

**Rule 46. Disposition hearing.**

(a) Disposition hearings may be separate from the hearing at which the petition is proved or may follow immediately after that portion of the hearing at which the allegations of the petition are proved. Disposition hearings shall be conducted in an informal manner to facilitate the opportunity for all participants to be heard.

(b) The court may receive any information that is relevant to the disposition of the case including reliable hearsay and opinions. Counsel for the parties are entitled to examine under oath the person who prepared the pre-disposition report if such person is reasonably available. The parties are entitled to compulsory process for the appearance of any person, including character witnesses, to testify at the hearing. Upon a finding of guilt of a traffic or parking offense, a juvenile's parent or guardian may address the court regarding circumstances related to the imposition of sentence, and may address other issues with the permission of the court.

(c) After the disposition hearing, the court shall enter an appropriate order. After announcing its order, the court shall advise any party who is present and not represented by counsel of the right to appeal the court's decision.

(d) The disposition order made and entered by the court shall be reduced to writing and a copy mailed or furnished to the minor and parent, guardian or custodian, or counsel for the minor and parent, guardian or custodian, if any, the prosecuting attorney, the guardian ad litem, and any agency or person affected by the court's order.

(e) Disposition of a petition alleging abuse, neglect, or dependency of a minor shall be conducted also in accordance with Section 78-3a-118, Section 78-3a-310, and Section 78-3a-311.

(f) For purposes of this rule, reliable hearsay is:

- (1) hearsay evidence admissible at trial under the Utah Rules of Evidence;
- (2) hearsay evidence admissible at trial under Rule 804 of the Utah Rules of Evidence, regardless of the availability of the declarant at the preliminary examination;
- (3) evidence establishing the foundation for or the authenticity of any exhibit;
- (4) scientific, laboratory or forensic reports and records;
- (5) medical and autopsy reports and records;
- (6) a statement of a non-testifying peace officer to a testifying peace officer;
- (7) a statement made by a child victim of physical abuse or sexual abuse which is otherwise admissible under these rules or by statute;
- (8) a statement of a declarant that is written, recorded, or transcribed verbatim which is:
  - (a) under oath or affirmation; and

(b) reasonable notice is given by the introducing party to the other parties of the writing or statement and the intent of that party to introduce it a the hearing.

(g) If a party establishes that it would be so substantially and unfairly disadvantaged by the use of hearsay evidence as to outweigh the interests of the declarant and the efficient administration of justice, the court may exclude such evidence or may continue the hearing.

Public Access to Child Abuse and Neglect Proceedings:  
Processes and Procedures

**Objectives:**

- Review understanding of HB222
- Update on evaluation of "Impact on Children"
- Achieve agreement on underlying principles in implementing court processes
- Consider proposed rule amendments and processes
- Consider proposed tracking devices
- Pinpoint training issues for court personnel
- Other issues

**I. When designing processes and procedures to implement greater public access to child abuse and neglect proceedings, no such process or procedure should result in any additional delays to case resolution.**

**II. Abuse, neglect and dependency proceedings should be presumed open with the option for closing all or part of a proceeding to all or select individuals upon proper motion of a party or counsel, or the court's own motion.**

**HB 222**

(2) (a) In abuse, neglect, and dependency cases the court shall admit any person to a hearing, including a hearing under Subsection 78-3a-320 (3), unless the court makes a finding upon the record that the person's presence at the hearing would:

(i) be detrimental to the best interest of a child who is a party to the proceeding;

(ii) impair the fact-finding process; or

(iii) be otherwise contrary to the interests of justice

(b) The court may exclude a person from a hearing under Subsection (2)(a) on its own motion or by motion of a party to the proceeding.

**How should motion to close be submitted?**

Proposed URJP 50, Presence at hearings.

(a) In abuse, neglect, and dependency cases, the court shall admit persons as provided for by 78-3a-115 and 78-3a-115.1. <sup>person denied</sup> A party requesting entry to a proceeding is not entitled to an evidentiary hearing, <sup>on the issue of presence</sup> but may present argument by proffer. A <sup>person</sup> party denied access to a proceeding may petition the Utah Court of Appeals under <sup>URJP 19</sup> Utah Rule of Procedure 65B(d). <sup>shall</sup> Proceedings will not be stayed pending appeal. As provided for by 78-3a-116, a person may <sup>petition</sup> file a motion requesting a copy of a record

if a m. made to deny

Judge asked if it created right.

~~Info. Evidence relating to challenge should be presented~~

their presence is prob. in arg is challenged, by re: presence by proffer.

KOB: May be moot but cap is rep but load review.

of the proceedings, setting forth the reasons for the request. Upon a finding of good cause by the Court and payment of a processing fee, the person <sup>shall</sup> ~~may~~ receive an <sup>record</sup> ~~audiotape~~ of a proceeding. ~~In its discretion,~~ The Court may place under seal information received in an open proceeding.

DIST CT Provision:  
Civil Pro  
Notice.

**Adoptions out of TPRs should always be closed. (Training)**

URJP 49. Adoptions.

Adoption procedures in juvenile court shall be conducted in accordance with Utah Code Ann. § 78-30-1 et seq.

**How can closure be appealed?**

URCP 65B(d), "Wrongful use of judicial authority or failure to comply with duty."

(1) Who may petition. A person aggrieved or whose interests are threatened by any of the acts enumerated in this paragraph may petition the court for relief.

(2) Grounds for relief. Appropriate relief may be granted: (A) where an inferior court, administrative agency, or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion; (B) where an inferior court, administrative agency, corporation or person has failed to perform an act required by law as a duty of office, trust or station; (C) where an inferior court, administrative agency, corporation or person has refused the petitioner the use or enjoyment of a right or office to which the petitioner is entitled; or (D) where the Board of Pardons and Parole has exceeded its jurisdiction or failed to perform an act required by constitutional or statutory law.

(3) Proceedings on the petition. On the filing of a petition, the court may require that notice be given to adverse parties before issuing a hearing order, or may issue a hearing order requiring the adverse party to appear at the hearing on the merits. The court may direct the inferior court, administrative agency, officer, corporation or other person named as respondent to deliver to the court a transcript or other record of the proceedings. The court may also grant temporary relief in accordance with the terms of Rule 65A.

(4) Scope of review. Where the challenged proceedings are judicial in nature, the court's review shall not extend further than to determine whether the respondent has regularly pursued its authority.

maybe  
URAP 19

**Determining Parties Present - Minnesota's Process:**

At the beginning of each hearing, identify on the record the names of the attorneys, parties (mom, dad, child, GAL), and participants (grandparents, foster parents, school, etc.) appearing at each hearing. Suggest that judges also ask people in the

audience to also identify themselves and their relationship to the child, if any, so that they know whether to ask that person to provide information. For example, if foster parent, or Aunt Sally, or neighbor Joe Johnson is in the audience, he/she may have some new information to provide the judge about the child's wellbeing. However, if John Doe is in the audience because he/she just wanted to sit in on a hearing to see what it was like, the judge would know not to ask that person for information about the child. The person's name is stated on the record, and, depending on the judge, may or may not be included in the order issued following the hearing (our orders identify who appeared at the hearing). Some judges ask audience members to identify themselves and others do not. Our data shows that it is really rare for people to sit in on hearings, except for those who are specifically notified of the hearing. When some unknown person shows up, the county attorney or one of the other attorney usually suggests to the judge that someone is in the audience and could the judge please ask the person to identify himself/herself.

### **III. Access to juvenile court records should not be expanded; such records should remain closed.**

#### **HB 222**

(b) (i) Notwithstanding any other provision, including Title 63, Chapter 2, Government Records Access and Management Act, a record of a proceeding made under Subsection(1)(a) shall be released by the court to any person upon a finding on the record for good cause.

(ii) Following a petition for a record of a proceeding made under Subsection (1)(a), the court shall:

(A) provide notice to all subjects of the record that a request for release of the record has been made; and

(B) allow sufficient time for the subjects of the record to respond before making a finding on the petition.

(iii) A record of a proceeding may not be released under this Subsection (1)(b) if the court's jurisdiction over the subjects of the proceeding ended more than 12 months prior to the request.

(iv) For purposes of this Subsection (1)(b):

(A) "record of a proceeding" does not include documentary materials of any type submitted to the court as part of the proceeding, including items submitted under Subsection (4)(a); and

(B) "subjects of the record" includes the child's guardian ad litem, the child's legal guardian, the Division of Child and Family Services, and any other party to the proceeding.

#### **Presumed Closed**

- A recording (taped or written) of an open proceeding is presumed closed.

#### **CJA 4-202.03**

(9) Juvenile court legal records. Upon request, the judicial branch shall disclose a juvenile court legal record to the following:

- (A) juvenile court personnel;
- (B) a court appointed guardian ad litem;
- (C) a prosecuting attorney;
- (D) attorneys of record representing the child, parents, or other parties to the proceedings including attorneys representing private petitioners;
- (E) representatives of agencies vested by court order with the legal custody, guardianship or protective supervision of the subject of the record;
- (F) parents or lawful guardians of the subject of the record;
- (G) government adult corrections, probation and parole agencies with respect to a proceeding involving the same person in the adult criminal justice system;
- (H) federal, state, and local law enforcement agencies having a legitimate interest in a juvenile court case;
- (I) staff persons in charge of juvenile detention facilities;
- (J) public or private youth service agencies currently providing service to the subject of the record and/or the subject's family;
- (K) the subject of the record if age 18 or older;
- (L) children's justice centers established by statute;
- (M) the Division of Child and Family Services for the purpose of Child Protective Services Investigations in accordance with Sections 62A-4a-403 and 62A-4a-409 and administrative hearings in accordance with Section 62A-4a-116.5.
- (N) any person to whom the record must be provided pursuant to a juvenile court order;
- (O) any court requesting the record.

### **Media**

- Media agreements to not use identifying information of any child(ren) or family involved in any public reporting of proceedings. (Training)
- Use of initials on all court dockets and documents. (Training)

### **Request for a Record of the Proceedings**

- Any individual may request an **audiotape** recording of an open proceeding. Clerks must be allowed a reasonable amount of time to comply with request. URJP 50; CJA 4-202.04
- A request for an audiotape of proceeding must include the reasons why the request is being made. CJA 4-202.04.

### **Rule 4-202.04. Records requests.**

(1) A records request shall be in writing, unless this requirement is waived by the clerk of the court. The request shall contain the requester's name, mailing address, daytime telephone number and a description of the records requested.

(2) (A) As soon as reasonably possible, but no later than ten business days after receiving a request, or five business days after receiving a request if the requester demonstrates that expedited response to the record request benefits the public rather than the requester, the judicial branch shall respond to a record request by:

(i) approving the request and providing the record;

(ii) denying the request;

(iii) notifying the requester that it does not maintain the record and providing, if known, the name and address of the governmental entity that does maintain the record; or

(iv) notifying the requester that because of one of the extraordinary circumstances listed in paragraph (3), it cannot immediately approve or deny the request. The notice shall describe the circumstances relied upon and specify the date when the records will be available.

(B) Any person who requests a record to obtain information for a story or report for publication or broadcast to the general public is presumed to be acting to benefit the public rather than the requester.

(3) The following circumstances constitute extraordinary circumstances . . .

- Motions for record saved for tracking purposes. (Tracking Form?)
- Will digital audio allow attorneys to access via internet? Transcript?
- All parties to the case would receive notice of the motion to access the recording of the open proceeding with opportunity to object.
- Rule should provide for the court to place under seal certain pieces of information revealed during the course of an otherwise open proceeding.

1 Utah Rules of Juvenile Procedure

2 **Rule 50. Presence at hearings.**

3 (a) In abuse, neglect, and dependency cases the court shall admit persons ~~as provided for by~~  
4 ~~78-3a-115 and 78-3a-115.1. A party requesting entry to a proceeding is not entitled to an~~  
5 ~~evidentiary hearing, but may present argument by proffer. A party denied access to a proceeding~~  
6 ~~may petition the Utah Court of Appeals under Utah Rule of Procedure 65B(d). Proceedings will~~  
7 ~~not be stayed pending appeal. As provided for by 78-3a-116, a person may file a motion~~  
8 ~~requesting a copy of a record of the proceedings, setting forth the reasons for the request. Upon~~  
9 ~~a finding of good cause by the Court and payment of a processing fee, the person may receive an~~  
10 ~~audiotape of a proceeding. In its discretion, the Court may place under seal information received~~  
11 ~~in an open proceeding.~~

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

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

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

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

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

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

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