

**SUMMARY MINUTES (DRAFT)  
SUPREME COURT'S ADVISORY COMMITTEE  
ON THE  
RULES OF JUVENILE PROCEDURE  
Executive Dining Room  
450 South State Street  
Salt Lake City, Utah  
September 5, 2008**

**Present**

Carol Verdoia  
Judge Larry Steele  
David Johnson  
Paul Wake  
Judge Elizabeth Lindsley  
Renee Jimenez  
Brent Hall  
Brent Bartholomew

**Excused**

Joan Carroll  
Narda Beas-Nordell  
Alan Sevison  
Angela Fonnesebeck  
Pam Vickery  
Ed Peterson

**AOC Staff**

Katie Gregory

**I. Welcome and Minutes**

Carol Verdoia welcomed all members. The committee reviewed the minutes of June 6, 2008. Judge Steele suggested that in the last paragraph on page 4 the word "raised" be changed to "raise." The following motion was made:

***MOTION: Judge Steele motioned to approve the minutes of June 6, 2008 as revised. Paul Wake seconded the motion and it passed unanimously.***

**II. Rule 9-Timing of Periodic Reviews Following Placement in Detention (Judge Lindsley)**

The committee reviewed the Rule 9 revision document attached to the materials for today's meeting. At the last meeting, the Committee had discussed Judge Oddone's proposed revisions to Rule 9. In the interim, Judge Lindsley emailed the draft rule to Dan Maldonado for comments. Dan Maldonado and Sal Mendez (Director of the court's early intervention services in Salt Lake City) responded with the following questions and comments: 1) does the term "exceeding 15 days" modifies both detention and home detention, or just home detention; 2) is the hearing at the 15 day mark or at the 21 day mark; and 3) whether the application of Rule 9 to certain detention cases may pose a resource issue in certain areas of the state. Mr. Mendez also noted his staff's policy of emailing the youth's progress to the court and suggested clarification of when

that would be appropriate given the new proposal. Mr. Maldonado also expressed concern that special needs children not languish in detention for 15 days.

The committee discussed how the proposed rule would impact these concerns and discussed clarifications to the proposed Rule 9 revisions. Judge Oddone wanted to allow less reviews for a child on home detention, although all agreed that a child should not be left on home detention for lengthy periods without review.

A lengthy discussion followed regarding the definition of detention and whether home detention is included in the definition or should be classified separately. The statute defines detention as both secure detention and home detention. Secured detention, however, is not the same as secure care. Following discussion, Judge Lindsay made the following motion:

**MOTION:** Judge Lindsley made a motion to revised Rule 9(J) to read as follows: “Any predisposition order to detention shall be reviewed by the court once every 7 days, unless the minor is ordered to home detention or an alternative detention program. Orders to home detention or an alternative detention program shall be reviewed by the court once every 15 days. The court may, on its own motion or on the motion of any party, schedule a detention review hearing at any time.”

**FRIENDLY AMENDMENT:** David Johnson proposed a friendly amendment to add the word “predisposition” at the beginning of the second sentence. Judge Lindsley accepted the friendly amendment. Additional discussion followed.

David Johnson seconded the motion. Additional discussion followed and a vote was called. The motion passed unanimously. The committee requested that Katie Gregory forward the revised rule to Tim Shea so that it may be sent out for comment.

#### **V. Rule 29A—Affect of the Crawford Decision (Carol Verdoia and Paul Wake)**

The Committee received a copy of newly revised URCrP 15.5 in the meeting materials. Carol updated the committee regarding the issuance of Rule 15.5. Katie reported that the Supreme Court had approved the revisions to URCrP 15.5 by order dated July 15, 2008, and the new rule will be effective on November 1, 2008. Paul Wake distributed a new memo regarding proposed changes to Rule 29A based, in part, on the revisions approved in Rule 15.5. He addressed issues regarding the use of CJC video tapes and remote testimony.

Regarding Rule 29A(b)(1), Paul noted that it does not allow court security or a parent of the child to be present with the child for support. He asked the committee to consider whether we should include either of these. Concerns were raised regarding automatically allowing parents to be present because a parent may be the perpetrator or the parent is the parent of both the victim and the perpetrator. It was noted that subsection (b)(1) is qualified by “may,” and already allows the court to have discretion on who may be present with the child. On the issue of allowing court

security, committee members were comfortable that security was already allowed if the judge was present, without so stating in the rule.

Paul explained that some of his revisions to Rule 29A track the language of UrCrP 15.5 and other portions do not. Paul struck subparagraphs (a)(4) and (a)(9) as did the Rules of Criminal Procedure Committee in drafting Rule 15.5. Discussion followed regarding whether to use the term "minor" or "child" in Rule 29A(a). The committee concurred that the word "child" should not be changed to "minor" in the second sentence. The use of minor in subsection (a)(1), however, was determined to be appropriate. Carol clarified that Rule 27A is also limited to delinquency and criminal cases, and does not apply to child welfare cases.

Paul mentioned that Subsections (c) and (d) have resulted in some confusion. Currently, they reflect the existing language, although the Rules of Criminal Procedure Committee made some changes to corresponding language in URCrP 15.5. The Committee will also consider changing the language which states "Person whose presence contributes to the welfare."

#### **VI. Old Business**

None.

#### **VII. New Business**

Carol distributed a packet of revisions to the URJP reflecting the recodification of Title 78. Members agreed to review the revisions for accuracy and appropriateness and to discuss the matter at the next meeting. The rules were divided for review as follows:

- ✓ David Johnson-Rules 5, 7, 9, 11
- Brent Bartholomew-Rules 12, 13, 17, 18
- ✓ Renee Jimenez-Rules 20, 21, 22, 23
- ✓ Brent Hall-Rules 23A, 26, 27, 29A
- ✓ Judge Lindsley-Rules 30, 34, 35, 36, 37, 39
- ✓ Judge Steele-Rules 43, 44, 46, 47
- Paul Wake-Rules 49, 50, 51, 56, 60

The committee then returned to the following agenda item which has been passed over:

#### **VIII. Rule 25 Update and Discussion of Order for Continued Disposition**

Katie Gregory provided a brief update of the status of proposed revisions to Rule 25. Judge Higbee and other members of the Board of Juvenile Court Judges will meet with the Supreme Court on September 17, 2008 to discuss the Board's concerns. The Board had concerns with the language added to Rule 25(c)(6) incorporating Alford Plea language into the rule and expressed that it would not wish to approve a rule containing the language as drafted. Katie distributed a copy of the Board's letter to the Supreme Court summarizing its concerns. The issue of orders for continued disposition was deferred to a future meeting when Pam Vickery could be present. Carol asked Katie to inquire of the Supreme Court where the justices would like the committee

to take an additional look at Rule 25 to determine whether to define standards for the withdrawal of pleas.

**The next meeting was scheduled for November 7, 2008 from noon to 2:00 p.m.**