

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



MARK L. SHURTLEFF
ATTORNEY GENERAL

RAYMOND HINTZE
Chief Deputy

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KIRK TORGENSEN
Chief Deputy

January 17, 2007

Chief Justice Christine M. Durham
Utah Supreme Court
450 S. State Street
PO Box 140210
Salt Lake City, UT 84111-0210

Re: Proposed Revisions to URJP 7: Warrants for immediate custody of minors; ground;
execution of warrants; search warrants.

Dear Chief Justice Durham:

On behalf of the Supreme Court's Advisory Committee on the Rules of Juvenile Procedure, I am enclosing the Committee's proposed revisions to Rule 7, entitled "Warrants for immediate custody of minors; ground; execution of warrants; search warrants."

The revisions are two-fold. The Committee added subparagraph (j) regarding retention and filing of search warrant copies to address the Supreme Court's concerns expressed in *Anderson v. Taylor*. The new subparagraph is identical to the language which the Advisory Committee on the Rules of Criminal Procedure is proposing to add as subparagraph (i) of URCP 40.

All other proposed revisions to the enclosed Rule 7 were added to address last year's statutory changes to the Juvenile Court Act to amend the definitions of "minor" and "child."

Please feel free to contact me if you have any questions regarding the Committee's recommendations regarding Rule 7.

Sincerely,

Carol Verdoia
Carol Verdoia
URJP Committee Chair

cc: Matty Branch
Katie Gregory

Rule 7. Warrants for immediate custody of minors; grounds; execution of warrants; search warrants.

(a) The issuance and execution of a warrant in delinquency cases is governed by Title 77, Chapter 7, Arrest, and by Section 78-3a-112 and Section 78-3a-113.

(b) The issuance and execution of a warrant in dependency, neglect and abuse cases is governed by Section 78-3a-106 and Section 78-3a-113.

(c) After a petition is filed, a warrant for immediate custody of a minor may be issued if the court finds from the facts set forth in an affidavit filed with the court or in the petition that there is probable cause to believe that:

(c)(1) the minor has committed an act which would be a felony if committed by an adult;

(c)(2) the minor has failed to appear after the minor or the parent, guardian or custodian has been legally served with a summons;

(c)(3) there is a substantial likelihood the minor will not respond to a summons;

(c)(4) the summons cannot be served and the minor's present whereabouts are unknown;

(c)(5) the minor seriously endangers others and immediate removal appears to be necessary for the protection of others or the public; or

(c)(6) there are reasonable grounds to believe that the minor has run away or escaped from the minor's parent, guardian or custodian.

(d) A warrant for immediate custody of a minor may be issued if the court finds from the affidavit that the minor is under the continuing jurisdiction of the court and probable cause to believe that the minor:

(d)(1) has left the custody of the person or agency vested by the court with legal custody and guardianship without permission; or

(d)(2) has violated a court order.

(e) A warrant for immediate custody shall be signed by a court and shall contain or be supported by the following:

(ed)(1) an order that the minor be taken to a juvenile the detention or shelter facility or an adult detention facility, if appropriate, designated by the court at the address specified pending a hearing or further order of the court;

(ed)(2) the name, date of birth and last known address of the minor;

(ed)(3) the reasons why the minor is being taken into custody;

(ed)(4) a time limitation on the execution of the warrant;

(ed)(5) the name and title of the person requesting the warrant unless ordered by the court on its own initiative pursuant to these rules; and

(ed)(6) the date, county and court location where the warrant is being issued.

(ed)(7) On verbal request from a probation officer or other authorized individual a warrant for custody may be issued telephonically during non-business hours or under exigent circumstances when it appears necessary for the protection of the community or the minor juvenile and shall be supported by an affidavit from the requesting authority the next court business day.

(fe) Search warrants, with an order of immediate custody, may be issued in the manner provided by law.

(gf) A peace officer who brings a minor to a detention facility pursuant to a court order for immediate custody shall so inform the person in charge of the facility and the existence of such order shall require the minor's immediate admission. A minor so admitted may not be released without court order.

(hg) This rule shall not limit the statutory authority of a probation officer to take a minor who has violated a condition of probation into custody.

~~(h) The issuance and execution of a warrant in dependency, neglect and abuse cases is governed by Section 78-3a-106 and Section 78-3a-113.~~

~~(i) A warrant for immediate custody shall be signed by a court and shall contain or be supported by the following:~~

~~(i)(1) an order that the minor be taken to the detention or shelter facility or other location designated by the court at the address specified pending a hearing or further order of the court;~~

~~(i)(2) the name, date of birth and last known address of the minor;~~

~~(i)(3) the reasons why the minor is being taken into custody;~~

~~(i)(4) a time limitation on the execution of the warrant;~~

~~(i)(5) the name and title of the person requesting the warrant unless ordered by the court on its own initiative pursuant to these rules; and~~

~~(i)(6) the date, county and court location where the warrant is being issued.~~

~~(i)(7) On verbal request from a state officer, peace officer, or child welfare worker or other authorized individual a warrant for custody may be issued telephonically when it appears necessary for the protection of the juvenile. Telephonic warrants shall be supported by an affidavit from the requesting authority the next court business day.~~

~~(j) Search warrants, with an order of immediate custody, may be issued in the manner provided by law.~~

~~(k) A peace officer who brings a minor to a detention or shelter facility pursuant to a court order for immediate custody shall so inform the person in charge of the facility and the existence of such order shall require the minor's immediate admission. A minor so admitted may not be released without court order.~~

~~(l) Return of service on a warrant shall be executed within 72 hours unless otherwise ordered by the Court.~~

~~(i) Magistrate to retain and file copies - Documents sealed for twenty days -Forwarding of record to court with jurisdiction.~~

~~(1) At the time of issuance, the magistrate shall retain and seal a copy of the search warrant, the application and all affidavits or other recorded testimony on which the warrant is based and shall, within a reasonable time, file those sealed documents in court files which are secured against access by the public. Those documents shall remain sealed until twenty days following the issuance of the warrant unless that time is extended or reduced under Section (m). Unsealed search warrant documents shall be filed in the court record available to the public.~~

~~(2) Sealing and retention of the file may be accomplished by:~~

(A) placing paper documents or storage media in a sealed envelope and filing the sealed envelope in a court file not available to the public;

(B) storing the documents by electronic or other means under the control of the court in a manner reasonably designed to preserve the integrity of the documents and protect them against disclosure to the public during the period in which they are sealed; or

(C) filing through the use of an electronic filing system operated by the State of Utah which system is designed to transmit accurate copies of the documents to the court file without allowing alteration to the documents after issuance of the warrant by the magistrate.