

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



MARK L. SHURTLEFF
ATTORNEY GENERAL

RAYMOND HINTZE
Chief Deputy

Protecting Utah • Protecting You

KIRK TORGENSEN
Chief Deputy

August 3, 2007

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

Re: Review of Comments to URJP 7
Proposed Addition of URJP 7A
Technical Amendments to URJP 15

Dear Chief Justice Durham:

On behalf of the Utah Rules of Juvenile Procedure Committee, I am enclosing the Committee's proposed resolution of the comments received on URJP 7. On February 15, 2007, the Supreme Court exercised its emergency rule making authority to issue revisions to URJP 7 effective April 30, 2007. URJP 7 was then sent out for public comment and the Committee received one comment from the Board of Juvenile Court Judges (the "Board") on May 17, 2007. The focus of the Board's concern was the deletion of subparagraph (d)(7) and whether the deletion precluded juvenile judges from issuing verbal pick up orders for youth who have run from a court ordered placement after hours or on a weekend. Both the Board and the URJP Committee felt that legal research on the issue was needed and requested that this be completed by the juvenile court law clerk and reviewed by Brent Johnson.

Enclosed is a copy of the research memorandum prepared by the law clerk, Maile Verbica. Following the Board's review of Ms. Verbica's memorandum, it sent a second letter of comment to the URJP dated July 3, 2007, a copy of which is enclosed. The letter expressed the Board's view that a pick up order does not constitute a verbal warrant and requested that language be inserted in URJP 7 to allow for the issuance of pick up orders. After review of the memorandum and the July 3rd letter, the Committee voted to resolve the issue by creating a new Rule 7A. The Committee noted that if a pick up order is not a verbal warrant, it would be inappropriate to place a provision allowing for such a procedure in Rule 7 regarding warrants. Instead, the Committee proposed that the provision be contained in a new Rule 7A.

Chief Justice Christine M. Durham
Page 2
August 3, 2007

The proposed Rule 7A is attached and reads as follows:

Rule 7A. Pick Up Orders.

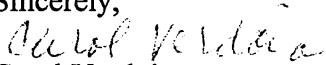
On verbal request from a probation officer or other authorized individual a pick up order may be issued telephonically during non business hours or under exigent circumstances when it appears necessary for the protection of the community or the minor and shall be supported by an affidavit from the requesting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

Since the revised Rule 7 is already in effect, the Committee further requests that the Supreme Court consider Rule 7A under its emergency rule making authority.

A second, and unrelated issue, is a proposed technical change to URJP 15 entitled "Preliminary inquiry; informal adjustment without petition." A redlined copy of URJP 15 is enclosed for your review. Currently, URJP 15(e) provides a 60 day period in which a youth may complete a non-judicial adjustment, with one extension of up to 60 days. During the 2006 legislative session, the Judicial Council requested in its "housekeeping" bill that these time frames be extended to 90 days. While this increase from 60 to 90 days was incorporated in statute at 78-3a-502, the corresponding revision was never made to URJP 15(e). The Committee proposes this as a technical change to conform to the statute, unless you feel it should first be sent out for public comment.

Please feel free to contact me if you have any questions or concerns regarding the revised rules or the work of the Utah Rules of Juvenile Procedure Committee.

Sincerely,


Carol Verdoia
URJP Committee Chair

cc: Matty Branch
Katie Gregory
Brent Johnson



Administrative Office of the Courts

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

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

MEMORANDUM

To: Ray Wahl, Juvenile Court Administrator

From: Maile Verbica, Law Clerk

Date: May 29, 2007

RE: Juvenile Pick-up Orders (or Warrants)

ISSUE: Is a pick-up order equivalent to a warrant, under Utah law, when issued by a juvenile court?

BRIEF ANSWER: No. While pick-up orders are not defined by statute, the term appears in case law signifying a court order to take someone into custody. The Juvenile Court Act of 1996 authorizes taking juveniles into custody through one of four methods: (1) without a warrant, in exigent circumstances; (2) with a warrant; (3) with an order; or (4) with parental consent. Since warrants and orders are listed separately, with different requirements, they cannot be considered synonyms. Furthermore, the Juvenile Court Act grants courts broad powers to issue orders that relate to the guidance, rehabilitation, placement, and control of minors. Pick-up orders fit squarely within these parameters. In sum, pick-up orders are not warrants, but are valid orders issued by the courts to take juveniles into custody.

ANALYSIS: The Utah Supreme Court has directed state courts to "retain copies of all warrants issued and the documents supporting the requests for such warrants." *Anderson v. Taylor*, 2006 UT 79, ¶ 26, 149 P.3d 352. While some warrants authorize law enforcement personnel to pick up an individual and take him or her into custody, the question at hand is whether all such orders, often called "pick-up orders," are warrants. This memorandum will first discuss the nature of pick-up orders, followed by a discussion of whether pick-up orders are warrants.

Pick-up orders. There is no statutory mention or definition of "pick-up orders" in Utah. The Utah Administrative Code utilizes the term in one section. UTAH ADMIN. CODE R. 512-32-6 (2007) (prohibiting disclosure of a child's communicable disease in pick-up-orders filed with the

juvenile court, but allowing reference to high risk behaviors). “Pick-up order” is a generic term referring to an order to take someone into custody. Although it is sometimes used interchangeably with “warrant,” it has also been used to indicate the lack of a warrant. Compare Paul Wake, *Helping Children through the Juvenile Justice System: A Guide for Utah Defense Attorneys*, 15 BYU J. PUB. L. 31, 36 n.20 (2000-2001) (“If a child is picked up because a judge issued a bench warrant (sometimes called a pick-up order) pursuant to UTAH CODE ANN. § 78-3a-112 (2000) and UTAH R. JUV. P. 39, the child will go to detention.”), with *State ex rel. M.C. v. State*, 2003 UT App 429, ¶ 3 (Utah Ct. App. 2003) (distinguishing a pick-up order from a bench warrant: “The juvenile court issued a bench warrant for M.C.’s mother and a ‘pick-up’ order for [three-month-old] M.C.”), and *Karr v. Smith*, 774 F.2d 1029, 1030 (10th Cir. 1985) (holding that while plaintiff’s arrest following issuance of a ‘pick-up order’ was a warrantless arrest, it was not unlawful because it was supported by probable cause).

The term “pick-up order” has been used in delinquency cases, see, e.g., *State ex rel. M.V. v. State*, 1999 UT App 104, ¶ 13 (“After confirming M.V. was truant and learning of the outstanding juvenile court pick-up order, the officer took M.V. into custody and transported him to youth detention.”), in child welfare cases, see, e.g., *In re E.R.*, 2001 UT App 66, ¶ 2 (“[T]he juvenile court issued a pick-up order authorizing DCFS to remove the children from Parents’ custody.”), and in custody cases, see, e.g., *In re B.T.D.*, 2003 UT App 99, ¶ 10 (“The court ultimately . . . awarded custody of the children to Gunderman, and issued a pick-up order.”). Pick-up orders are not unique to juvenile court. *Id.*; see also *United States v. Clarke*, 110 F.3d 612, 613 (8th Cir. 1997) (“ ‘Pick-up orders’ are entered in the KCPD computer when officers believe that probable cause exists to arrest an individual for a particular crime.”).

Orders or warrants. The Juvenile Court Act of 1996 governs taking juveniles into custody, and authorizes doing so by order as well as by warrant. UTAH CODE ANN. §§ 78-3a-106, -112, -113 (2007). In all, it enumerates four different types of authorization: first, without a warrant, when there are exigent circumstances, §§ 78-3a-106(2)(a), -113; second, with a warrant, §§ 78-3a-106(2)(b), -106(3), -112(1), -112(3), -112(6), -301(5); third, with a court order, §§ 78-3a-106(2)(c), -113(5)(c); cf. UTAH CODE JUD. ADMIN. R. 4-701 (authorizing a bench warrant or order, but requiring that if a bench warrant is issued for juveniles, it must be flagged when issued for juveniles); UTAH ADMIN. CODE R. 512-32-6 (2007) (recognizing the validity of pick-up orders by requiring compliance with specific guidelines when the child has a communicable disease); and fourth, with parental consent, UTAH CODE ANN. § 78-3a-106(2)(d) (2007).

The inquiry at hand concerns mainly the second and third of these, warrants and orders. The bare fact that orders are listed separately from warrants lends support to the position that such orders are not simply warrants by another name. “In interpreting the meaning of a statute or ordinance, we begin first by looking to the plain language of the ordinance. When examining the plain language, we must assume that each term included in the ordinance was used advisedly.” *Carrier v. Salt Lake County*, 2004 UT 98, ¶ 30, 104 P.3d 1208. Therefore, when “warrant” appears in a statute in addition to “order,” particularly in the phrase “warrant or order,” the word “order” is not a synonym for, but an alternative to, “warrant.”

An order is an alternative to a warrant in Section 78-3a-106(2) of the Utah Code, which requires exigent circumstances, a warrant, a court order, *or* parental consent in order to take a child into custody:

(2) A peace officer or child welfare worker may not enter the home of a child who is not under the jurisdiction of the court, remove a child from the child's home or school, or take a child into protective custody unless:

(a) there exist exigent circumstances sufficient to relieve the peace officer or child welfare worker of the requirement to obtain a warrant;

(b) the peace officer or child welfare worker obtains a search warrant under Subsection (3);

(c) the peace officer or child welfare worker obtains a court order after the parent or guardian of the child is given notice and an opportunity to be heard; or

(d) the peace officer or child welfare worker obtains the consent of the child's parent or guardian.

An order is also an alternative to a warrant in Section 78-3a-113(5)(c), which allows admitting a minor to detention either "based on the guidelines or [when] the minor has been brought to detention pursuant to a judicial order or [Juvenile Justice Services] division warrant." In this context, one may argue that "order" simply distinguishes a judicial warrant from a division warrant. However, "we must assume that each term included . . . was used advisedly," and understand order to mean order, and not warrant. *Carrier v. Salt Lake County*, 2004 UT 98, ¶ 30, 104 P.3d 1208.

The Utah Code specifies that courts can address a juvenile's failure to appear by issuing a bench warrant, § 78-3a-112. However, in parking, traffic and infraction cases, Rule 4-701(2)(C) of the Code of Judicial Administration allows courts to address a juvenile's failure to appear with either a "bench warrant *or* order to take the defendant into custody" (emphasis added).

Furthermore, a pick-up order was not the equivalent of a warrant in the Tenth Circuit case of *Karr v. Smith*. 774 F.2d 1029 (10th Cir. 1985). Karr filed a Section 1983 claim challenging his arrest for destruction of property. *Id.* at 1031. The *Karr* court found that while Karr's arrest pursuant to a pick-up order was a warrantless arrest, it was not unlawful because it was supported by probable cause. *Id.* at 1031-32. Although this is a federal court case, it supports the concept that pick-up orders are not necessarily synonymous with warrants, depending upon the jurisdiction. *Compare State v. Bell*, 780 P.2d 175 (Kan. Ct. App. 1989) (emphasizing that the defendant was in custody pursuant to a pick-up order and that "[n]o warrant for [his] arrest had been issued"), *with In re O.M.*, 565 A.2d 573, 584 (D.C. 1989) (asserting that a juvenile pick-up order is the equivalent of an arrest warrant).

Having determined that an order is not the same as a warrant under the Juvenile Court Act of 1996 ("Act"), the question remains whether the orders specified in the Act include pick-up orders. The Act describes the authorized orders as those issued by a court, "after the parent or guardian of the child is given notice and an opportunity to be heard," so that a peace officer (or child welfare worker) may "remove a child from the child's home or school, or take a child into protective custody." UTAH CODE ANN. § 78-3a-106(2) (2007). This describes a pick-up order.

There is an additional phrase prohibiting the peace officer or child welfare worker from “enter[ing] the home of a child who is not under the jurisdiction of the court.” *Id.* This language begs the question, what about juveniles who *are* under the jurisdiction of the court? May a peace officer enter their homes without exigent circumstances, a warrant, an order, or parental consent? The Act fails to answer that question explicitly. However, it seems unlikely that the legislature would authorize a court to issue a pick-up order for a child who is *not* under its jurisdiction, but withhold authorization to issue a similar order for a child over whom it exercises continuing jurisdiction. A more likely interpretation is that the continuing jurisdiction of the court allows a peace officer to enter the child’s home at the discretion of the court.

With respect to juveniles who *are* under the jurisdiction of the court, the Act authorizes probation officers to take them into custody. “A probation officer may also take a minor into custody . . . if the minor has violated the conditions of probation, if the minor is under the continuing jurisdiction of the juvenile court or in emergency situations in which a peace officer is not immediately available.” § 78-3a-113(2)(b). Under this section, the continuing jurisdiction of the court expands the ability to take a juvenile into custody – extending it from peace officers to probation officers. Similarly, the Utah Rules of Juvenile Procedure Rule 7(f), amended April 2007, states: “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.” It is unlikely that the Act would prevent courts from issuing orders allowing peace officers to do what probation officers are freely able to do.

Indeed, the Act confers broad powers on juvenile courts, allowing them to “order appropriate measures to promote guidance and control . . . order rehabilitation, reeducation, and treatment for persons who have committed acts bringing them within the court’s jurisdiction . . . and to establish appropriate authority over these minors by means of placement and control orders.” UTAH CODE ANN. § 78-3a-102(5)(b)-(d) (2007). Pick-up orders fit squarely within these parameters, since they relate to the guidance, rehabilitation, placement, and control of the minors.

The Utah Supreme Court requires “the plain language of a statute [] to be read as a whole, and its provisions interpreted in harmony with other provisions in the same statute and with other statutes under the same and related chapters.” *State v. Schofield*, 2002 UT 132, ¶ 8, 63 P.3d 667 (internal quotation marks omitted). Read together, the various provisions of the Juvenile Court Act of 1996¹ support the proposition that pick-up orders are not warrants, but valid orders issued by the courts to take juveniles into custody.

In conclusion, the Juvenile Court Act of 1996 authorizes both warrants and orders, including pick-up orders, as separate and distinct tools courts can use to accomplish their purposes.

¹ UTAH CODE ANN. §§ 78-3a-102(5)(b)-(d), -106, -112, -113 (2007).

Administrative Office of the Courts

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

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

July 3, 2007

Carol Verdoia
URJP Committee Chairperson
Office of the Attorney General
160 East 300 South, Sixth Floor
P.O. Box 140833
Salt Lake City, Utah 84114-0833

Re: Revisions to Rule 7 of the Utah Rules of Juvenile Procedure

Dear Ms. Verdoia:

On May 17, 2007 the Board of Juvenile Court Judges submitted an official comment to Tim Shea regarding the proposed revisions to Rule 7 of the Utah Rules of Juvenile Procedure. The Board expressed concerns about the deletion of the following subparagraph:

~~(d)(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 juvenile and shall be supported by an affidavit from the requesting authority the next court business day.~~

The Board requested additional time to solicit a legal memo from its law clerk on the question of whether a verbal "pick-up order" constitutes a verbal warrant prohibited by the deletion of Rule 7(d)(7). At its June 8th meeting, the Board reviewed the enclosed legal memo from its law clerk which indicates that a pick-up order does not constitute a verbal warrant. Accordingly, the Board proposes the incorporation of the following language into Rule 7:

This rule shall not limit the authority of a court to issue pick-up orders for juveniles under the continuing jurisdiction of the court. Pick-up orders may be issued telephonically during non-business hours or under exigent circumstances when it appears necessary for the protection of the community or the juvenile, and shall be supported by an affidavit from the requesting authority the next court business day.

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.

Carol Verdoia
July 3, 2007
Page 2

The Board requests that you review the proposed language at your July 13th URJP Committee meeting and consider it for submission to the Supreme Court. The Board recognizes that, depending on the placement of the proposed language, the URJP Committee may need to consider other revisions to produce consistency with the existing language of Rule 7. Please feel free to contact me on behalf of the Board with any questions or concerns that may arise.

Sincerely,



Charles D. Behrens, Chair
Board of Juvenile Court Judges

cc: Brent Johnson
Maile Verbica

Proposed Revisions to the Utah Rules of Juvenile Procedure

Rule 7A. Pick Up Orders.

On verbal request from a probation officer or other authorized individual a pick up order 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 and shall be supported by an affidavit from the requesting authority the next court business day.

Rule 15. Preliminary inquiry; informal adjustment without petition.

(e) Attempts to affect non judicial adjustment of a case shall not extend beyond ~~60~~ 90 days without authorization by the court, and then for no more than an additional ~~60~~ 90 days.