law.
- Utah is the only state that has a parental presence requirement in a set of court rules.
- Despite the requirement that a parent be present during an interrogation or *Miranda* waiver, several states, including Montana and Kansas, recognize in statute that parents may not be the best advocates for their children in these circumstances. In those states, if a parent disagrees with the desires of the juvenile, is an alleged victim of the offense, or a co-defendant of the alleged crime, then the juvenile must consult with an attorney before waiving his or her *Miranda* rights.

[4] For the sake of brevity, further references to "interested adult" are meant to include a guardian, legal custodian, or attorney of a juvenile, unless further specified.

- Several states require a parent or interested adult to take a more active role during a juvenile's interrogation. California requires that a juvenile consult with legal counsel. Iowa, on the other hand, requires parents to provide written consent for a juvenile to waive his or her rights. In Kansas, parents or an interested adult must consult with the juvenile before a *Miranda* waiver is made. Similarly, Massachusetts case law requires a parent to be present during an interrogation, understand the *Miranda* warnings, and have the opportunity to explain those rights to the juvenile before a waiver is made.

Table B

California	A minor under the age of 16 must consult with legal counsel before he or she participates in a custodial interrogation. CAL. WELF. INST. § 625.6. The consultation cannot be waived except in limited circumstances, as outlined in the statute. *Id.*
Connecticut	Any admission or statement made by a minor under the age of 16 after a waiver of their *Miranda* rights is inadmissible unless it is made in the presence of a parent or guardian. CONN. GEN. STAT. § 46b-137(a).
Illinois	Juveniles under the age of 15 must be represented by counsel throughout a custodial interrogation, without the ability to waive counsel if they are in custody for allegations related to a sex offense or murder. 705 ILL. COMP. STAT. 405/5-170.
Iowa	A minor under the age of 16 cannot waive the right to counsel without the written consent of a parent, guardian, or custodian if they are taken into custody for an act that constitutes a serious or aggravated misdemeanor or felony under the criminal code. IOWA CODE § 232.11(2).
Kansas	Admissions or confessions from juveniles under the age of 14 years old made during a custodial interrogation are inadmissible unless it was made following consultation between a parent, guardian, or attorney on whether to waive certain *Miranda* rights. KAN. STA. ANN. § 38-2333(a). If a parent is the alleged victim or codefendant of the same crime, then the juvenile must consult with an attorney or a non-involved parent before making a waiver. *Id.* § 38-2333(b). Furthermore, the presence of a parent during a waiver is insufficient if the parent is not acting with the juvenile's interest in mind. *Matter of P.W.G.*, 426 P.3d 501, 513–14 (Kan. 2018).
Massachusetts	If a juvenile is under 14, a parent or interested adult must be present during the interrogation, understand the *Miranda* warnings, and have the opportunity to explain those rights to the juvenile before a waiver is made. *Commonwealth v. Philip S.*, 611 N.E.2d 226, 230–31 (Mass. 1993). Juveniles 14 and older may consult with a parent or adult but the presence of a parent or adult is not required. *Commonwealth v. McCra*, 694 N.E.2d 849, 852 (Mass. 1998).
Montana	A minor under the age of 16 can only waive his or her *Miranda* rights if a parent or guardian agrees with the waiver. MONT. CODE ANN. § 41-5-331(2)(b). If the parent or guardian disagrees, then the minor can only waive those rights with the advice of an attorney. *Id.*
New Jersey	Minors under the age of 14 can only waive their *Miranda* rights if a parent or guardian is present during the interrogation. *State ex rel. Q.N.*, 843 A.2d 1140, 1144 (N.J. 2004).
New Mexico	Statements made by a minor under the age of 13 collected during an interrogation are inadmissible. N.M. STAT. ANN. § 32A-2-14(F). There is a rebuttable presumption that statements made by a 13 or 14 year old to a "person in a position of authority" are inadmissible. *Id.*
North Carolina	If minor is under the age of 16, no in-custody admissions or confessions during an interrogation are admissible unless they were made in the presence of a parent, guardian, or attorney." N.C. GEN. STAT. § 7B-2101(b). If an attorney is not present, the parent or guardian must also be advised of the minor's rights. *Id.* A parent or guardian cannot make a waiver of rights on behalf of the minor. *Id.*
Oklahoma	If the minor is under the age of 16, evidence collected during a custodial interrogation cannot be admitted unless the interrogation is conducted in the presence of "the parents, guardian, attorney, adult relative, adult caretaker, or legal custodian. OKLA. STAT. tit. 10A § 2-2-301(A). The interested adult must also be advised of the minor's rights before questioning. *Id.*
Utah	For juveniles under the age of 14, a parent, guardian, or legal custodian must be present before the minor can waive his or her *Miranda* rights. Utah R. of Juv. P. 27A.
Washington	For minors under the age of 12, only a parent can waive the minor's rights or offer any objection

	to an interrogation. WASH. REV. CODE § 13.40.140(11).
West Virginia	Minors under the age of 14 cannot make statements to law enforcement or while in custody unless counsel is present. W. VA. CODE § 49-4-701(l). Statements made to law enforcement by minors who are 14 or 15 years of age are inadmissible unless they are made in the presence of an attorney or the presence of the minor's parent or custodian. *Id.* The parent or custodian must also be fully informed of the minor's rights and consent to the waiver as well. *Id.*

IV. Jurisdictions Requiring the Presence of a Parent, Attorney, or Other Interested Adult Until a the Juvenile Reaches the Age of Majority

Before a totality of the circumstances test is used to determine whether a *Miranda* waiver is knowing and voluntary, these states require that a parent or other interested adult, including an attorney in some instances, be present or consult with the juvenile first. Unlike the second group, these requirements apply to juveniles until they reach the age of 18.

Points of summary from Table C:

- Two states, Indiana and Vermont, both recognize that a parent's interest may be adverse to the alleged juvenile defendant. In Indiana, a parent cannot consent to a juvenile's *Miranda* waiver if they have an adverse interest. In Vermont, the adult must be interested in the welfare of the child and independent of the prosecution.
- In Indiana and Vermont, a parent or interested adult must consult with the juvenile in custody before a *Miranda* waiver is made, unlike the other states in this group where the presence of a parent or interested adult is sufficient.

TABLE C

Colorado	For statements made by a minor to be admissible, a parent, guardian, or attorney of a juvenile must be present during a custodial interrogation and be advised of the minor's *Miranda* rights. COLO. REV. STAT. § 19-2-511(1). The presence of a parent or guardian during an interrogation may be waived by both the minor and the parent or guardian in writing. *Id.* § 19-2-511(5).
Indiana	Constitutional rights of a minor may be waived only (1) by counsel if the child knowingly and voluntarily agrees to the waiver; (2) by the child's parent, guardian, or guardian ad litem if that person knowingly and voluntarily waives the child's rights, has no interest adverse to the child, meaningfully consults with the child, and the child knowingly and voluntarily waives his or her rights; or (3) by the child, without the presence of a custodial parent, guardian or guardian ad litem if the child has been emancipated. IND. CODE § 31-32-5-1.
Maine	When a juvenile is arrested, law enforcement officers cannot question a juvenile until: (1) A legal custodian of the juvenile is notified and present during the questioning; (2) A legal custodian of the juvenile is notified of the arrest and gives consent for the questioning to proceed without the custodian's presence; or (3) Law enforcement has made reasonable efforts to make contact but has failed to reach the legal custodian and seeks to question the juvenile about continuing or imminent criminal activity. ME. REV. STAT. ANN. tit. 15, § 3203-A(2-A).
North Dakota	A minor has a right to counsel when taken into custody. N.D. CENT. CODE § 27-20-26(1). This right to an attorney cannot be waived unless the minor is "represented by a parent, guardian, or custodian." *In re Z.C.B.*, 2003 ND 151, ¶ 13, 669 N.W.2d 478. Any statement obtained during an interrogation without an attorney present or a waiver made by a parent cannot be used against a child in a subsequent delinquency proceeding. N.D. CENT. CODE § 27-20-26(2).
Vermont	For a statement made by a minor in custody to be admissible and for a *Miranda* waiver to be valid: (1) the minor must have an opportunity to consult with an interested adult; (2) the adult must be interested in the welfare of the child but independent of the prosecution, and (3) the adult is also advised of the minor's rights. *In re E.T.C.*, 449 A.2d 937, 940 (Vt. 1982).

V. Utah's Rule 27A of the Utah Rules of Juvenile Procedure

While Utah is part of the large minority of states that requires the involvement or presence of a parent during a juvenile's waiver of *Miranda* rights, it is the only state where the rule requiring the presence of a parent or guardian is located in a set of court rules.[5] Not only does the rule impact the admissibility of statements, but it is also the basis for how law enforcement conducts its interrogations of juveniles. It is also the only source in Utah law that describes a parent's level of involvement during a juvenile *Miranda* waiver, only requiring the "presence" of a parent if the child is under the age of 14.[6] While Utah is not alone in only requiring a parent to be present during an interrogation, other states have adopted laws that contemplate a more active role for parents or other interested adults.[7]

It is also worth noting other states with similar juvenile *Miranda* waiver standards contemplate the possibility that a parent, guardian, or legal custodian's presence is not necessarily beneficial to a juvenile in custody. In Kansas, if a parent is the alleged victim or codefendant of the same crime, then the juvenile must consult with an attorney or a non-involved parent before making a waiver.[8] Additionally, the presence of a parent during a waiver is insufficient if the parent is not acting with the juvenile's interest in mind.[9] Likewise, in Indiana, a parent cannot have an "interest adverse to the child" before making a *Miranda* waiver on behalf of a juvenile.[10] While these are only several examples, it highlights how other states have addressed the issue of parents with an interest contrary to that of a juvenile in custody.

Utah may be part of a minority of states and jurisdiction requiring the presence of a parent or interested adult during an interrogation, the standard outlined in Rule 27A of the Utah Rules of Juvenile Procedure does not vary greatly from states with similar laws or rules. However, some of these states have addressed additional issues in statute or case law that have remained, for the most part, unmentioned in Utah statutes or case law. The most unique aspect of Utah's Rule 27A, as mentioned earlier, is that it is the only basis for the requirement that a parent must be present during a custodial interrogation, not a statute or court decision like other jurisdictions.

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[5] Utah R. Juv. P. 27A(a)(1).

[6] This is to not say that appellate courts in Utah have not already discussed the general role of parents in a totality of the circumstances test when analyzing a juvenile's *Miranda* waiver. The Utah Supreme Court in *R.G. v. State* specifically applied factors developed in Utah case law, including "[w]hether a parent, adult friend, or attorney was present," to determine if a juvenile above the age of 13 knowingly and voluntarily waived his or her *Miranda* rights. *R.G. v. State*, 2017 UT 79, ¶ 18, 416 P.3d 478. The participation of a parent in a totality of the circumstances test goes back at least to 1980 when the Utah Supreme Court first declined to adopt a standard requiring the presence of a parent or interested adult during a juvenile interrogation. *State v. Hunt*, 607 P.2d 297, 300–01 (Utah 1980).

[7] For example, in Massachusetts, a waiver made by a juvenile under the age of 14 requires that a parent or interested adult to be present during the interrogation, understand the *Miranda* warnings, and have the opportunity to explain those rights to the juvenile. *Commonwealth v. Philip S.*, 611 N.E.2d 226, 230–31 (Mass. 1993).

[8] KAN. STA. ANN. § 38-2333(b).

[9] *Matter of P.W.G.*, 426 P.3d 501, 513–14 (Kan. 2018).

[10] IND. CODE § 31-32-5-1.

TAB 4

Name

Address

City, State, Zip

Phone

Email

In the District Court of Utah

_____ Judicial District _____ County

Court Address _____

State of Utah, in the interest of: Name(s) and Date of Birth A child(ren) under the age of 18 years.	**Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child** _____ Case Number(s) _____ Judge

1. I represent the (*name of the tribe*): _____, which is a federally recognized Indian tribe listed in the Federal Register.

2. Under the Indian Child Welfare Act, the tribe designates (*specify name and title*) _____ as the tribe's representative and authorizes that person under the attached [ ] tribal resolution or [ ] other official tribal documentation (e.g. letter, declaration, or other document from the office of the chairperson or president of the tribe or ICWA office) for the following purposes:

a.	[ ]	To be present at hearings;
b.	[ ]	To address the court;
c.	[ ]	To examine all court documents relating to the case (*at the court's discretion, if tribe does not intervene*)
d.	[ ]	To submit written reports and recommendations to the court;

e.	[ ]	To request transfer of the case to the tribe's jurisdiction, and
f.	[ ]	To intervene at any point in a proceeding when it is determined ICWA applies.

3. [ ] The tribe is formally intervening as a party and is entitled to be treated in the same member as counsel.

4. The tribe requests that notice of all proceedings be sent to the above-named tribal representative at the contact information below:

Name:	
Title:	
Address:	
City, State & Zip Code	
Telephone:	Fax:

5. The tribe [ ] requests or [ ] does not request an additional notice be sent to the tribal council at the contact information below:

Name:		
Title:		
Address:		
City, State & Zip Code		
Telephone:		Fax:

I declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signed at _____ (city, and state or country).

_____ Signature ► _____

Date

Printed Name _____

Certificate of Service

I certify that I filed with the court and am serving a copy of this Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child on the following people.

Person's Name	Service Method	Service Address	Service Date
	[ ] Mail [ ] Hand Delivery [ ] E-filed [ ] Email [ ] Left at business (With person in charge or in receptacle for deliveries.) [ ] Left at home (With person of suitable age and discretion residing there.)		
	[ ] Mail [ ] Hand Delivery [ ] E-filed [ ] Email [ ] Left at business (With person in charge or in receptacle for deliveries.) [ ] Left at home (With person of suitable age and discretion residing there.)		
	[ ] Mail [ ] Hand Delivery [ ] E-filed [ ] Email [ ] Left at business (With person in charge or in receptacle for deliveries.) [ ] Left at home (With person of suitable age and discretion residing there.)		
	[ ] Mail [ ] Hand Delivery [ ] E-filed [ ] Email [ ] Left at business (With person in charge or in receptacle for deliveries.) [ ] Left at home (With person of suitable age and discretion residing there.)		
	[ ] Mail [ ] Hand Delivery [ ] E-filed [ ] Email [ ] Left at business (With person in charge or in receptacle for deliveries.) [ ] Left at home (With person of suitable age and discretion residing there.)		

_______________________________ Signature ► _______________________________
Date

Printed Name _______________________________

TAB 5

Rule 50. Presence at hearings.

(a) In abuse, neglect, and dependency cases the court shall admit persons as provided by Utah Code Section 78A-6-114. If a motion is made to deny any person access to any part of a hearing, the parties to the hearing, including the person challenged, may address the issue by proffer, but are not entitled to an evidentiary hearing. A person denied access to a proceeding may petition the Utah Court of Appeals under Utah Rule of Appellate Procedure 19. Proceedings shall not be stayed pending appeal. As provided for by Utah Code Section 78A-6-115, a person may file a petition requesting a copy of a record of the proceedings, setting forth the reasons for the request. Upon a finding of good cause by the Court and payment of a fee, the person shall receive an audio recording of a proceeding. The Court may place under seal information received in an open proceeding.

(b) In delinquency cases the court shall admit all persons who have a direct interest in the case and may admit persons requested by the parent or legal guardian to be present.

(c) In delinquency cases in which the minor charged is 14 years of age or older, the court shall admit any person unless the hearing is closed by the court upon findings on the record for good cause if:

(c)(1) the minor has been charged with an offense which would be a felony if committed by an adult; or

(c)(2) the minor is charged with an offense that would be a class A or B misdemeanor if committed by an adult and the minor has been previously charged with an offense which would be a misdemeanor or felony if committed by an adult.

(d) If any person, after having been warned, engages in conduct which disrupts the court, the person may be excluded from the courtroom. Any exclusion of a person who has the right to attend a hearing shall be noted on the record and the reasons for the exclusion given. Counsel for the excluded person has the right to remain and participate in the hearing.

(e) Videotaping, photographing or recording court proceedings shall be as authorized by the Code of Judicial Administration.

(f) In proceedings subject to the Indian Child Welfare Act of 1978, United State Code, title 25, sections 1901 to 1963, the tribe of the Indian child may appear by counsel or by a designated non-attorney representative to intervene on its behalf. When the tribe appears as a party and is represented by a non-attorney designated by the tribe, the name of the representative and a statement of authorization for that individual to appear as the non-attorney representative must be submitted to the court in the form of a tribal resolution or other document evidencing an official act of the tribe. If the tribe changes its designated representative, the tribe must file a written substitution of representation.

(f)(1) If the tribe of the Indian child does not intervene in the proceeding, the tribe through counsel or non-attorney representative designated by the tribe has the right to participate in all hearings. The name of the representative and a statement of authorization for that individual to appear as the non-attorney representative must be submitted to the court in the form of a tribal resolution or other document evidencing an official act of the tribe. If the tribe changes its designated representative, the tribe must file a written substitution of representation.