

AGENDA

SUPREME COURT'S ADVISORY COMMITTEE ON THE RULES OF JUVENILE PROCEDURE

WebEx Virtual Conference

June 5, 2020

Noon – 2:00 p.m.

12:00-12:10	Welcome and Approval of Minutes <i>(Draft Minutes of May 1, 2020—Tab 1)</i>	David Fureigh
12:10-12:20	Set Meeting Schedule for Remainder of 2020	All
12:20-12:35	Rule 9-Detention hearings; scheduling; hearing procedure <i>Final discussion prior to submission to Supreme Court (Tab 2)</i>	Katie Gregory
12:35-1:40	Review of Rules Impacted by Legislation (Group 2)	
	Rule 21-Warrant of arrest or summons in cases under Utah Code § 78A-6-703.3 <i>(Tab 3)</i>	Chris Yannelli
	Rule 22-Initial appearance and preliminary examination in cases under Utah Code § 78A-6-703.3 <i>(Tab 4)</i>	Judge Lindsley
	Rule 23- Hearing to waive jurisdiction and certify under Section 78A-6-703; bind over to district court <i>(Tab 5)</i>	Judge Lindsley
	Rule 23A-Hearing on condition of Utah Code § 78A-6-703.3 bind over to district court <i>(Tab 6)</i>	Judge Lindsley
	Rule 44-Findings and conclusions <i>(Tab 7)</i>	Judge Lindsley
1:40-1:55	Rule 50-Presence at hearings <i>(Rule 50 Draft dated May 1, 2020--Tab 8)</i>	Bridget Koza
1:55-2:00	Old or New Business/Adjourn	All

TAB 1

AGENDA TOPIC

II. Rule 5-Definitions.		DANIEL GUBLER
Daniel Gubler introduced a draft of Rule 5 dated April 10, 2020 and discussed proposed revisions necessitated by statutory changes contained in H.B. 384. The revisions reflect new statutory definitions of "adult" and "minor" in juvenile delinquency proceedings.		
Action Item:	Present revised Rule 5 to the Supreme Court and obtain permission to publish it for public comment.	
Motion: to approve the April 10, 2020 draft of Rule 5.	By: Daniel Gubler	Second: Judge Lindsley
Approval	<input checked="" type="checkbox"/> Unanimous <input type="checkbox"/> Vote: In Favor _____ Opposed _____	

AGENDA TOPIC

III. Rule 17-The petition.		MONICA DIAZ
Monica Diaz introduced a draft of Rule 17 dated April 28, 2020. She proposed revisions necessitated by H.B. 397 including separating expungement petitions into "Adjudication Expungements" and a new paragraph for "Nonjudicial Expungements." She also added a new paragraph (c)(4) addressing petitions for vacatur added by H.B. 291. Ms. Gregory explained the history of the vacatur amendment and the need to program CARE to allow for petitioning to vacate an individual incident in certain human trafficking situations. Ms. Diaz suggested an additional revision to change the term "expungement" on line 43 to "vacatur." The April 28, 2020 draft was approved with that change.		
Action Item:	Present revised Rule 17 to the Supreme Court and obtain permission to publish it for public comment.	
Motion: to approve the April 28, 2020 draft of Rule 17 with an additional change on line 43 to replace the word "expungement" with "vacatur."	By: Monica Diaz	Second: Sophia Moore
Approval	<input checked="" type="checkbox"/> Unanimous <input type="checkbox"/> Vote: # In Favor _____ # Opposed _____	

AGENDA TOPIC

IV. Rule 56-Expungements.		MONICA DIAZ
Monica Diaz introduced a draft of Rule 56 dated April 28, 2020. She explained the need to revise Rule 56 due to the passage of H.B. 397, which created the Juvenile Expungement Act. Revisions to Utah Code § 78A-6-1503 now provide a method to expunge nonjudicial adjustments in addition to adjudicated juvenile court records. H.B. 397 also provides that certified copies of expungement orders must be provided to the petitioner at no cost.		

Mr. Butler noted that the Utah Code is not cited consistently throughout the Rules of Juvenile Procedure and proposed that the Committee correct this as it amends various rules. He moved to use the reference "Utah Code §" in all the rules discussed in today's meeting. Ms. Gregory will amend the rules discussed in today's meeting for consistency and to reflect this style change.	
Action Item:	Present revised Rule 56 to the Supreme Court and obtain permission to publish it for public comment.
Motion #1: to approve the April 28, 2020 draft of Rule 56.	By: Monica Diaz Second: Judge Lindsley
Approval	<input checked="" type="checkbox"/> Unanimous <input type="checkbox"/> Vote: # In Favor _____ # Opposed _____
Motion #2: to amend rules discussed in today's meeting to consistently use "Utah Code §" when referencing statutes.	By: Arek Butler Second: Daniel Gubler
Approval	<input checked="" type="checkbox"/> Unanimous <input type="checkbox"/> Vote: # In Favor _____ # Opposed _____

AGENDA TOPIC

V. Rule 31-Initiation of truancy proceedings	JANETTE WHITE
Janette White presented a draft of Rule 31 dated April 28, 2020, which updates statutory references from Utah Code §53A-11-103 to Utah Code §53G-6-206.	
Action Item:	Present revised Rule 31 to the Supreme Court and obtain permission to publish it for public comment.
Motion: to approve the April 28, 2020 draft of Rule 31 with the additional deletion of the reference to "Ann." in citations to statute.	By: Janette White Second: Michelle Jeffs
Approval	<input checked="" type="checkbox"/> Unanimous <input type="checkbox"/> Vote: # In Favor _____ # Opposed _____

AGENDA TOPIC

VI. Rule 48-Post judgment motions.	AREK BUTLER
Arek Butler introduced a draft of Rule 48 dated April 22, 2020. Carol Verdoia expressed concern that Rule 48 does not address the timeframes stipulated in the Rules of Civil Procedure and may be in conflict with the civil rules. Ms. Verdoia will research related case law addressing the conflict. The Committee tabled the discussion to a future meeting.	
Action Item:	Place Rule 48 on the June 5, 2020 agenda.

Motion: to table review of Rule 48 until the next meeting.	By: Arek Butler	Second: Janette White
Approval	<input checked="" type="checkbox"/> Unanimous	<input type="checkbox"/> Vote: # In Favor _____ # Opposed _____

AGENDA TOPIC

VII. Rule 50-Presence at hearings	BRIDGET KOZA
<p>Bridget Koza reported on her February 2020 meeting with the Supreme Court regarding proposed revisions to Rule 50 related to tribal participation in ICWA cases. She presented a draft of Rule 50 dated February 19, 2020, which she created following her meeting. The Supreme Court commented in two areas:</p> <ol style="list-style-type: none"> 1. The justices were supportive in concept. However, they stated that Rule 14-802 of the Code of Judicial Administration pertaining to the unauthorized practice of law would need to be amended to allow non-attorneys to participate in hearings on ICWA cases. If Rule 14-802 is amended, then similar language can be cross-referenced in Rule 50. 2. Some of the justices wanted Rule 50(f) to define what "participate" means. A number of other states that allow tribal participation do not define what participation means. Some, such as New Mexico, place it in the commentary to its rule. California defines it for non-federally recognized tribes within the state. Discussion took place on how to define "participate." <p>The Committee revised and restructured paragraph (f) into four subparts to create a May 1, 2020 draft. The Committee ultimately agreed to table Rule 50 until the June, 2020 meeting to allow Ms. Koza and Committee members to review the new draft.</p>	
Action Item:	Place Rule 50 on the next agenda for further discussion.

TAB 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Rule 9. Detention hearings; scheduling; hearing procedure.

(a) The officer in charge of the detention facility shall provide to the court a copy of the report required by Section 78A-6-112. ~~At a detention hearing, the court shall order the release of the minor to the parent, guardian or custodian unless there is reason to believe:~~

~~(a)(1) the minor will abscond or be taken from the jurisdiction of the court unless detained;~~

~~(a)(2) the offense alleged to have been committed would be a felony if committed by an adult;~~

~~(a)(3) the minor's parent, guardian or custodian cannot be located;~~

~~(a)(4) the minor's parent, guardian or custodian refuses to accept custody of the minor;~~

~~(a)(5) the minor's parent, guardian or custodian will not produce the minor before the court at an appointed time;~~

~~(a)(6) the minor will undertake witness intimidation;~~

~~(a)(7) the minor's past record indicates the minor may be a threat to the public safety;~~

~~(a)(8) the minor has problems of conduct or behavior so serious or the family relationships are so strained that the minor is likely to be involved in further delinquency; or~~

~~(a)(9) the minor has failed to appear for a court hearing within the past twelve months.~~

(b) If a minor is admitted into a detention facility without a warrant, the court shall make a determination whether there is a reasonable basis for admission probable cause for the minor's arrest, within 24 hours of the minor's admission to detention including weekends and holidays.

(c)(b) The court shall hold a detention hearing within 48 hours of the minor's admission to detention, weekends and holidays excluded. A minor may not be held in a detention facility longer than 48 hours before a detention hearing, excluding weekends and holidays, unless the court has entered an order for continued detention. The officer in charge of the detention facility

25 shall notify the minor, parent, guardian or custodian and attorney of the date, time, place and
26 manner of such hearing.

27 ~~(d)(e)~~ The court may at any time order the release of a minor whether a detention hearing is
28 held or not.

29 (e) A probable cause determination and detention hearing may occur concurrently so long as
30 the probable cause determination and the detention hearing occur pursuant to the times frames in
31 paragraphs (b) and (c).

32 ~~(f)(e)~~ The court may order a minor to be held in the detention facility or placed in another
33 appropriate facility, subject to further order of the court, only if the court finds at the detention
34 hearing that:

35 ~~(e)(f)(1)~~ releasing the minor to the minor's parents, guardian, or custodian presents an
36 unreasonable risk to public safety;

37 ~~(e)(f)(2)~~ less restrictive nonresidential alternatives to detention have been considered and,
38 where appropriate, attempted; and

39 ~~(e)(f)(3)~~ the minor is eligible for detention under the division guidelines for detention
40 admission established by the Division of Juvenile Justice Services, under Section 62A-7-202 and
41 under Section 78A-6-112.

42 ~~(d)(g)~~ At the beginning of the detention hearing, the court shall advise all persons present as
43 to the reasons or allegations giving rise to the minor's admission to detention and the limited
44 scope and purpose of the hearing ~~as set forth in paragraph (g)~~. If the minor is to be arraigned at
45 the detention hearing, the provisions of Rules 24 and 26 shall apply.

46 ~~(e)(h)~~ The court may receive any information, including hearsay and opinion, that is relevant
47 to the decision whether to detain or release the minor. Privileged communications may be
48 introduced only in accordance with the Utah Rules of Evidence.

49 ~~(f)(i)~~ A detention hearing may be held without the presence of the minor's parent, guardian or
50 custodian if they fail to appear after receiving notice. The court may delay the hearing for up to

51 48 hours to permit the parent, guardian or custodian to be present or may proceed subject to the
52 rights of the parent, guardian or custodian. The court may appoint counsel for the minor with or
53 without the minor's request.

54 ~~(g)~~(j) If the court determines that no ~~reasonable basis~~ probable cause exists for the arrest and
55 or the offense or condition alleged as required does not meet the requirements in Rule 6 as a
56 basis for admission, it shall order the minor released immediately without restrictions.

57 (k) If the court determines that ~~reasonable cause exists for continued detention, a less~~
58 restrictive alternative to detention is appropriate it may ~~order continued detention~~, place the
59 minor on home detention, another alternative program, or order the minor's release upon
60 compliance with certain conditions pending further proceedings. Such conditions may include:

61 ~~(g)~~(k)(1) a requirement that the minor remain in the physical care and custody of a parent,
62 guardian, custodian or other suitable person;

63 ~~(g)~~(k)(2) a restriction on the minor's travel, associations or residence during the period of the
64 minor's release; and

65 ~~(g)~~(k)(3) other requirements deemed reasonably necessary and consistent with the criteria for
66 detaining the minor.

67 ~~(l)~~(h) If the court determines that a ~~reasonable basis~~ probable cause exists as to the offense or
68 condition alleged as a basis for the minor's admission to detention but that the minor can be
69 safely left in the care and custody of the parent, guardian or custodian present at the hearing, it
70 may order release of the minor upon the promise of the minor and the parent, guardian or
71 custodian to return to court for further proceedings when notified.

72 ~~(m)~~(i) If the court determines that the offense is one governed by Section 78A-6-701, Section
73 78A-6-702, or Section 78A-6-703, the court may by issuance of a warrant of arrest order the
74 minor committed to the county jail in accordance with Section 62A-7-201.

75 ~~(n)~~(j) Any predisposition order to detention shall be reviewed by the court once every seven
76 days, unless the minor is ordered to home detention or an alternative detention program.
77 Predisposition orders to home detention or an alternative detention program shall be reviewed by

78 the court once every 15 days. The court may, on its own motion or on the motion of any party,
79 schedule a detention review hearing at any time.

TAB 3

Rule 21. Warrant of arrest or summons in cases under ~~Section 78A-6-702 and Section Utah Code § 78A-6-703.3.~~

(a) Upon the return of an indictment alleging the commission of a felony governed by ~~Section 78A-6-702 or Section Utah Code § 78A-6-703.3,~~ the court shall cause to issue either a warrant for the arrest or a summons for the appearance of the minor.

(b) Upon the filing of an information alleging the commission of a felony governed by ~~Section 78A-6-702 or Section Utah Code § 78A-6-703.3,~~ if it appears from the information, or from any affidavit filed with the information, that there is probable cause to believe that an offense governed by ~~these sections~~this section has been committed and that the minor has committed it, the court shall cause to issue either a warrant for the arrest or a summons for the appearance of the minor.

(c) If it appears to the court that the minor will appear on a summons and there is no substantial danger of a breach of the peace, or injury to persons or property, or danger to the community, a summons may issue in lieu of a warrant of arrest to require the appearance of the minor. A warrant of arrest may issue in cases where the minor has failed to appear in response to a summons or citation or thereafter when required by the court. If a warrant of arrest is issued, the court shall state on the warrant:

(c)(1) the name of the law enforcement agency in the county or municipality with jurisdiction over the offense charged; and

(c)(2) whether the minor is to be taken to court, jail, or a juvenile detention center~~center~~facility.

(d)(1) The warrant shall be executed by a peace officer. The summons may be served by a peace officer or any person authorized to serve a summons in a civil action.

(d)(2) The warrant may be executed or the summons may be served at any place within the state.

26 (d)(3) The warrant shall be executed by the arrest of the minor. The officer need not possess
27 the warrant at the time of the arrest, but upon request shall show the warrant to the minor as soon
28 as practicable. If the officer does not possess the warrant at the time of the arrest, the officer shall
29 inform the minor of the offense charged and of the fact that the warrant has been issued. The
30 summons shall be served as in civil actions, or by mailing it to the minor's last known address.

31 (d)(4) The person executing a warrant or serving a summons shall make return thereof to the
32 juvenile court as soon as practicable. At the request of the prosecuting attorney, any unexecuted
33 warrant shall be returned to the court for cancellation.

34

TAB 4

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Rule 22. Initial appearance and preliminary examination in cases under ~~Section 78A-6-702 and Section~~ Utah Code § 78A-6-703.3

(a) When a summons is issued in lieu of a warrant of arrest, the minor shall appear before the court as directed in the summons.

(b) When any peace officer or other person makes an arrest of a minor without a warrant, the minor shall be taken to a juvenile detention facility center pending a detention hearing, which shall be held as provided by these rules. When any peace officer makes an arrest of a minor with a warrant, the minor shall be taken to the place designated on the warrant. If an information has not been filed, one shall be filed without delay in the court with jurisdiction over the offense.

(c) If a minor is arrested in a county other than where the offense was committed the minor shall without unnecessary delay be returned to the county where the crime was committed and shall be taken before a judge of the juvenile court.

(d) The court shall, upon the minor's first appearance, inform the minor:

(d)(1) of the charge in the information or indictment and furnish the minor with a copy;

(d)(2) of any affidavit or recorded testimony given in support of the information and how to obtain them;

(d)(3) of the right to retain counsel or have counsel appointed by the court ~~without expense if the minor is unable to obtain counsel;~~

(d)(4) of rights concerning detention, pretrial release, and bail in the event the minor is bound over to stand trial in district court; and

(d)(5) that the minor is not required to make any statement, and that any statements made may be used against the minor in a court of law.

24 (e) The court shall, after providing the information under paragraph (d) and before
25 proceeding further, allow the minor reasonable time and opportunity to consult counsel and shall
26 allow the minor to contact any attorney by any reasonable means, without delay and without fee.

27 (f)(1) The minor may not be called on to enter a plea. During the initial appearance, the
28 minor shall be advised of the right to a preliminary examination, ~~and, as applicable, to a~~
29 ~~certification hearing pursuant to Section 78A-6-703 or to the right to present evidence regarding~~
30 ~~the conditions established by Section 78A-6-702.~~ If the minor waives the right to a preliminary
31 examination the court shall proceed in accordance with Rule 23A to hear evidence regarding the
32 factors contained in Utah Code § 78A-6-703.5 ~~and, if applicable, a certification hearing, and if~~
33 ~~the prosecuting attorney consents, the court shall order the minor bound over to answer in the~~
34 ~~district court.~~

35 (f)(2) If the minor does not waive a preliminary examination, the court shall schedule the
36 preliminary examination. The time periods of this rule may be extended by the court for good
37 cause shown. The preliminary examination shall be held within a reasonable time, but not later
38 than ten days after the initial appearance if the minor is in custody for the offense charged and
39 the information is filed under ~~Section Utah Code § 78A-6-702,~~ 703.3. The preliminary
40 examination shall be held within a reasonable time, but not later than 30 days after the initial
41 appearance if:

42 (f)(2)(A) the minor is in custody for the offense charged and the information is filed under
43 ~~Section Utah Code § 78A-6-703,~~ 3; or

44 (f)(2)(B) the minor is not in custody.

45 (f)(3) A preliminary examination may not be held if the minor is indicted. ~~If the indictment is~~
46 ~~filed under 78A-6-703, the court shall proceed in accordance with Rule 23 to hear evidence~~
47 ~~presented by the prosecutor regarding the factors of Section 78A-6-703 for waiver of jurisdiction~~
48 ~~and certification, unless the hearing is waived.~~ If the indictment is filed under ~~Section Utah Code~~
49 § 78A-6-702,3, the court shall proceed in accordance with Rule 23A to hear evidence
50 ~~presented by the minor regarding the factors conditions~~ of contained in ~~Section Utah Code §~~
51 78A-6-702,703.5 if requested.

52 (g) A preliminary examination shall be held under the rules and laws applicable to criminal
53 cases tried before a court. The state has the burden of proof and shall proceed first with its case.
54 At the conclusion of the state's case, the minor may testify under oath, call witnesses, and present
55 evidence. The minor may cross-examine adverse witnesses.

56 ~~(h) If from the evidence the court finds probable cause to believe that the crime charged has~~
57 ~~been committed and that the minor has committed it, and if the information is filed under Section~~
58 ~~78A-6-703, the court shall proceed in accordance with Rule 23 to hear evidence presented by the~~
59 ~~prosecutor regarding the factors of Section 78A-6-703 for waiver of jurisdiction and~~
60 ~~certification.~~

61 ~~(h)~~ If from the evidence the court finds probable cause to believe that the crime
62 charged under ~~has been committed and that the minor has committed it, and if the~~
63 ~~information is filed under Section~~ Utah Code § 78A-6-702.703.3, the court shall proceed in
64 accordance with Rule 23A to hear evidence ~~presented by the minor~~ regarding the ~~conditions~~
65 factors contained in of Section Utah Code § 78A-6-702.703.5.

66 ~~(i)~~ The finding of probable cause may be based on hearsay in whole or in part. Objections
67 to evidence on the ground that it was acquired by unlawful means are not properly raised at the
68 preliminary examination.

69 ~~(j)~~ If the court does not find probable cause to believe that the crime charged has been
70 committed or that the minor committed it, the court shall dismiss the information and discharge
71 the minor. The court may enter findings of fact, conclusions of law, and an order of dismissal.
72 The dismissal and discharge do not preclude the state from instituting a subsequent prosecution
73 for the same offense.

74 ~~(k)~~ At a preliminary examination, upon request of either party, and subject to Title 77,
75 Chapter 38, Victim Rights, the court may:

76 ~~(k)~~(1) exclude witnesses from the courtroom;

77 ~~(k)~~(2) require witnesses not to converse with each other until the preliminary examination
78 is concluded; and

~~(k)~~(k)(3) exclude spectators from the courtroom.

TAB 5

Rule 23. Hearing to waive jurisdiction and certify under Section 78A-6-703; bind over to district court. This entire rule should be stricken because certification to district court is no longer an option to transfer a minor. 78A-6-703 has been repealed.

~~(a)(1) Upon the filing of a criminal indictment or information and motion to waive jurisdiction under Section 78A-6-703, the court shall order that a full investigation of the minor's social history and background be made by the court's probation department.~~

~~(a)(2) The investigation may include, but shall not be limited to: the minor's delinquency history, the minor's response to rehabilitative and correctional efforts; the minor's educational history, social history and status; a psychological evaluation and assessment, and any other matter ordered by the court.~~

~~(a)(3) A report of the investigation shall be prepared and made available to the parties or to counsel, if represented, and to the minor's parent, guardian or custodian, as early as feasible but in any case at least 48 hours prior to the hearing. Written reports and other materials relating to the minor's mental, physical, educational and social history and other relevant information are governed by the Rules of Evidence. The court may require, and shall require if requested by a party, that any person preparing the report or materials be present for direct and cross examination.~~

~~(b)(1) After a finding of probable cause in accordance with Rule 22, the court shall hear evidence and determine whether it would be contrary to the best interests of the minor or of the public for the court to retain jurisdiction. The state has the burden to prove by a preponderance of the evidence the factors required in Section 78A-6-703 to be considered by the court.~~

~~(b)(2) At the conclusion of the state's case, the minor may testify under oath, call witnesses, and present evidence on the factors required by Section 78A-6-703 to be considered by the court. The minor may cross-examine adverse witnesses.~~

~~(c) The court shall make findings on each factor for which evidence is presented. If the motion to waive jurisdiction and certify is granted, the court shall indicate which factor or factors were relied upon as a basis for the decision. If the court finds by a preponderance of the evidence that it would be contrary to the best interests of the minor or of the public for the court to retain jurisdiction, the court shall enter an order directing the minor to answer the charges in district court.~~

32 ~~(d)(1) Upon entry of an order directing the minor to answer the charges in district court, the~~
33 ~~court shall comply with the requirements of Title 77, Chapter 20, Bail. By issuance of a warrant~~
34 ~~of arrest or continuance of an existing warrant, the court may order the minor committed to jail~~
35 ~~in accordance with Section 62A-7-201. The court shall enter the appropriate written order.~~

36 ~~(d)(2) Once the minor is bound over to district court, a determination regarding where the~~
37 ~~minor is held shall be made pursuant to Section 78A-6-703.~~

38 ~~(d)(3) The clerk of the juvenile court shall transmit to the clerk of the district court all~~
39 ~~pleadings in and records made of the proceedings in the juvenile court.~~

40 ~~(d)(4) The jurisdiction of the court shall terminate as provided by statute.~~

41 ~~(e) If the court finds probable cause to believe that a felony has been committed and that the~~
42 ~~minor committed it but does not find that it would be contrary to the best interests of the minor~~
43 ~~or of the public for the court to retain jurisdiction, the court shall proceed upon the information~~
44 ~~as if it were a petition. The court may order the minor held in a detention center or released in~~
45 ~~accordance with Rule 9.~~

TAB 6

Rule 23A. Hearing on conditions of Section Utah Code § 78A-6-702~~703.3~~; bind over to district court.

(a) If a criminal indictment under Section Utah Code § 78A-6-702~~703.3~~ alleges the commission of a felony, the court shall, upon the request of the minor, hear evidence and consider the ~~conditions~~ factors in paragraph ~~(e)~~:(b).

(b) If a criminal information under Section Utah Code § 78A-6-702 703.3 alleges the commission of a felony, after a finding of probable cause in accordance with Rule 22, the court shall hear evidence and consider ~~determine whether the conditions of paragraph (e) exist~~the factors and make findings on:

~~(e) The minor shall have the burden of going forward and presenting evidence of the following conditions as provided in Section 78A-6-702:~~

~~(e)(1) the minor has not been previously adjudicated delinquent for an offense involving the use of a dangerous weapon which would be a felony if committed by an adult;~~

~~(e)(2) that if the offense was committed with one or more other persons, the minor appears to have a lesser degree of culpability than the codefendants;~~

~~(e)(3) that the minor's role in the offense was not committed in a violent, aggressive, or premeditated manner;~~

~~(e)(4) the number and nature of the minor's prior adjudications in the juvenile court; and~~

~~(e)(5) that public safety is better served by adjudicating the minor in the juvenile court or in the district court.~~

(b)(1) the seriousness of the qualifying offense and whether the protection of the community requires that the minor is detained beyond the amount of time allowed under Subsection 78A-6-117(2)(h), or beyond the age of continuing jurisdiction that the court may exercise under Utah Code § 78A-6-703.4;

(b)(2) the extent to which the minor's actions in the qualifying offense were committed in an aggressive, violent, premeditated or willful manner;

(b)(3) the minor's mental, physical, educational, trauma, and social history;

(b)(4) the criminal record or history of the minor; and

(b)(5) the likelihood of the minor's rehabilitation by the use of services and facilities that are available to the court.

32 (c) The court may consider any written report or other materials that relates to the minor's
33 mental, physical, educational, trauma and social history. Upon request by the minor, the minor's
34 parent, guardian, or other interested party, the court shall require the person preparing the report,
35 or other material to appear and be subject to direct and cross-examination.

36 (d) ~~At the conclusion of the minor's case, the state may call witnesses and present evidence~~
37 ~~on the conditions required by Section 78A-6-702.~~ The minor may cross-examine adverse
38 witnesses.

39 (e) If the court does not find by a preponderance of evidence that it would be contrary to the
40 best interest of the minor and the best interests of the public to bind the minor over to the
41 jurisdiction of the district court, the court shall enter an order directing the minor to answer the
42 charges in district court.

43 (f)(1) Upon entry of an order directing the minor to answer the charges in district court, the
44 court shall comply with the requirements of Title 77, Chapter 20, Bail. By issuance of a warrant
45 of arrest or continuance of an existing warrant, the court shall make an initial determination on
46 where the minor is held until the time of trial. ~~court may order the minor committed to jail in~~
47 ~~accordance with Section 62A-7-201.~~ The court shall enter the appropriate written order.

48 (f)(2) Once the minor is bound over to district court, a determination regarding where the
49 minor is held shall be made pursuant to ~~Section~~ Utah Code § 78A-6-702, 703.5.

50 (f)(3) The clerk of the juvenile court shall transmit to the clerk of the district court all
51 pleadings in and records made of the proceedings in the juvenile court.

52 (f)(4) The jurisdiction of the court shall terminate as provided by statute.

53 (g) If the court finds probable cause to believe that a felony has been committed and that the
54 minor committed it and also finds that it would be in the best interests of the minor and the
55 public for the juvenile court to retain jurisdiction over the offense, all of the conditions of
56 Section 78A-6-702 are present, the court shall proceed upon the information as if it were a
57 petition. The court may order the minor held in a detention center or released in accordance with
58 Rule 9.

TAB 7

Rule 44. Findings and conclusions.

(a) If, upon the conclusion of an adjudicatory hearing, the court determines that the material allegations of the petition are established, it shall announce its ruling. The findings of fact upon which it bases its determination may also be announced or reserved for entry by the court in an order as provided in these Rules. In cases concerning any minor who has violated any federal, state, or local law or municipal ordinance, or any person under 21 years of age who has violated any such law or ordinance before becoming 18 years of age, findings of fact shall not be necessary. If, after such a determination, the dispositional hearing is not held immediately and the minor is in detention or shelter care, the court shall determine whether the minor shall be released or continued in detention, shelter care or the least restrictive alternative available.

(b) In ~~certification~~ proceedings under Utah Code §§ 78A-6-703.3 and 703.5 and permanent deprivation cases, the court shall enter findings of fact and conclusions of law with specific reference to each statutory requirement considered, setting forth the complete basis for its determination. Such findings and conclusions may be prepared by counsel at the direction of the court, but shall be reviewed and modified as deemed appropriate by the court prior to the court's acceptance and signing of the documents submitted by counsel.

(c) The court may at any time during or at the conclusion of any hearing, dismiss a petition and terminate the proceedings relating to the minor if such action is in the interest of justice and the welfare of the minor. The court shall dismiss any petition which has not been proven.

(d) After the dispositional hearing, the court shall enter an appropriate order or decree of disposition.

(e) Adjudication of a petition alleging abuse, neglect, or dependency of a child shall be conducted also in accordance with Utah Code ~~Section~~ § 78A-6-309 and ~~Section~~ § 78A-6-310.

(f) Adjudication of a petition to review the removal of a child from foster care shall be conducted also in accordance with Utah Code ~~Section~~ § 78A-6-318.

TAB 8

Rule 50. Presence at hearings.

(a) In abuse, neglect, and dependency cases the court shall admit persons as provided by Utah Code Section 78A-6-114. 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 Utah Code Section 78A-6-115, 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:

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

(c)(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.

(f) In proceedings subject to the Indian Child Welfare Act of 1978, United State Code, title 25, sections 1901 to 1963:

31 (f)(1) The Indian child’s tribe is not required to formally intervene in the proceeding unless the
32 tribe seeks affirmative relief from the court.

33

34 (f)(2) If an Indian child’s tribe does not formally intervene in the proceeding, official tribal
35 representatives from the Indian child’s tribe have the right to participate in any court proceeding.

36 Participation in a court proceeding includes being able to:

37 (f)(2) (i) be present at the hearing;

38 (f)(2)(ii) address the court;

39 (f)(2) (iii) request and receive notice of hearings;

40 (f)(2)(iv) present information to the court that is relevant to the proceeding;

41 (f)(2)(v) submit written reports and recommendations to the court; and

42 (f)(2)(vi) perform other duties and responsibilities as requested or approved by the court.

43

44 (f)(3)The designated representative should provide his or her contact information ~~either in~~
45 writing ~~or via email~~ to the court.

46

47 (f)(4) As provided in Utah Special Practice Rule 14-802, an Indian tribe that has formally
48 intervened may have a designated non-attorney represent the Indian tribe in the proceeding. The
49 tribe must file a written authorization for the designated non-attorney representative before the
50 non-attorney may represent the tribe. If the tribe changes its designated representative or if the
51 representative withdraws, the tribe must file a written substitution of representation or
52 withdrawal.

53 Draft 14-802(d)(13) – “In proceedings subject to the Indian Child Welfare Act of 1978, United
54 State Code, title 25, sections 1901 to 1963, an Indian tribe that has formally intervened may have
55 a designated non-attorney represent the Indian tribe in the proceeding. The tribe must file a
56 written authorization for the designated non-attorney representative before the non-attorney may
57 represent the tribe. If the tribe changes its designated representative or if the representative
58 withdraws, the tribe must file a written substitution of representation or withdrawal.