

Alicia

From: Alicia Davis
To: Alicia Davis
Date: 8/19/03 2:31PM
Subject: Fwd: 8/20 mtg materials (public access)

>>> Alicia Davis 08/07/03 04:15PM >>>

Matty - would you include this with the URJP materials for the 8/20 meeting? We're asking that URJP 50 be approved to be effective during the comment period. Thanks, Alicia

TIM.



Administrative Office of the Courts

Chief Justice Christine M.
Durham
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

To: Supreme Court Justices
From: Alicia Davis, Staff, Advisory Committee on Rules of Juvenile Procedure.
Date: August 7, 2003
Re: Public Access to Juvenile Court Dependency Proceedings

HB 222 (2003) expanded access to abuse, neglect and dependency hearings starting November 1, 2003 in districts selected by the Judicial Council as the Third and Sixth District. Given this start date, the Advisory Committee asks that the proposed amendment to URJP 50 be approved to be effective during the comment period pursuant to Code of Judicial Administration 11-201.

While Utah Code Ann. § 78-3a-115(1)(a) previously read: "In abuse, neglect, and dependency cases the court shall exclude all persons who do not have a direct interest in the proceedings," HB 222 provides as follows:

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.*

Further, any person may receive a record of a prior court proceeding as established by 78-3a-116 (2003).

The policies behind greater access to child welfare proceedings and the resulting legislation have been thoroughly considered and discussed within the judiciary. The Judicial Council's Standing Committee on Children and Family Law formed a Public Access sub-committee last fall. Chaired by Robin Arnold Williams of the Department of Human Services, and Judge Mary Noonan, the group's stated purpose was to "formulate what the public policy of the state should be with respect to public access to juvenile court abuse, neglect and dependency proceedings" (subcommittee minutes, November 19, 2002). Third District Juvenile Judge Charles Behrens

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

and First District Juvenile Judge Larry Jones participated in the subcommittee. Considering the various groups affected by greater access to child welfare proceedings (parties to the case, media, interested persons, and the general public), formulated these general policy concepts:

- ❖ **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.**
- ❖ **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.**
- ❖ **Access to juvenile court records should not be expanded; such records should remain closed.**

These principles were communicated to legislative representatives and staff. While not all parties to the subcommittee agreed to the over-arching principle of expanded public access, the sub-committee achieved consensus on these points if greater access were to occur. The sub-committee worked with legislative staff to ensure adherence to these principles in the resulting legislation.

The proposed amendments to URJP 50 set forth the detail to the procedure, and incorporate principles established in the legislation. These amendments have been approved by that subcommittee. The Advisory Committee to the Rules of Juvenile Procedure now recommends to the Court that these amendments be published November 2003.

Rule 50. Presence at hearings.

(a) In abuse, neglect, and dependency cases the court shall exclude all persons who do not have a direct interest in the proceedings except as provided for by 78-3a-115 and 78-3a-115.1. 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 78-3a-116, 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:

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

(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.

LEGISLATIVE GENERAL COUNSEL
Approved for Filing: S.M. Snyder
01-27-03 10:57 AM

1 **CHILD WELFARE PROCEEDINGS**
2 **AMENDMENTS**

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Greg J. Curtis**

6 **This act modifies the Judicial Code. This act phases in expanded access to abuse, neglect,**
7 **and dependency hearings and records of those hearings, beginning with Juvenile Court**
8 **districts identified by the Judicial Council as pilot districts. This act requires the Judicial**
9 **Council to report to the Legislature on the effects of this act. This act includes revisors**
10 **instructions.**

11 This act affects sections of Utah Code Annotated 1953 as follows:

12 AMENDS:

- 13 **78-3-21**, as last amended by Chapter 221, Laws of Utah 2000
- 14 **78-3a-115**, as last amended by Chapters 171 and 237, Laws of Utah 1998
- 15 **78-3a-116**, as last amended by Chapter 274, Laws of Utah 1998
- 16 **78-3a-406**, as renumbered and amended by Chapter 260, Laws of Utah 1994

17 ENACTS:

18 **78-3a-115.1**, Utah Code Annotated 1953

19 This act enacts uncodified material.

20 *Be it enacted by the Legislature of the state of Utah:*

21 Section 1. Section **78-3-21** is amended to read:

22 **78-3-21. Judicial Council -- Creation -- Members -- Terms and election --**
23 **Responsibilities -- Reports.**

24 (1) The Judicial Council, established by Article VIII, Section 12, Utah Constitution,
25 shall be composed of:

- 26 (a) the chief justice of the Supreme Court;
- 27 (b) one member elected by the justices of the Supreme Court;

28 (c) one member elected by the judges of the Court of Appeals;

29 (d) five members elected by the judges of the district courts;

30

(e) two members elected by the judges of the juvenile courts;

31 (f) three members elected by the justice court judges; and

32 (g) a member or ex officio member of the Board of Commissioners of the Utah State
33 Bar who is an active member of the Bar in good standing elected by the Board of
34 Commissioners.

35 (2) (a) The chief justice of the Supreme Court shall act as presiding officer of the
36 council and chief administrative officer for the courts. The chief justice shall vote only in the
37 case of a tie.

38 (b) All members of the council shall serve for three-year terms. If a council member
39 should die, resign, retire, or otherwise fail to complete a term of office, the appropriate
40 constituent group shall elect a member to complete the term of office. In courts having more
41 than one member, the members shall be elected to staggered terms. The person elected to the
42 Judicial Council by the Board of Commissioners shall be a member or ex officio member of
43 the Board of Commissioners and an active member of the Bar in good standing at the time the
44 person is elected. The person may complete a three-year term of office on the Judicial Council
45 even though the person ceases to be a member or ex officio member of the Board of
46 Commissioners. The person shall be an active member of the Bar in good standing for the
47 entire term of the Judicial Council.

48 (c) Elections shall be held under rules made by the Judicial Council.

49 (3) The council is responsible for the development of uniform administrative policy for
50 the courts throughout the state. The presiding officer of the Judicial Council is responsible for
51 the implementation of the policies developed by the council and for the general management of
52 the courts, with the aid of the administrator. The council has authority and responsibility to:

53 (a) establish and assure compliance with policies for the operation of the courts,
54 including uniform rules and forms; and

55 (b) publish and submit to the governor, the chief justice of the Supreme Court, and the
56 Legislature an annual report of the operations of the courts, which shall include financial and
57 statistical data and may include suggestions and recommendations for legislation.

HB0222

(4) (a) The Judicial Council shall make rules establishing:

59

(i) standards for judicial competence; and

60 (ii) a formal program for the evaluation of judicial performance containing the
61 elements of and meeting the requirements of this Subsection (4).

62 (b) The Judicial Council shall ensure that the formal judicial performance evaluation
63 program has improvement in the performance of individual judges, court commissioners, and
64 the judiciary as its goal.

65 (c) The Judicial Council shall ensure that the formal judicial performance evaluation
66 program includes at least all of the following elements:

67 (i) a requirement that judges complete a certain number of hours of approved judicial
68 education each year;

69 (ii) a requirement that each judge certify that he is:

70 (A) physically and mentally competent to serve; and

71 (B) in compliance with the Codes of Judicial Conduct and Judicial Administration; and

72 (iii) a requirement that the judge receive a satisfactory score on questions identified by
73 the Judicial Council as relating to judicial certification on a survey of members of the Bar
74 developed by the Judicial Council in conjunction with the American Bar Association.

75 (d) The Judicial Council shall ensure that the formal judicial performance evaluation
76 program considers at least the following criteria:

77 (i) integrity;

78 (ii) knowledge;

79 (iii) understanding of the law;

80 (iv) ability to communicate;

81 (v) punctuality;

82 (vi) preparation;

83 (vii) attentiveness;

84 (viii) dignity;

85 (ix) control over proceedings; and

86 (x) skills as a manager.

87 (e) (i) The Judicial Council shall provide the judicial performance evaluation
88 information and the disciplinary data required by Subsection 20A-7-702(2) to the Lieutenant
89 Governor for publication in the voter information pamphlet.

90 (ii) Not later than August 1 of the year before the expiration of the term of
91 office of a

92 municipal court judge, the Judicial Council shall provide the judicial performance evaluation
93 information required by Subsection 20A-7-702(2) to the appointing authority of a municipal
94 justice court judge.

95 (5) The council shall establish standards for the operation of the courts of the state
96 including, but not limited to, facilities, court security, support services, and staff levels for
97 judicial and support personnel.

98 (6) The council shall by rule establish the time and manner for destroying court
99 records, including computer records, and shall establish retention periods for these records.

100 (7) (a) Consistent with the requirements of judicial office and security policies, the
101 council shall establish procedures to govern the assignment of state vehicles to public officers
102 of the judicial branch.

103 (b) The vehicles shall be marked in a manner consistent with Section 41-1a-407 and
104 may be assigned for unlimited use, within the state only.

105 (8) (a) The council shall advise judicial officers and employees concerning ethical
106 issues and shall establish procedures for issuing informal and formal advisory opinions on
107 these issues.

108 (b) Compliance with an informal opinion is evidence of good faith compliance with the
109 Code of Judicial Conduct.

110 (c) A formal opinion constitutes a binding interpretation of the Code of Judicial
111 Conduct.

112 (9) (a) The council shall establish written procedures authorizing the presiding officer
113 of the council to appoint judges of courts of record by special or general assignment to serve
114 temporarily in another level of court in a specific court or generally within that level. The
115 appointment shall be for a specific period and shall be reported to the council.

116 (b) These procedures shall be developed in accordance with Subsection 78-3-24(10)
117 regarding temporary appointment of judges.

118 (10) The Judicial Council may by rule designate municipalities in addition to those
119 designated by statute as a location of a trial court of record. There shall be at least one court
120 clerk's office open during regular court hours in each county. Any trial court of record may
hold court in any municipality designated as a location of a court of record. Designations by

121 the Judicial Council may not be made between July 1, 1997, and July 1, 1998.

122 (11) The Judicial Council shall by rule determine whether the administration of a court
123 shall be the obligation of the administrative office of the courts or whether the administrative
124 office of the courts should contract with local government for court support services.

125 (12) The Judicial Council may by rule direct that a district court location be
126 administered from another court location within the county.

127 (13) The Judicial Council shall establish and supervise the Office of Guardian Ad
128 Litem Director, in accordance with the provisions of Sections 78-3a-911 and 78-3a-912, and
129 assure compliance of the guardian ad litem program with state and federal law, regulation, and
130 policy, and court rules.

131 (14) The Judicial Council shall establish and maintain, in cooperation with the Office of
132 Recovery Services within the Department of Human Services, the part of the state case registry
133 that contains records of each support order established or modified in the state on or after
134 October 1, 1998, as is necessary to comply with the Social Security Act, 42 U.S.C. Sec. 654a.

135 (15) (a) On or before November 1, 2003, the Judicial Council, by rule, shall select one
136 or more districts as pilot districts for purposes of Sections 78-3a-115, 78-3a-115.1, and
137 78-3a-116.

138 (b) Prior to the 2005 Annual General Session, the Judicial Council shall report to the
139 Child Welfare Legislative Oversight Panel and the Judiciary Interim Committee on the effects
140 of this act and recommend whether the provisions of this act should be continued, modified, or
141 repealed.

142 Section 2. Section **78-3a-115** is amended to read:

143 **78-3a-115. Hearings -- Public excluded, exceptions -- Victims admitted -- Minor's**
144 **cases heard separately from adult cases -- Minor or parents or custodian heard**
145 **separately -- Continuance of hearing -- Consolidation of proceedings involving more than**
146 **one minor.**

147 (1) Hearings in minor's cases shall be held before the court without a jury and may be
148 conducted in an informal manner.

149 (a) In abuse, neglect, and dependency cases in all districts other than pilot districts
150 selected by the Judicial Council under Subsection 78-3-21(15)(a), the court shall exclude all
151 persons from hearings held prior to July 1, 2005 who do not have a direct interest in the

152 proceedings.

153 (b) In delinquency cases the court shall admit all persons who have a direct interest in
154 the case and may admit persons requested by the parent or legal guardian to be present. The
155 court shall exclude all other persons except as provided in Subsection (1)(c).

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

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

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

164 (d) The victim of any act charged in a petition or information involving an offense
165 committed by a minor which if committed by an adult would be a felony or a class A or class B
166 misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter
167 36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, and Title 77,
168 Chapter 38, Rights of Crime Victims Act. The notice provisions in Section 77-38-3 do not
169 apply to important juvenile justice hearings as defined in Section 77-38-2.

170 (e) A victim, upon request to appropriate juvenile court personnel, shall have the right
171 to inspect and duplicate juvenile court legal records that have not been expunged concerning:

172 (i) the scheduling of any court hearings on the petition;

173 (ii) any findings made by the court; and

174 (iii) any sentence or decree imposed by the court.

175 (2) Minor's cases shall be heard separately from adult cases. The minor or his parents
176 or custodian may be heard separately when considered necessary by the court. The hearing
177 may be continued from time to time to a date specified by court order.

178 (3) When more than one minor is involved in a home situation which may be found to
179 constitute neglect or dependency, or when more than one minor is alleged to be involved in the
180 same law violation, the proceedings may be consolidated, except that separate hearings may be
181 held with respect to disposition.

182 Section 3. Section 78-3a-115.1 is enacted to read:

183 **78-3a-115.1. Access to abuse, neglect, and dependency hearings.**

184 (1) This section applies:

185 (a) beginning November 1, 2003, to districts selected by the Judicial Council as pilot
186 districts under Subsection 78-3-21(15)(a); and

187 (b) beginning July 1, 2005, to all other districts.

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

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

192 (ii) impair the fact-finding process; or

193 (iii) be otherwise contrary to the interests of justice.

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

196 Section 4. Section **78-3a-116** is amended to read:

197 **78-3a-116. Hearings -- Record -- County attorney or district attorney**
198 **responsibilities -- Attorney general responsibilities -- Admissibility of evidence.**

199 (1) (a) A verbatim record of the proceedings shall be taken by an official court reporter
200 or by means of a mechanical recording device in all cases that might result in deprivation of
201 custody as defined in this chapter. In all other cases a verbatim record shall also be made
202 unless dispensed with by the court.

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

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

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

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

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

214 request.

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

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

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

221 (v) This Subsection (1)(b) applies:

222 (A) to records of proceedings made on or after November 1, 2003 in districts selected
223 by the Judicial Council as pilot districts under Subsection 78-3-21(15)(a); and

224 (B) to records of proceedings made on or after July 1, 2005 in all other districts.

225 (2) (a) Except as provided in Subsection (2)(b), the county attorney or, if within a
226 prosecution district, the district attorney shall represent the state in any proceeding in a minor's
227 case.

228 (b) The attorney general shall enforce all provisions of Title 62A, Chapter 4a, Child
229 and Family Services, and Title 78, Chapter 3a, Juvenile Courts, relating to:

230 (i) protection or custody of an abused, neglected, or dependent child; and

231 (ii) petitions for termination of parental rights.

232 (c) The attorney general shall represent the Division of Child and Family Services in
233 actions involving minors who have not been adjudicated as abused or neglected, but who are
234 otherwise committed to the custody of that division by the juvenile court, and who are
235 classified in the division's management information system as having been placed in custody
236 primarily on the basis of delinquent behavior or a status offense. Nothing in this Subsection
237 (2)(c) may be construed to affect the responsibility of the county attorney or district attorney to
238 represent the state in those matters, in accordance with the provisions of Subsection (2)(a).

239 (3) The board may adopt special rules of procedure to govern proceedings involving
240 violations of traffic laws or ordinances, fish and game laws, and boating laws. However,
241 proceedings involving offenses under Section 78-3a-506 are governed by that section regarding
242 suspension of driving privileges.

243 (4) (a) For the purposes of determining proper disposition of the minor in dispositional
244 hearings and establishing the fact of abuse, neglect, or dependency in adjudication hearings and

245 in hearings upon petitions for termination of parental rights, written reports and other
246 material

246 relating to the minor's mental, physical, and social history and condition may be received in
247 evidence and may be considered by the court along with other evidence. The court may require
248 that the person who wrote the report or prepared the material appear as a witness if the person
249 is reasonably available.

250 (b) For the purpose of determining proper disposition of a minor alleged to be or
251 adjudicated as abused, neglected, or dependent, dispositional reports prepared by Foster Care
252 Citizen Review Boards pursuant to Section 78-3g-103 may be received in evidence and may be
253 considered by the court along with other evidence. The court may require any person who
254 participated in preparing the dispositional report to appear as a witness, if the person is
255 reasonably available.

256 (5) For the purpose of establishing the fact of abuse, neglect, or dependency, the court
257 may, in its discretion, consider evidence of statements made by a minor under eight years of
258 age to a person in a trust relationship.

259 Section 5. Section **78-3a-406** is amended to read:

260 **78-3a-406. Notice -- Nature of proceedings.**

261 (1) After a petition for termination of parental rights has been filed, notice of that fact
262 and of the time and place of the hearing shall be provided, in accordance with the Utah Rules
263 of Civil Procedure, to the parents, the guardian, the person or agency having legal custody of
264 the child, and to any person acting in loco parentis to the child.

265 (2) A hearing shall be held specifically on the question of termination of parental rights
266 no sooner than ten days after service of summons is complete. A verbatim record of the
267 proceedings shall be taken and the parties shall be advised of their right to counsel. The
268 summons shall contain a statement to the effect that the rights of the parent or parents are
269 proposed to be permanently terminated in the proceedings. That statement may be contained in
270 the summons originally issued in the proceeding or in a separate summons subsequently issued.

271 (3) The proceedings are civil in nature and are governed by the Utah Rules of Civil
272 Procedure. The court shall in all cases require the petitioner to establish the facts by clear and
273 convincing evidence, and shall give full and careful consideration to all of the evidence
274 presented with regard to the constitutional rights and claims of the parent and, if a parent is
275 found, by reason of his conduct or condition, to be unfit or incompetent based upon any of the

276 grounds for termination described in this part, the court shall then consider the
welfare and best
277 interest of the child of paramount importance in determining whether termination of parental
278 rights shall be ordered.

279 ~~[(4) Any hearing held pursuant to this part shall be held in closed court without~~
280 ~~admittance of any person who is not necessary to the action or proceeding, unless the court~~
281 ~~determines that holding the hearing in open court will not be detrimental to the child.]~~

282 **Section 6. Revisors instructions.**

283 It is the intent of the Legislature that, in preparing the Utah Code database for
284 publication, the Office of Legislative Research and General Counsel shall change the reference
285 in Subsection 78-3-21(15)(b) from "this act" to the act's designated chapter number in Laws of
286 Utah, 2003.

Legislative Review Note

as of 1-24-03 11:39 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel