



Utah Supreme Court's Advisory Committee on the Rules of Juvenile Procedure

Meeting Agenda

David W. Fureigh, Chair

Location: Webex Meeting:
<https://utcourts.webex.com/utcourts/j.php?MTID=m60614e94398c691ccac151892d1f861d>

Date: February 5, 2021

Time: 12:00 pm – 2:00 pm

12:00 – 12:10	Action: Welcome and approve January 8, 2021 Meeting minutes	Tab 1	David Fureigh
12:10 – 12:40	Action: Rule 45 – Disposition Reports	Tab 2	Bridget Koza
12:40 – 1:05	Action: Venue Transfer and Rule 16	Tab 3	David Fureigh
1:05 – 1:25	Action: Petition contents and Rule 17	Tab 4	David Fureigh
1:25 – 1:50	Action: Rights of minors in delinquency proceedings and Rule 26	Tab 5	David Fureigh
1:50 – 2:00	Discussion: Old business/new business		All

<https://www.utcourts.gov/utc/juvenile-procedure/>

Meeting Schedule:

March 5, 2021

June 4, 2021

October 1, 2021

April 2, 2021

August 6, 2021

November 5, 2021

May 7, 2021

September 3, 2021

December 3, 2021

TAB 1



**Utah Supreme Court's
Advisory Committee on the Rules of Juvenile Procedure**

Draft Meeting Minutes

January 8, 2021

Webex Meeting:

<https://utcourts.webex.com/utcourts/j.php?MTID=m6ed2f9fdd245f1af928fc01c661bd282>

12:00 pm – 2:00 pm

David Fureigh, Chair

<p><u>Attendees:</u> Carol Verdoia, Emeritus Member (Acting Chair) Judge Mary Manley Arek Butler Michelle Jeffs Matthew Johnson Mikelle Ostler Jordan Putnam Janette White Chris Yannelli</p>	<p><u>Excused Members:</u> David Fureigh, Chair Judge Elizabeth Lindsley Monica Diaz Kristin Fadel Sophia Moore</p>
<p><u>Staff:</u> Bridget Koza Meg Sternitzky, Juvenile Court Law Clerk Xen Fedison, Juvenile Court Law Clerk</p>	

1. Welcome and approval of the December 4, 2020 meeting minutes: (Carol Verdoia)

Carol Verdoia welcomed everyone to the meeting and asked for approval of the minutes.

Chris Yannelli moved to approve the December 4, 2020 meeting minutes. Matthew Johnson seconded the motion, and it passed unanimously. Judge Mary Manley had a possible change to the December 4, 2020 meeting minutes. She believed that vote to approve Rule 27A for publication was unanimous. The minutes were approved unanimously with the condition that Bridget Koza look into and correct the December 4, 2020 meeting minutes on the committee's decision regarding Rule 27(A). Bridget Koza reviewed previous meeting minutes and corrected

the December 4, 2020 meeting to reflect that the vote to approve Rule 27A for publication was unanimous.

2. Action – Venue Transfer and Rule 16A: (Chris Yanelli & Janette White)

Janette White discussed with the committee the approved amendments to Rule 16A. Janette noted that the committee had planned to see if the recodification made changes to § 76A-6-110 before voting to present the rule to Supreme Court. Bridget summarized the changes made to Rule 16 and 16A and commented that draft Juvenile Court Recodification bill strikes the language in rule from the statute and adds language to alert practitioners to the rule in the Utah Rules of Juvenile Procedure.

Judge Manley moved to present the revised Rule 16A to the Supreme Court to obtain permission to publish it for public comment. Janette White seconded the motion, and it passed unanimously.

3. Action – Petition contents and Rule 17: (Bridget Koza)

Bridget Koza discussed with the committee the approved amendment to add language in Rule 17 about the contents of a termination of parental rights petition to capture what is being repealed in § 78A-6-505(1) by the draft Juvenile Court Recodification bill. Bridget noted that the committee approved the draft at the December 4, 2020 meeting, but the committee did not vote on the motion to present the rule to the Supreme Court.

Michelle Jeffs moved to present the revised Rule 17 to the Supreme Court to obtain permission to publish it for public comment. Jordan Putnam seconded the motion, and it passed unanimously.

4. Action – Rights of minors in delinquency proceedings and Rule 26: (Bridget Koza)

Bridget Koza discussed with the committee the amendments to Rule 26 to make it consistent with the Indigent Defense Act. Bridget noted that paragraphs (b) and (c), which refer to a finding indigency, were removed and language was added in paragraph (a)(6) to indicate minors are appointed counsel at all stages of the proceedings.

Bridget further discussed with the committee paragraph (e) of Rule 26, which discusses when minors are capable of waiving his or her right to counsel. Bridget commented that the language in paragraph (e) conflicts with the language in § 78B-22-204. Bridget noted that Monica Diaz had made a recommendation to remove paragraph (e) and replace it with a reference to § 78B-22-204. The committee then discussed whether the rule should reference the statute or use the language from the statute. The committee agreed after further discussion that the amended language should exclude reference to the statute, since the amendment uses the language from § 78B-22-204.

Janette White moved to present the revised Rule 26 to the Supreme Court to obtain permission to publish it for public comment. Chris Yanelli seconded the motion, and it passed unanimously.

5. Discussion – Rule 45 and 46 – Disposition Reports: (Bridget Koza)

Carol Verdoia discussed with the committee whether they want to include language about submission of dispositional reports in Rule 45 and Rule 46 to capture the language about dispositional reports in termination proceedings under § 80-4-107(3)(a) of draft Juvenile Court Recodification bill. The committee discussed that it is unclear whether the term “dispositional hearing” in § 80-4-107(3)(a) refers to termination trials or post-termination proceedings. The committee further discussed that termination trials are formal and court reports are submitted pursuant to the Rules of Evidence. Carol suggested to remove language about petitions, so the statute would be applicable to post-termination review hearings. Janette further recommended that “dispositional hearing” should be changed to “for purposes of disposition and post-termination review.”

The committee agreed to add this to the agenda for the next meeting on February 5, 2021.

Bridget Koza further discussed that one of the juvenile judges recommended the committee look at the two-day submission timeline for pre-dispositional reports under paragraph (e) of Rule 45. Bridget noted the judge’s concern that under the current rule a pre-dispositional report can be submitted on the weekend, which prevents defense counsel from reviewing the report and discussing it with his or her client before a hearing on a Monday. Janette recommended that the timeline could be changed to match the child welfare timeline (reports have to be submitted five days before a hearing) or suggested a timeline of two business days. The committee noted that this could affect other entities and agreed they need more input.

Bridget Koza agreed to reach out to Tiffany Pew, Assistant Juvenile Court Administrator, to get more input before further discussion.

6. Old business/new business: (All)

The Committee had no further items for potential future agenda items.

The meeting adjourned at 1:15 pm. The next meeting will be held on February 5, 2021, at 12:00 pm via Webex.

TAB 2

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Rule 45. Pre-disposition reports and social studies.

(a) Unless waived by the court, a pre-disposition report shall be prepared in all proceedings which result in the filing of a petition. The pre-disposition report shall be deemed waived, unless otherwise ordered, in all traffic, fish and game and boating cases, and other bailable offenses. The report shall conform to the requirements in the Code of Judicial Administration.

(b) In delinquency cases, investigation of the minor and family for the purpose of preparing the pre-disposition report shall not be commenced before the allegations have been proven without the consent of the parties.

(c) The pre-disposition report shall not be submitted to or considered by the judge before the adjudication of the charges or allegations to which it pertains. If no pre-disposition report has been prepared or completed before the dispositional hearing, or if the judge wishes additional information not contained in the report, the dispositional hearing may be continued for a reasonable time to a date certain.

(d) For the purpose of determining proper disposition of the minor and for the purpose of establishing the fact of neglect or dependency, written reports and other material relating to the minor’s mental, physical, and social history and condition may be received in evidence and may be considered by the court along with other evidence. The court may require that the person who wrote the report or prepared the material appear as a witness if the person is reasonably available.

(e) The pre-dispositional report and social studies shall be provided by the author to the minor's counsel, the prosecuting attorney, the guardian ad litem, and counsel for the parent, guardian or custodian of the minor at least two days prior to the dispositional hearing. When the minor or the minor's parent, guardian or custodian are not represented by counsel, the court may limit inspection of reports by the minor or the minor's parent, guardian or custodian if the court determines it is in the best interest of the minor to do so.

TAB 3

Rule 16 Transfer of delinquency case ~~for preliminary inquiry~~.

(a) Transfer of delinquency case for preliminary inquiry.

(a)(1) When a minor resides in a county within the state other than the county in which the alleged delinquency occurred, and it appears that the minor qualifies for a nonjudicial adjustment pursuant to statute, the intake probation officer of the county of occurrence shall, unless otherwise directed by court order, transfer the referral to the county of residence for a preliminary inquiry to be conducted in accordance with Rule 15. If any of the following circumstances are found to exist at the time of preliminary inquiry, the referral shall be transferred back to the county of occurrence for filing of a petition and further proceedings:

(a)(1)(A) if a minor, the child or the child’s parent, guardian or custodian cannot be located or failed to appear after notice for the preliminary inquiry;

(a)(1)(B) if a minor, the child or the child’s parent, guardian or custodian declines an offer for a nonjudicial adjustment;

(a)(1)(C) if a minor or the minor’s custodian cannot be located or fails to appear after notice for the preliminary inquiry or the minor declines an offer for a nonjudicial adjustment;

(a)(1)(D) there are circumstances in the case that require adjudication in the county of occurrence in the interest of justice; or

(a)(1)(E) there are multiple minors involved who live in different counties.

(b) If the referral is not returned to the county of occurrence, a petition may be filed in the county of residence, and the arraignment and all further proceedings may be conducted in that county if the petition is admitted.

(c) After the filing of a petition alleging a delinquency or criminal action, the court may transfer the case to the district where the minor resides or the district where the violation of

28 law or ordinance is alleged to have occurred. The court may, in its discretion, after
29 adjudication certify the case for disposition to the court of the district in which the minor
30 resides.

31 (d) The transferring or certifying court shall notify the receiving court and transmit all
32 documents and legal and social records, or certified copies to the receiving court. The receiving
33 court shall proceed with the case as if the petition had been originally filed or the adjudication
34 had been originally made in that court.

35 (e) The dismissal of a petition in one district where the dismissal is without prejudice and
36 where there has been no adjudication upon the merits shall not preclude refiling within the
37 same district or another district where there is venue of the case.

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Rule 16A. Transfer of a non-delinquency proceeding.

(a) After the adjudication of a petition in a non-delinquency proceeding, the court may transfer the case to the district where the minor or parent resides so long as the court finds it is in the best interest of the minor.

(b) A case may not be transferred prior to adjudication unless the court finds good cause to transfer the matter to another district.

(c) The court may not transfer the case to another district after the initial disposition hearing unless the transferring court first communicates and consults with the receiving court.

(d) The receiving court shall schedule a hearing within 30 days of receiving notice of the transfer.

(e) The transferring or certifying court shall notify the receiving court and transmit all documents and legal and social records, or certified copies to the receiving court. The receiving court shall proceed with the case as if the petition had been originally filed or the adjudication had been originally made in that court.

(f) The dismissal of a petition in one district where the dismissal is without prejudice and where there has been no adjudication upon the merits shall not preclude refileing within the same district or another district where there is venue of the case.

TAB 4

1 *Draft January 8, 2021*

2 **Rule 17. The petition.**

3 **(a) Delinquency cases.**

4 (a)(1) The petition shall allege the offense as it is designated by statute or
5 ordinance, and shall state: in concise terms, the definition of the offense together
6 with a designation of the section or provision of law allegedly violated; the name,
7 age and date of birth of the minor; the name and residence address of the minor's
8 parents, guardian or custodian; the date and place of the offense; and the name or
9 identity of the victim, if known.

10 (a)(2) The petition shall be verified and filed by the prosecuting attorney upon
11 information and belief.

12 **(b) Neglect, abuse, dependency, permanent termination and ungovernability cases.**

13 (b)(1) The petition shall set forth in plain and concise language the jurisdictional
14 basis as designated by statute, the facts supporting the court's jurisdiction, and the
15 relief sought. The petition shall state: the name, age and residence of the minor;
16 the name and residence of the minor's parent, guardian or custodian; and if the
17 parent, guardian or custodian is unknown, the name and residence of the nearest
18 known relative or the person or agency exercising physical or legal custody of the
19 minor.

20 (b)(2) The petition must be verified and statements made therein may be made on
21 information and belief.

22 (b)(3) A petition filed by a state human services agency shall either be prepared or
23 approved by the office of the attorney general. When the petitioner is an employee
24 or agent of a state agency acting in his or her official capacity, the name of the
25 agency shall be set forth and the petitioner shall designate his or her title.

26 (b)(4) A petition for termination of parental rights shall also include, to the best
27 information or belief of the petitioner: the name and residence of the petitioner;
28 the sex and place of birth of the minor; the relationship of the petitioner to the
29 minor; the dates of the birth of the minor's parents, if known; and the name and
30 address of the person having legal custody or guardianship, or acting in loco
31 parentis to the minor, or the organization or agency having legal custody or
32 providing care for the minor.

33 (c) **Other cases.**

34 (c)(1) Protective orders. Petitions may be filed on forms available from the court
35 clerk and must conform to the format and arrangement of such forms.

36 (c)(2) Petitions for adjudication expungements must meet all of the criteria of Utah
37 Code section 78A-6-1503 and petitioner. Petitions for expungement must be
38 accompanied by an original criminal history report obtained from the Bureau of
39 Criminal Identification and proof of service upon the County Attorney, or within
40 a prosecution district, the District Attorney for each jurisdiction in which an
41 adjudication occurred prior to being filed with the Clerk of Court.

42 (c)(3) Petitions for expungement of nonjudicial adjustments must meet all of the
43 criteria of Utah Code section 78A-6-1504 and shall state: the name, age, and
44 residence of the petitioner. Petition for nonjudicial expungement must be served
45 upon the County Attorney, or within a prosecution district, the District Attorney
46 for each jurisdiction in which a nonjudicial adjustment occurred.

47 (c)(4) Petitions for vacatur must meet all of the criteria of Utah Code section 78A-
48 6-1114 and shall state any agency known or alleged to have documents related to
49 the offense for which vacatur is sought. Petitions for vacatur must be accompanied
50 by an original criminal history report obtained from the Bureau of Criminal
51 Identification and proof of service upon the County Attorney, or within a

52 prosecution district, the District Attorney for each jurisdiction in which an
53 adjudication occurred prior.

54 (c)(5) Petitions in other proceedings shall conform to Rule 10 of the Utah Rules of
55 Civil Procedure, except that in adoption proceedings, the petition must be
56 accompanied by a certified copy of the Decree of Permanent Termination.

TAB 5

1 Draft January 8, 2021

2 **Rule 26. Rights of minors in delinquency proceedings.**

3 (a) A minor who is the subject of a delinquency petition filed pursuant to Section 78A-6-
4 103 shall be advised of the following rights:

5 (a)(1) to appear in person and to defend in person or by counsel;

6 (a)(2) to receive a copy of the petition which contains the allegations against the
7 minor;

8 (a)(3) to testify in the minor's own behalf;

9 (a)(4) to be confronted by the witnesses against the minor;

10 (a)(5) to have compulsory process to ensure the attendance of witnesses in the
11 minor's behalf;

12 (a)(6) to be represented by appointed counsel at all stages of the proceedings ~~and~~
13 ~~if indigent, to have appointed counsel;~~

14 (a)(7) to remain silent and to be advised that anything the minor says can and will
15 be used against the minor in any court proceedings; and

16 (a)(8) to appeal any adjudication against the minor in the manner provided by law.

17 ~~(b) If the minor or the minor's parent, guardian or custodian is found to be indigent and~~
18 ~~request counsel, the court shall appoint counsel at public expense in the manner provided~~
19 ~~by law. Where necessary to protect the interest of the minor, the court may appoint~~
20 ~~counsel without the request of the minor or parent, guardian or custodian.~~

21 ~~(c) If the parent, guardian or custodian of a minor is found not to be indigent, but does~~
22 ~~not or will not retain counsel for the minor and the minor has no means to retain counsel,~~
23 ~~the court may appoint counsel at public expense. However, the court may order, after~~
24 ~~giving the parent, guardian or custodian reasonable opportunity to be heard, that the~~
25 ~~parent, guardian or custodian reimburse the county for the cost of appointed counsel, in~~
26 ~~whole or in part, depending on ability to pay.~~

27 ~~(db)~~ Parties other than the minor have the right to be represented by counsel retained by
28 them and to participate as provided in these rules.

29 ~~(e) A minor 14 years of age and older is presumed capable of intelligently comprehending~~
30 ~~and waiving the minor's right to counsel as above and may do so where the court finds~~
31 ~~such waiver to be knowing and voluntary, whether the minor's parent, guardian or~~
32 ~~custodian is present. A child under 14 years of age may not waive such rights outside of~~
33 ~~the presence of the child's parent, guardian or custodian.~~

34 (c) A minor may not waive the right to counsel before:

35 (c)(1) the minor has consulted with counsel; and

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(c)(2) the court is satisfied that in light of the minor's unique circumstances and attributes:

(c)(2)(A) the minor's waiver is knowing and voluntary; and

(c)(2)(B) the minor understands the consequences of the waiver.