PROPOSED UT R. JUV. P. 18 (c): *SERVICE BY PUBLICATION*

Service by publication shall be authorized by the procedure and in the form provided by Utah Rule of Civil Procedure 4 *except within the caption and the body of any published document, children shall be identified by their initials and respective birth date, and not by their names. The parents of each child also shall be identified as such using ~~the parents~~' names within the caption of any published document.*

(Emphasis used to specify proposed changes.)

their full

, parent, or guardian

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H.B. 239

This document includes House Committee Amendments incorporated into the bill on Tue, Feb 2, 2010 at 12:02 PM by lerror. -->

CHILD PROTECTION REVISIONS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill amends provisions of the Utah Human Services Code and the Juvenile Court Act of 1996 relating to the performance monitoring system of the Division of Child and Family Services (DCFS), the interviewing of children in DCFS custody, and the provision of reunification services.

Highlighted Provisions:

This bill:

. defines terms;

. amends provisions relating to the performance monitoring system of DCFS;

. prohibits DCFS from consenting to the interview of a child in DCFS' custody by a law enforcement officer, unless consent for the interview is obtained from the child's guardian ad litem;

. provides for the extension of time, under certain circumstances, during which reunification services may be provided; and

. makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

(f) The division shall:
(i) give full, fair, and good faith consideration to all comments and objections received from the committee;
(ii) notify the committee in writing of:
(A) the division's decision regarding the proposed amendment; and
(B) the reasons that support the decision;
(iii) include complete information on all amendments to the performance standards in the report described in Subsection (4); and
(iv) post the changes on the division's website.
(3) The division shall maintain a performance monitoring system to regularly:
(a) collect information on performance indicators; and
(b) compare performance indicators to performance standards.
(4) Before January 1 each year the director shall submit a written report to the Child Welfare Legislative Oversight Panel and the Joint Health and Human Services Appropriations Subcommittee that includes:
(a) a comparison between the performance indicators for the prior fiscal year and the performance standards;
(b) for each performance indicator that does not meet the performance standard:
(i) the reason the standard was not met;
(ii) the measures that need to be taken to meet the standard; and
(iii) the division's plan to comply with the standard for the current fiscal year;
(c) data on the extent to which new and experienced division employees have received training pursuant to statute and division policy; and
(d) an analysis of the use and efficacy of in-home services, both before and after removal of a child from the child's home.

Section 2. Section **62A-4a-415** is enacted to read:

***62A-4a-415.* Law enforcement interviews of children in state custody.**

(1) Except as provided in Subsection (2), the division may not consent to the interview of a child in the division's custody by a law enforcement officer, unless consent for the interview is obtained from the child's guardian ad litem.
(2) Subsection (1) does not apply if a guardian ad litem is not appointed for the child.

Section 3. Section **78A-6-312** is amended to read:

78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.

(1) The court may:
(a) make any of the dispositions described in Section 78A-6-117 ;
(b) place the minor in the custody or guardianship of any:
(i) individual; or
(ii) public or private entity or agency; or
(c) order:
(i) protective supervision;
(ii) family preservation;
(iii) subject to Subsection 78A-6-117 (2)(n)(iii), medical or mental health treatment; or
(iv) other services.
(2) (a) (i) Whenever the court orders continued removal at the dispositional hearing, and that the minor remain in the custody of the division, the court shall first:
(A) establish a primary permanency goal for the minor; and

S.B. 89 Enrolled

LEGAL NOTICE AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: John Dougall

LONG TITLE

General Description:

This bill amends legal notice requirements.

Highlighted Provisions:

This bill:

. modifies provisions relating to public notices on websites;

. modifies provisions requiring the publication of notice of a public meeting or hearing so that the notice is published on the Utah Public Notice Website rather than a website for legal notices;

. clarifies publication requirements for a notice subject to legal notice publication and the Open and Public Meetings Act;

. adds a requirement to publish notice to the Utah Public Notice Website to certain provisions requiring the publication of notice;

. modifies an advertisement for bids publication requirement applicable to the Department of Transportation; and

. makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill coordinates with H.B. 216, Incorporation of a Town Amendments, by providing superseding, technical amendments.

Utah Code Sections Affected:

AMENDS:

45-1-101. Legal notice publication requirements.

(1) As used in this section:

(a) (i) "Legal notice" means:

(A) a communication required to be made public by a state statute or state agency rule; or

(B) a notice required for judicial proceedings or by judicial decision.

(ii) "Legal notice" does not include a public notice published by a public body in accordance with the provisions of Sections 52-4-202 and 63F-1-701 .

(b) "Person" is as defined in Section 68-3-12 .

(2) *(a)* Notwithstanding any other legal notice provision established in this Utah Code, a person required to publish legal notice:

[~~(a)~~] *(i)* until January 1, 2010, shall publish as required by the [~~state~~] statute establishing the legal notice requirement; and

[~~(b)~~] *(ii)* beginning on January 1, 2010, shall publish legal notice:

[~~(i)~~] *(A)* as required by the statute establishing the *legal* notice requirement; and

[~~(ii)~~] *(B)* on a website established by the collective efforts of Utah's newspapers.

(b) A person's publishing legal notice as required under Subsection (2)(a) does not relieve the person from complying with an otherwise applicable requirement under Title 52, Chapter 4, Open and Public Meetings Act.

(3) Beginning on January 1, 2012, notwithstanding any provision of law requiring publication of legal notice in a newspaper, a person who publishes legal notice that is required to be given in a county of the first or second class:

(a) is not required to comply with the requirement to publish legal notice in a newspaper;

(b) is required to publish legal notice on the website described in Subsection [~~(2)(b)(ii)~~] *(2)(a)(ii)(B)*; and

(c) may, in addition to complying with Subsection (3)(b), publish legal notice in a newspaper.

(4) The website described in Subsection [~~(2)(b)(ii)~~] *(2)(a)(ii)(B)* may not:

(a) charge a fee to publish a legal notice on the website before January 1, 2012; and

(b) charge more than $10 to publish a legal notice on the website on or after January 1, 2012.

From: Paul Wake
To: Gregory, Katie; Verdoia, Carol
Date: 3/23/2010 8:31 AM
Subject: URJP Committee

I would appreciate the opportunity to discuss with the committee whether there should be a juvenile rule similar to, or referencing, the new criminal rule 15A. Following United States v. Melendez-Diaz, the legislature this year ran HB 251, but before they passed it the Utah Supreme Court quickly produced this brand new criminal rule, Rule 15A (see http://www.utcourts.gov/resources/rules/approved/2010-02/URCrP015A.pdf). With that rule in place, the legislature figured the problem was fixed, and it dropped HB 251. Criminal Rule 15A basically says that the prosecution doesn't have to bring into court each and every person who ever handled a bit of evidence sent to the crime lab, but can instead rely on the toxicology report, unless the defense gives timely notice in advance of trial that it wants all those people at trial to establish chain of custody or the accuracy of the report or whatever. It's nice that the adult system has a fix for the problem, but it occurred to me that in the delinquency realm, we don't have the same fix. I'm wondering if we should. Thanks.

--
Paul Wake

Effective February 26, 2010 under Rule 11-105(5).
Subject to change after the comment period.

Rule 15A. Scientific, Lab, and Analytical Reports - When prosecution required to produce foundation and chain of custody witnesses.

(a) In all prosecutions in which an analysis of a controlled substance or other evidentiary sample is conducted, a sworn copy of the analytical report signed by the director of the laboratory or the analyst, technician, or forensic scientist conducting the analysis, shall be admitted as prima facie evidence of the report's contents and conclusions and of the chain of custody pertaining to any sample tested.

(b) The defendant may, however, require that the prosecution produce the preparer of the report or chain-of-custody witnesses for cross-examination at trial by filing a written demand with the court and the prosecutor no less than 30 days before trial or 15 days after receiving the report, whichever is later. The court shall extend the demand time for good cause shown.

(c) If a written demand is filed, the prosecution shall be entitled to a continuance upon a showing that the prosecution, despite reasonable efforts, is unable to procure the attendance at trial of the preparer of the report or chain-of-custody witnesses. The time within which a trial is required to begin shall be extended by the length of the continuance.

(d) Failure to timely file a written demand waives the defendant's right to challenge the admissibility of the report or the sample's chain of custody on the ground that the prosecution did not call the preparer of the report or chain-of-custody witnesses.

Contact Pat B ↓ 238-7974

filings and how their district would be impacted by fax filings. Katie Gregory will check with the Clerk of the Supreme Court regarding how timing is handled on faxed documents. Any documents they think should be exempt, if fax should be followed by originals.	
Action Item:	Judge Lindsley's will email the juvenile court judges and Katie Gregory will contact Supreme Court staff.
Motion: Judge Lindsley to send an email to all juvenile judges for input on creating a fax filing rule, after a draft has been reviewed by Judge Steele and Carol Verdoia.	By: Judge Lindsley Second: Judge Steele
Approval	× Unanimous ☐ Vote: # In Favor_____ # Opposed _____

AGENDA TOPIC

VI. Other Items	[PRESENTER] CAROL VERDOIA

Discussion:

1. Carol Verdoia reviewed the items which were tabled to a future meeting. The issue of consent to waive the youth's constitutional rights if interrogated was tabled because it may be impacted by pending legislation (H.B. 239).

2. The next meeting was set for March 26, 2010 from Noon to 2:00 p.m.

Compliance docs. + hrtn practice time sensitive
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interloc appeals > not allowed.

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low volume helps.

FAX FILING POLICY

The Utah Supreme Court and the Utah Court of Appeals have implemented the following fax filing policy, effective August 24, 1998:

1. Fax filings are permitted for documents of 10 pages or less except that regardless of length, petitions for interlocutory appeal, petitions for writ of certiorari and petitions for review may not be filed by fax.

2. The faxed document, which must bear a facsimile of the required signature, will be accepted as an "original" document until the true original (and any required copies) are filed in the appellate court. The original must be filed in the court within 5 business days from the date of the transmission by fax. If the original is not filed in the appellate court within that period, the filing may be treated as ineffective and untimely.

3. A fax filing is considered "received' when stamped by the clerks' office. The time for stamping is limited to regular office hours (8:00 a.m. to 5:00 p.m., weekdays). For example, a fax received at 5:05 p.m. will be stamped as received on the next business day.

4. Any document filed by fax must also be sent concurrently by fax, hand-delivery or mail on all other parties to the appeal, and the faxed document must contain a certificate of service attesting to such service and that the document was initially filed with the court by fax. The time for filing a response to a document filed by fax runs from the date the document was faxed to the court.

5. All risks associated with fax filing are borne by the sender (e.g. court's phone system being out of order, the receiving fax machine running out of paper, etc.).

Appellate Clerks' Office Fax Number: 801-578-3999

(June 25, 1999)

MEMORANDUM

TO: **Juvenile Rules Committee**
FROM: Paul Wake
SUBJECT: Criminal Rule 15A
DATE: March 26, 2010

I would appreciate your consideration and discussion of whether the following is an issue the juvenile rules committee should consider.

In *Melendez-Diaz v. Massachusetts*, the U.S. Supreme Court held that under *Crawford*, state drug lab analyses are subject to the confrontation clause. However, the Court also said that notice and demand statutes are constitutional, in that a state can require defendants to notify the prosecution in advance if they want the prosecution to bring an analyst to trial to testify that a report is what it says it is.

The Utah legislature ran HB 251 this year to create a notice and demand statute. However, at the same time the Utah Supreme Court hurried through a new criminal rule, Rule 15A, that covers the same ground. At least, it sort of does. Since it's a criminal rule, it doesn't apply to delinquency proceedings because it wasn't adopted by the juvenile rules. Rule 15A states:

> **Rule 15A. Scientific, Lab, and Analytical Reports - When prosecution required to produce foundation and chain of custody witnesses.**
> (a) In all prosecutions in which an analysis of a controlled substance or other evidentiary sample is conducted, a sworn copy of the analytical report signed by the director of the laboratory or the analyst, technician, or forensic scientist conducting the analysis, shall be admitted as prima facie evidence of the report's contents and conclusions and of the chain of custody pertaining to any sample tested.
> (b) The defendant may, however, require that the prosecution produce the preparer of the report or chain-of-custody witnesses for cross-examination at trial by filing a written demand with the court and the prosecutor no less than 30 days before trial or 15 days after receiving the report, whichever is later. The court shall extend the demand time for good cause shown.
> (c) If a written demand is filed, the prosecution shall be entitled to a continuance upon a showing that the prosecution, despite reasonable efforts, is unable to procure the attendance at trial of the preparer of the report or chain-of-custody witnesses. The time within which a trial is required to begin shall be extended by the length of the continuance.
> (d) Failure to timely file a written demand waives the defendant's right to challenge the admissibility of the report or the sample's chain of custody on the ground that the prosecution did not call the preparer of the report or chain-of-custody witnesses.

When the Utah Supreme Court implemented this rule, the legislature dropped HB 251.

It seems to me that the same standard should apply in delinquency trials. I'm wondering if we should advance an identical rule, or adopt this one by reference, perhaps as a new Rule 43(d) (something like "Use of scientific, lab, and analytical reports shall be governed by Utah R. Cr. P 15A.")?