

Juvenile Law and Procedure

Presented by:

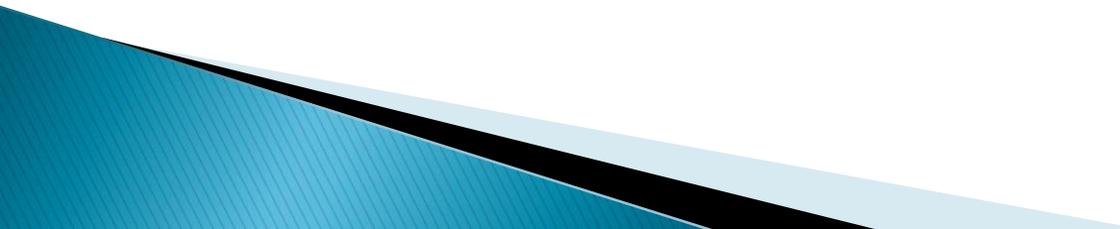
Gary R. Heward
Rich County Attorney

“A great relationship is about two things...

First, appreciating the **similarities**, and

Second, respecting the *differences*.”

-Unknown.



Two Sides of the House

- ▶ Delinquency
(minor violates the law)
 - Handled by County Attorney/DA
 - ▶ Abuse, Neglect and Dependency (authority over parents, caregivers and children)
 - ▶ –Aka Child Welfare Cases
 - Handled by the Utah Attorney General
- 

Public Defense

§78A-6-1111

- ▶ County is responsible for public defense in both delinquency and child welfare cases where state action is brought against a child or parents.
 - Trial and through the first appeal
 - County is not responsible for defense of private petitions by statute.

Procedural Distinctions

Adult

Criminal

Bail

Expungement (limited)

Jury

Hearings Open to
Public

Juvenile

Civil Except

- ▶ Transfer to Adult Court
- ▶ Traffic

§78A-6-116

No bail except Out of State
§78A-6-113(12)

Expungement (all)
§78A-6-1105

No jury

Public Screened
§78A-6-114

Terminology

Adult

Defendant

Arrest Warrant

(No equivalent)

Information

(No equivalent)

Juvenile

Minor, Child,
Delinquent

Pick-up Order

Formal Referral

Petition

Preliminary Inquiry &
Non-Judicial Closure

Adult

Guilty/Not Guilty

Conviction

Sentencing

Jail

Prison Diagnostic

Prison

Juvenile

True/Not True

Adjudication
§78A-6-105(3)

Disposition

Detention §62A-7-101

O & A (45 days)

Secure Confinement
(Facility)

DEFINITIONS OF TERMS

“Minor”

Juvenile Court Act: A person under the age of 18.
§78A-6-105(24)

Other common terms: child, delinquent, youth...



Formal Referral

§78A-6-602(1), Rule 14 URJP, 7-301,RJA

A written report from the police officer or other person informing the court that a minor is or appears to be within the court's jurisdiction and that a petition may be filed.

If minor is in detention, referral must be filed w/in 72 hours. No need for referral w/Class B or less.

If arrest but no detention: 10 days to file referral.

Preliminary Inquiry

§78A-6-602, Rule 14 & 15 URJP, 7-301, RJA

After a referral is made to the court, a voluntary meeting between the probation officer, minor and his/her parent to determine if its in the best interest of the public and minor to go forward.



Non-Judicial Adjustment/Closure

- ▶ Closure of the case without court involvement.
- ▶ Minor admits conduct.
- ▶ Petition may still be filed.
- ▶ Information not admissible in an adjudicatory proceeding.
- ▶ Minor, Parent/legal guardian and Probation Officer sign agreement re conditions for NJC.
- ▶ Conditions may include: fine, restitution, counseling, community service, restrictions on activities and associations.

Petition

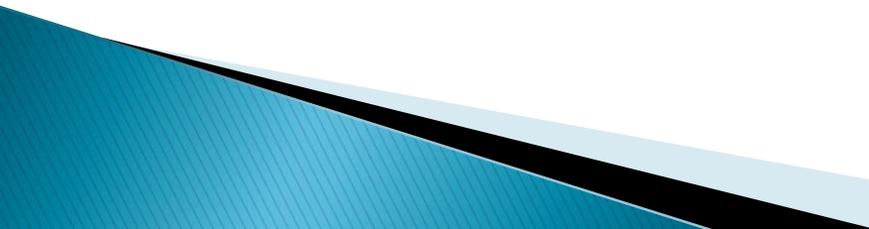
§78A-6-602, Rule 17, URJP

- ▶ Charging document
 - ▶ Includes information about the child, his/her parents, address(es)
 - ▶ Crime and the elements
- 

JURISDICTION ISSUES

Exclusive Jurisdiction

§78A-6-103

- ▶ General Rule: A minor who violates federal, state, local or municipal laws (some exceptions)
 - ▶ Person under 21 who commits a crime while under the age of 18
 - ▶ Traffic and boating offenses for any person under 16
 - ▶ Ungovernable, runaway, truant
 - ▶ Specific Serious Traffic Offenses (see below)
- 

Jurisdiction–Traffic Offenses

§78A-6-104

Traffic and boating offenses may go into adult or justice court for minors 16 and 17

EXCEPT exclusive Juvenile Court jurisdiction for specific traffic offenses for ALL minors:

- (1) Auto homicide,
- (2) D.U.I.,
- (3) Reckless Driving,
- (4) Unauthorized Control Over a Motor Vehicle, AND
- (5) Fleeing a Police Officer (Evading).

Concurrent Jurisdiction

§78A-6-1001

- ▶ ADULTS charged with:
 - Unlawful sale or supply of alcohol to a minor
 - Failure to report child abuse or neglect
 - Harboring a runaway
 - Misdemeanor custodial interference
 - Contributing to the delinquency of a minor
 - Compulsory education requirements.

Venue

§78A-6-110

A minor's case shall be commenced in the court of the district where:

- a. the minor lives or
- b. where the crime occurred.

Minor generally arraigned in the county where they live or are found. If Petition not admitted, the case is returned to the county of the offense for prosecution.

General agreement not to negotiate other county's petitions without discussion.



Bail

§78A-6-113(12), Rule 10, URJP

Provisions regarding bail are not applicable to minors unless held as an adult or they are a nonresident minor.

Arrest/Taking Child Into Custody

§78A-6-112

- ▶ Officer may take a child into custody
 - With a Court Order
 - Without a Court Order if
 - Violate any law in the officer's presence
 - Reasonable grounds to believe minor committed felony
 - Seriously endangered/endangering and immediate removal is necessary for protection of child or others
 - Runaway
 - Truant
- ▶ If taken into temporary custody officer must w/o unnecessary delay, notify and release to parent or take to detention.

Detention of Minors

§78A-6-113(8) and §62A-7-201

General Rule: Minors may not be housed or held with adult offenders.

Main exception: Minors with court order, transferred into the adult system

JUVENILE TRANSFERS TO ADULT SYSTEM

Three Ways to Transfer Juveniles into Adult System

1. Automatic Transfer
2. Certification
3. Serious Youth Offender

Automatic Transfer

§78A-6-701

If a minor is 16 years of age and CHARGED with:

- Murder,
- Aggravated Murder, or
- Felony after being committed to a “Secure Facility.”
 - Exception for offenses committed in a secure facility.

Certification

§78A-6-703, Rules 22, 23 23A URJP

Requirements:

- ▶ 14 years of age or older
 - ▶ charged by Information with a felony AND
 - ▶ Best Interest of the child or society to certify.
- 

Procedure

Preliminary Hearing

Certification Hearing
(State's Burden)

Held in Juvenile Court.

Factors to be considered in determining “best interests” are specifically enumerated in the statute.

Burden

Probable Cause

Preponderance of the
Evidence:

“Contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction.”

Certification

If certified, the Juvenile Court sets bail and the minor is transferred to jail. No further right to a preliminary hearing.

Juvenile Court loses jurisdiction.

If minor is found guilty of any portion of the offense, juvenile court loses all subsequent jurisdiction.

Serious Youth Offender

§78A-6-702

Requirements:

16 years of age or older

+

charged by Information with one of the “Ten Deadly Sins.”

“Ten Deadly Sins”

- (1) Aggravated arson,
 - (2) Aggravated assault (2nd degree),
 - (3) Aggravated kidnapping,
 - (4) Aggravated burglary,
 - (5) Aggravated robbery,
 - (6) Aggravated sexual assault,
 - (7) Discharge of firearm from a vehicle,
 - (8) Attempted aggravated murder,
 - (9) Attempted murder,
 - (10) Felony weapon + prior felony (weapon)
- 

Procedure

Preliminary Hearing

Retention Hearing

Court

Burden

Probable Cause
(State)

Defendant has burden of
going forward and
presenting evidence.

Clear and Convincing

Retention Hearing Factors

Once the State has established probable cause to believe that the crime has been committed and the defendant has committed it.

The Court, shall order the defendant be bound over unless it would be contrary to the best interest of the minor and to the public.

In making the bind over determination the court shall consider only the following:



Retention Hearing Factors

- 1 – Whether the minor has been previously adjudicated delinquent for an offense involving the use of a dangerous weapon which would be a felony if committed by an adult.
 - 2 – If the offense was committed with one or more other persons, whether the minor appears to have a greater or lesser degree of culpability than the codefendants.
 - 3 – The extent to which the minor's role in the offense was committed in a violent, aggressive, or premediated manner.
 - 4 – The number and nature of the minor's prior adjudications in the juvenile court.
 - 5 – Whether public safety is better served by adjudicating the minor in the juvenile court or in the district court.
- 

INVESTIGATING JUVENILES

Custody, Warrants, Fingerprinting, Photographing,
HIV Testing, Questioning

Court Orders

Rule 7 URJP & §78A-6-106

General Rule: Juvenile Court has same authority to issue pick up orders, search warrants and subpoenas as in the adult system.

Obtaining Search Warrants for Kids

§78A-6-106(2)

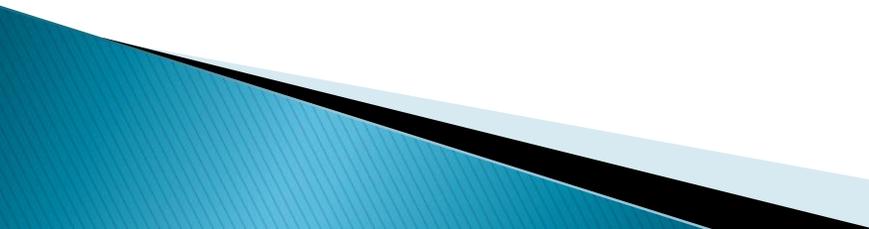
Affidavit or Sworn Testimony of Probable Cause to believe:

- a. immediate threat to child,
- b. reasons why parents should not be given notice and hearing,

Officer may use force if necessary.

(78A-6-106(3)(a))

See also 77-23-210



Obtaining a Pick Up Order

Rule 7, URJP

Process is similar to obtaining an arrest warrant

1. Have prosecutor file a petition,
2. Submit an affidavit showing probable cause of:
 - a. Felony committed,
 - b. Prior FTAs,
 - c. Substantial likelihood minor won't respond to summons,
 - d. Unknown location,
 - e. Public necessity, or
 - f. Runaway.

Photographing, Fingerprinting & HIV Testing

§78A-6-1104(1) & Rule 27, URJP

Rules apply before juveniles may be subjected to these procedures. Important to do so, just be aware of the rules.

General Rule: If you have a legitimate reason to do so, you should be able to fit it into the rule.

Photographing

§78A-6-1104(1) & Rule 27, URJP

Age 14 or older:

- a. Custody + Felony;
- b. Serious Habitual Offender + under jurisdiction of Juvenile Court or Division of Juvenile Justice System (call juvenile probation),
- d. Discovery motion + “material aid” (call prosecutor), or
- e. Upon Adjudication of Felony or a Class A Misdemeanor.

Fingerprinting

§78A-6-1104(2) & Rule 27, URJP

Age 14 or older:

- a. Custody + felony,
- b. Serious Habitual Offender + under jurisdiction of Juvenile Court or Division of Juvenile Justice System,
- c. Required to provide a DNA specimen,
- d. Discovery motion + “material aid”
- e. Upon Adjudication of Felony and Class A misdemeanor.

HIV Testing

§78A-6-1104(3) & Rule 27, URJP

1. Custody + Adjudicated of a sex offense,
2. Request of victim, or
3. Request of parent or guardian to victim.

Court order required if under age 14.

Interviews in Detention Facility

Rule 8, URJP

14 years and older:

Minor consent + parent consent + waiver of rights

Under 14 years of age:

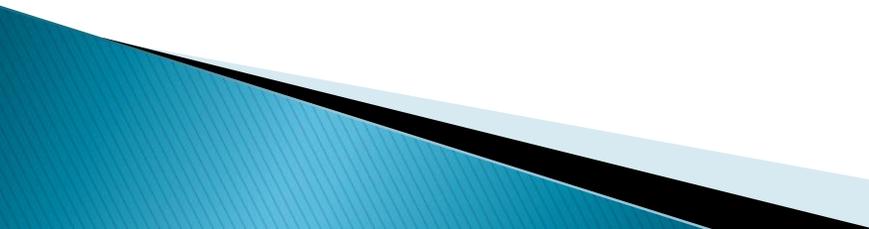
General rule: must have parent present

Except:

- a. written permission from parent,
- b. parent waived rights, **and**
- c. minor waived rights.

Interviewing

Rules 27A, URJP

- ▶ In custody: must be advised of rights
 - ▶ 14 or older: presumed capable of waiving rights without parent present
 - ▶ Under 14: presumed incapable of waiving rights unless parent is present (maturity issue)
 - May be overcome by a preponderance
- 

Custodial Interviews

Under 14 years of age:

General rule: must have parent present

Except:

- a. written permission from parent,
- b. parent waived rights, **and**
- c. minor waived rights.

Contact Information

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