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# UTAH JUVENILE COURT PRACTICE BOOK

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## Table of Contents

### **INTRODUCTION TO JV COURT** **3**

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*Limitations on Public Defenders*  
*People who Work in the Juvenile Court*  
*Parents' Rights and Responsibilities*  
*The Juvenile Court Process*  
*Relevant Definitions*

### **DETERMINING JURISDICTION** **7**

---

Matters of Exclusive & Original JV Jurisdiction  
*Delinquents / Serious Youth Offenders / Bindovers*  
*Neglected, Abused, or Dependent Children*  
District Court Jurisdiction Concurrent with JV Court

### **PROTECTIVE CUSTODY** **18**

---

*Conditions Necessary for Protective Custody Intervention*  
*Previous Adjudications / Secure Facilities / Warrants*  
*Factors NOT for sole consideration in determining removal*

### **HEARINGS & COURT PROCEDURES** **21**

---

Who may Attend/be Excluded from Hearings  
Children at Hearings  
Hearing Cases Separately  
Employers' Duty to Parents  
Evidence at Hearings  
Shelter Hearings  
Mediation  
Pre-trial Hearings  
Trial/Adjudication  
Dispositional Hearings  
Reunification  
*Determining if reunification is appropriate*  
*Are reunification services reasonable?*  
Review Hearings  
Permanency Hearings  
Parental Presumption, TPR, & Voluntary Relinquishment  
*Voluntary Relinquishments v. Forced Termination of Parental Rights*

## Introduction to JV Court

### PUBLIC DEFENDERS' LIMITATIONS ON REPRESENTATION

Public Defenders cannot represent clients in private matters such as, private petitions for custody, grandparent visitation, or other private matters before the Juvenile Court. If the Court does appoint us in such matters, however, the Public Defender's office is required to seek reimbursement from the client.

### PEOPLE WHO WORK IN JUVENILE COURT

**Judge** – Hears all evidence & makes decisions based on Utah law to protect the rights of children and parents

**Assistant Attorney General (AG)** – Represents the State (DCFS, *Department of Child and Family Services*)

**Parent's Attorney (also known as Public Defender PD)** – Represents interests/rights of the parents

**Guardian ad Litem (GAL)** – Attorney represents the stated interest and the best interest of the child

**DCFS Caseworkers** – Employed by the State. Ensure safety of child; make recommendations about future of child and services required of the parents (this should be your best friend and resource throughout your child welfare case)

**CASA** – *Court Appointed Special Advocate*, sometimes appointed to assist GAL

**Court Clerk** – Judge's assistant

**Bailiff** – Officer in charge of courtroom security

### PARENT'S RIGHTS & RESPONSIBILITIES

#### Parents have the RIGHT to:

1. An attorney
2. Be present & participate in all court hearings
3. Understand what is required do to get child home and to help to do it
4. Examine court files about the case

#### Parents have the RESPONSIBILITY to:

1. Visit with the child as soon as possible & as often as possible
2. Do best to be a good parent & provide safe home for child
3. Cooperate with DCFS caseworker; follow Service Plan
4. Make sure attorney & caseworker always have current address and phone number
5. Attend all court dates on time & in appropriate dress
6. Tell attorney if they have serious problems with caseworker or Service Plan
7. Stay informed with case at all times

## THE JUVENILE COURT PROCESS

***Shelter Hearing*** – Held within 3 days of removal—First court hearing after removal of child. Judge determines, based on the presented evidence, (1) whether removal by DCFS was reasonable, and (2) whether continued removal is necessary. If removal is necessary, placement with a relative or friend is the preferred outcome. If placement with a relative or friend is not possible, the child will be placed in foster care. If the State is awarded ongoing custody of the children or intends to monitor the parenting of the children, the State will file a Petition for Custody or for Protective Supervision. The Petition further asks for findings of neglect, abuse, or dependency of the children.

***Mediation*** – Can occur after Shelter Hearing. Mediation is an out-of-court process where a specially trained mediator attempts to resolve disputes between the State’s Petition and the parent’s view of the initial finding of facts in the Petition. The State (AG and DCFS) may change language in the Petition if the explanations by the parents in mediation warrant a change. If the parties are unable to reach an agreement as to the language of the Petition, the parties may request trial to determine the initial findings of fact. At Trial, the State must prove its initial findings of fact by clear & convincing evidence.

***Pretrial Hearing*** – Within 15 days of the Shelter Hearing. If parties are unable to agree on the language in Petition, a trial on the Petition will be held. At the Pretrial Hearing, the Court will establish the time frames and the trial date.

***Trial (Adjudication)*** – Within 60 days of the Shelter Hearing. Court will receive evidence (witness testimony and document evidence) from the State and the Parents in regarding the allegations made in the Petition. The Court, based on the evidence at trial, will determine whether child was abused, neglected, or dependent. If the Court determines that the children are abused, neglected or dependent, the court will set the matter for a Dispositional Hearing to determine how to resolve the abuse, neglect, or dependency.

***Dispositional Hearing*** – Within 30 days of Trial. At the dispositional hearing, the Court will determine the temporary placement of the children. The Court will also determine primary and secondary goals for permanent child placement. In most cases the Court will find that reunification with one or both parents to be the primary goal. Other permanent goals include, guardianship with family or friends, individual self-sufficiency (usually reserved for children 16 and older), and adoption. At this hearing, DCFS will generally present a Service Plan that has been developed, with the assistance of parents, to resolve the abuse, neglect, or dependency. Parents have 10 days to object to the Service Plan after receiving it. The Court will review the Plan and determine if it adequately addresses the concerns outlined in the Petition. The Court will also set the matter for review. *\*At or before this point in the case, it is important to be in constant contact with the caseworker and request assistance if you have any problems completing the Service Plan.*

***Review Hearings*** – When the case is reviewed periodically by judge. DCFS provides judge with report on progress. Case also may be reviewed by Foster Care Citizen Review Board, which sends report to judge. Judge may enter new orders regarding Parents and child.

***Motions*** – Requests for expansion of visits or to return the children home can occur at any time. The Court will receive evidence from parents, the State, and the Guardian ad Litem as to the parent's progress on their service plan and the best interests of the children.

***Permanency Hearing*** – Within 8 months to 1 year, depending on the child's age. The Court will evaluate the permanent placement goal and determine if the goal is still appropriate. If the parents have failed to comply with their service plan or have otherwise failed to fix the problems that brought about State involvement, the Court can change the permanent placement goal and order DCFS to stop assisting the parents in their goal of having their child returned home.

***Termination of Parental Rights Trial*** – If the Court orders DCFS to stop providing assistance, the State is required to file a Petition to Terminate Parental Rights. A pretrial will be set at which the Court and Counsel will determine the dates for the parties to exchange information and will also set a trial date. At trial, the State has the burden to show parental unfitness by clear and convincing evidence. They must also show that the Termination of Parental Rights is in the child's best interest. If the parent's rights are terminated, this finding can be used as a presumption that the parent is unfit in future cases regarding this child and other children.

***Voluntary Relinquishment*** – Parents can voluntarily give up their parental rights at any time. The parent must sign documents before the judge or other authorized individual. Voluntary relinquishment of parental rights is final and irrevocable. This terminates the parent's rights to the child, but does not carry the presumption of unfitness in future cases.

***Appealing Your Case*** – Within 15 days of the judge's final written decision. If Parents disagree with a final court decision, the parent may appeal to Utah Court of Appeals. Notice of appeal must be done within 15 days of judge's written decision, and signed by Parent and attorneys.

## RELEVANT DEFINITIONS

### 78A-6-105

(1)(a) **“Abuse”** means—non-accidental harm of a child, threatened harm of a child, sexual exploitation or sexual abuse of a child.

(1)(b) **Abuse**—does not include reasonable discipline or management of a child

(19) **Harm**—Physical, emotional, or developmental injury or damage

(11) **Dependent**—a child who is homeless or without proper care through no fault of the child’s, parent, guardian, or custodian.

(17) **Guardianship**—allows the guardian to consent to marriage, enlistment in armed forces, major medical, surgical or psychiatric treatment or Legal Custody

(21) **Legal Custody**—Right to physical custody; right and duty to protect, train and discipline the minor; the duty to provide the minor with food clothing, shelter, education and ordinary medical care; right to determine where minor will live; right in an emergency, to authorize surgery or other extraordinary care.

(25) **Neglect**—Abandonment, lack of proper parental care by reason of fault or habits of the parent, guardian, or custodian; failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence, education, or medical care, or any other care necessary for the child’s health, safety, morals or well-being, or “sibling at risk.” Or “Educational neglect”

(30) **Protective Supervision**—Following an adjudication for abuse, neglect, or dependency, the minor remains in the home with the parent with supervision and assistance from DCFS, probation etc...

(31) **Residual Parental Rights**—Unless assigned to another parent retains: duty to support child, right to consent to adoption, right to determine child’s religious affiliations, right to reasonable parent-time.—If no guardian is appointed, parent retains right to consent to: marriage, medical treatment, major medical, surgical, and psychiatric treatment.

## Determining Jurisdiction

### MATTERS OF EXCLUSIVE & ORIGINAL JV JURISDICTION

#### **Emancipation of a Minor—78A-6-103(1)(f)**

The juvenile court has jurisdiction over the emancipation of a minor under 78A-6-805, where

- (1) An emancipated minor may enter into contracts, buy and sell property, sue or be sued, retain his or her own earnings, borrow money for any purpose, including for education; and obtain healthcare without parental consent;
- (2) An emancipated minor may not be considered an adult under the criminal laws of the state unless the requirements of Part 7, Transfer of Jurisdiction, have been met; under the criminal laws of the state when he or she is a victim and the age of the victim is an element of the offense; and for specific constitutional and statutory age requirements regarding voting, use of alcoholic beverages, possession of tobacco or firearms, and other health and safety regulations relevant to the minor because of the minor's age;
- (3) An order of emancipation prospectively terminates parental responsibilities that accrue based on the minor's status as a minor under the custody and control of a parent, guardian, or custodian, including parental tort liability for the acts of the minor.

#### **Civil commitments of minors—78A-6-103(1)(h) & (m)**

The juvenile court has exclusive original jurisdiction in proceedings concerning the treatment or commitment of a minor who has an (h) intellectual disability or (m) mental illness. The court may commit the child to the physical custody of a local mental health authority in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, but not directly to the Utah State Hospital;

#### ***RETENTION AFTER COMMITMENT***

Court could commit defendant to state industrial school but expressly retain jurisdiction to complete the proceedings for purpose of determining question and amount of restitution. *State ex rel. Schroeder*, 598 P.2d 373 (Utah 1979).

#### **Habitual Truancy—78A-6-103(1)(i)**

The juvenile court has exclusive original jurisdiction in proceedings concerning a minor who is habitually truant from school.

#### **Consent for marriage of 16 y/o without consent of parents—78A-6-103(1)(j)**

Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings concerning marriage of a 16 year old in state custody.

#### ***MARRIAGE OF JUVENILE***

Marriage of juvenile delinquent did not take away jurisdiction of juvenile court over

delinquent until child reached majority. *Stoker v. Gowans*, 45 Utah 556, 147 P. 911, Ann. Cas. 1916E, 1025 (1915); *Chatwin v. Terry*, 107 Utah 340, 153 P.2d 941 (1944).

#### **JV Court's jurisdiction over parents of delinquent youth—78A-6-103(1)(k)**

JV Court has jurisdiction over any parents of a child **committed to a secure youth corrections facility**. The court has discretion to recommend a secure facility to house the child. The court may order the child to undergo group rehabilitation therapy at the secured facility, under the direction of the facility's therapist, or any other therapist as appointed by the court, for a period of time as recommended by the facility or under the court's discretion.

#### ***JURISDICTION OVER PARENT***

The jurisdiction of the juvenile court over a child is a prerequisite to obtaining jurisdiction of that child's parent. *In re State ex rel. Graham*, 110 Utah 159, 170 P.2d 172 (1946).

#### **Adoptions—78A-6-103(1)(q)**

JV Court has exclusive original jurisdiction in proceedings concerning adoptions (*conducted in accordance with the procedures in Title 78B, Chapter 6, Part 1, Utah Adoption Act*) when the JV Court has previously entered an order terminating the rights of a parent and finds that adoption is in the best interest of the child.

#### ***ADOPTION & TERMINATION OF JURISDICTION.***

The juvenile court lacked subject-matter jurisdiction to enforce a pre-adoption visitation order after entering a decree of adoption. Once the legal relationship of parent and child is established, the juvenile court lacks jurisdiction over the adopted child until new requirements for jurisdiction are satisfied. *Hardinger v. Scott (State ex rel. B.B.)*, 2004 UT 39, 94 P.3d 252.

#### **Ungovernable Children and Runaways—78A-6-103(3)**

JV Court has exclusive original jurisdiction in proceedings concerning an ungovernable or runaway child who is referred to the court by DCFS, or by public or private agencies that contract with the division to provide services to that child where—despite earnest and persistent efforts by the division or agency—the child has demonstrated that he/she:

- (a) is beyond the control of the child's parent, guardian, lawful custodian, or school authorities to the extent that the child's behavior or condition endangers the child's own welfare or the welfare of others; or
- (b) has run away from home.

#### ***RUNAWAY CHILDREN***

Running away from home is not a violation of law, and juvenile court may take jurisdiction over runaway only upon referral by an agency as specified in former § 78-3a-16.5. *State v. Dung Hung Vo*, 585 P.2d 464 (Utah 1978).

**JV JURISDICTION—  
DELINQUENCY / SERIOUS YOUTH OFFENDERS / BINDOVERS**

**Delinquency of Minor Before Age 18 and up to 21 Years—78A-6-103(1)(a)**

JV Court has jurisdiction over any child who has violated any federal, state or local law, or ordinance before become 18. This jurisdiction continues until 21 for the purpose of causing compliance with issued orders.

→This is exclusive for class B and C misdemeanors **78A-6-103(2)**

→For felonies, see **78A-6-702(1)(a)&(b)**

→**Delinquents over 18 and New Crimes—78A-6-104(1)(a)** JV Court maintains jurisdiction over delinquents over the age of 18 who commit new crimes.

**Serious Youth Offender Action (i.e., Bindover Proceedings)—78A-6-103(5)**

The juvenile court has jurisdiction of all magistrate functions relative to cases arising under Section **78A-6-702**.

**Definition of a Serious Youth Offender—78A-6-702(1)(a)&(b)**

Describes a serious youth offender. A serious youth offender is one who is 16 years or older charged with any felony violation of:

- (a) (i) 76-6-103, aggravated arson;
- (ii) 76-5-103, aggravated assault resulting in serious bodily injury
- (iii) 76-5-302, aggravated kidnapping;
- (iv) 76-6-203, aggravated burglary;
- (v) 76-6-302, aggravated robbery;
- (vi) 76-5-405, aggravated sexual assault;
- (vii) 76-10-508.1, felony discharge of a firearm;
- (viii) 76-5-202, attempted aggravated murder; or
- (ix) 76-5-203, attempted murder; or
- (b) An offense involving a dangerous weapon (*which would have been considered a felony if committed by an adult*) with prior convictions.

***JURISDICTION IN BINDOVERS***

This section is not intended to delimit absolutely the types of crimes for which a juvenile defendant may be tried in district court. The purpose of the statute is to define the manner in which such charges will be disposed. *State v. Houskeeper, 2002 UT 118, 462 Utah Adv. Rep. 24, 62 P.3d 444.*

Because this section allows the district court to retain jurisdiction over minors who are found guilty of charges arising from the same criminal episode as that for which they are bound over, district court was not required to remand proceedings against juvenile defendant bound over for, and found not guilty of, attempted murder but convicted of third degree felony aggravated assault. (Decided before 2010 addition of provisions terminating juvenile court's jurisdiction over such offenses.) *State v. Tunzi, 2002 UT 119, 63 P.3d 70.*

***CRIMINAL OFFENSES.***

Seventeen-year-old boy was not shown, on the record, to be within juvenile court's jurisdiction where juvenile court before which he appeared on charge of taking indecent liberties ruled that he had committed simple assault instead, without making any formal findings of fact or conclusions of law. *State ex rel. R.N.*, 527 P.2d 1356 (Utah 1974).

Juvenile court has jurisdiction over juvenile who has committed a lesser included criminal offense of the offense for which he is charged. *State ex rel. L.G.W.*, 641 P.2d 127 (Utah 1982).

Where the majority of the Supreme Court were convinced that the state had failed to meet its burden of eliminating all reasonable doubt that defendant committed a crime when he was 18 years old, the Supreme Court reversed defendant's conviction of two counts of aggravated sexual abuse of a child and ordered the trial court to transfer the matter to the appropriate division of the juvenile court for further disposition according to statute. *State v. Walker*, 743 P.2d 191 (Utah 1987).

Subsection (1)(a) did not prohibit district court from exercising jurisdiction in proceedings involving defendant who was 21 at time of proceeding, but was 18 at time of the crimes. *State v. Hodges*, 2002 UT 117, 63 P.3d 66.

This section does not grant the juvenile court jurisdiction over all offenses committed by minors. *State v. Hodges*, 2002 UT 117, 63 P.3d 66.

Subsection (1)(a) creates two classes of offenders: (1) those who commit crimes while under age 18 and who are charged before reaching age 21, and (2) those who commit crimes while under age 18 and who are charged after reaching age 21. The first class of offenders comes under the jurisdiction of the juvenile court; the second class of offenders comes under the jurisdiction of the district court. *State v. Schofield*, 2002 UT 132, 63 P.3d 667.

Trying a person over the age of 21 in the district court as an adult for crimes he is alleged to have committed as a minor under Subsection (1)(a) does not violate the uniform operation of laws provision of the Utah Constitution, Art. I, § 24. *State v. Schofield*, 2002 UT 132, 63 P.3d 667.

**Probable Cause Required for Bindover—78A-6-702(3)(a)**

To bindover, the State must prove that there is probable cause to believe a felony crime has been committed and that the minor committed the crime. If proceeding under Subsection (1)(b), the State shall have the additional burden of proving by a **preponderance of the evidence** that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon.

### ***BURDEN OF PROOF***

Proof "that the minor's role in the offense was not committed in a violent, aggressive, or premeditated manner" does not require the juvenile court to employ a balancing test, rather the burden is on the juvenile to show by clear and convincing evidence that his or her role in the alleged offense was not violent, aggressive or premeditated. *Z.R.S. v. State*, 951 P.2d 1114 (Utah Ct. App. 1998).

Subsection (3) creates a strong presumption that cases involving inherently violent and aggressive offenses by juveniles 16 years of age and older will be transferred to the district court. The statute places the burden on a juvenile to show by clear and convincing evidence that his or her role in an alleged offense was not violent or aggressive. *State v. F.L.R. (State ex rel. F.L.R.)*, 2006 UT App 294, 141 P.3d 601.

### ***PREMEDITATED OFFENSES***

Bindover requiring a juvenile to stand trial as an adult for the offense of aggravated robbery was appropriate because the evidence suggested, and defendant did not disprove, that he took part in a premeditated plan to attack a store clerk. *State v. W.H.V. (State ex rel. W.H.V.)*, 2007 UT App 239, 164 P.3d 1279.

### ***ACTS OF VIOLENCE OR AGGRESSION***

Subsection (3)(b)(iii) does not require a finding that the minor acted with a level of violence and aggression greater than that inherent in the underlying offense. *M.E.P. v. State (In re M.E.P.)*, 2005 UT App 227, 526 Utah Adv. Rep. 16, 114 P.3d 596.

There is nothing in Subsection (3) requiring a juvenile court to find a level of violence or aggression greater than that inherent in the underlying offense. Nor is a juvenile court required to employ any sort of balancing test or to determine the degree of aggression and violence and whether it warrants treatment as an adult. *State v. F.L.R. (State ex rel. F.L.R.)*, 2006 UT App 294, 141 P.3d 601.

### ***THREATS TO USE VIOLENCE OR AGGRESSION***

Juvenile was properly tried as an adult for aggravated robbery because even though he never made any physical manifestation that he had a gun or explicitly threatened to use it, the statement "I have a gun," coupled with a demand for any money the victim was carrying, implied a threat that a gun was readily available and would in fact be used. The circumstances of the robbery supported the conclusion that his role in the crime was violent or aggressive. *State v. F.L.R. (State ex rel. F.L.R.)*, 2006 UT App 294, 141 P.3d 601.

**Challenging A Bindover: The Case Stays in JV Court If a Minor can Show—78A-6-702(3)(b)**

- (i) 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;
- (ii) 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; and
- (iii) That the minor's role in the offense was not committed in a violent, aggressive, or premeditated manner.

**→If Bound Over, JV Court Sets Bail—78A-6-702(5)**

If bound over, youth offender is entitled to bail hearing in JV court. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

**→If Bound Over, All Charges go to District Court—78A-6-702(7)-(10)**

(7) If a youth offender in a bindover is charged with multiple criminal offenses arising from the same criminal episode, or if any subsequent misdemeanors or felonies charged against him arise, the defendant shall also be bound over to the district court to answer for those charges.

(8) When a minor has been bound over to the district court under this section, the jurisdiction of the Division of Juvenile Justice Services and the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against the minor, except as provided in Subsection (12).

(9) A minor who is bound over to answer as an adult in the district court under this section or on whom an indictment has been returned by a grand jury is not entitled to a preliminary examination in the district court.

(10) Allegations contained in the indictment or information that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon, or is 16 years of age or older, are not elements of the criminal offense and do not need to be proven at trial in the district court.

**When District Court Retains Bindover Jurisdiction—78A-6-702(11)**

If a minor enters a plea to, or is found guilty of, any of the charges filed or any other offense arising from the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

**After District Court Bindover Proceedings, JV Court Can Regain Jurisdiction 78A-6-702(12)**

Under 78A-6-103 JV Court regains jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

## **JV JURISDICTION—NEGLECTED, ABUSED, OR DEPENDENT CHILDREN**

### **Child Welfare (*Neglected, Abused, or Dependent*)—78A-6-103(1)(c)**

JV Court has jurisdiction over a child who is abused, neglected or dependent as defined by **78A-6-105**, Petitions for such a finding must state facts to support that child is abuse, dependent, or neglected.

#### ***NEGLECTED OR DEPENDENT CHILDREN***

Petition, alleging facts showing that child was neglected by her father and that third person was providing care for her, was sufficient to confer jurisdiction on juvenile court to conduct inquiry into status and well-being of child, even though petition failed to state facts sufficient to show that child was "dependent child." *In re Olson*, 111 Utah 365, 180 P.2d 210 (1947).

In a proceeding to determine whether a child was neglected and best committed to the state welfare department for placement for purpose of adoption, allegations that the child had been abandoned by her father and that her mother had not contributed to her support were sufficient to confer jurisdiction on the juvenile court. *In re State ex rel. C*, 9 Utah 2d 345, 344 P.2d 981 (1959).

Juvenile court erred in exercising exclusive jurisdiction where finding of **dependency** was premised solely on inability of father to furnish his children with personal guidance and care because of his incarceration despite father's arrangement for care of his children with relatives whose home was found to provide a fine, stable, and comfortable environment. *In re State ex rel. Valdez*, 29 Utah 2d 63, 504 P.2d 1372 (1973).

#### ***REVIEW OF JV COURT ACTION***

Once the juvenile court, which has exclusive original jurisdiction in matters involving the dependency, neglect and/or delinquency of children, assumes jurisdiction of children whose dependency, neglect or delinquency is in issue, the matters of: (1) fitness of persons to have custody; and (2) the welfare of the minors are matters appealable directly to Supreme Court and not reviewable by the district court in habeas corpus proceedings. *Black v. Anderson*, 3 Utah 2d 42, 277 P.2d 975 (1954).

### **Findings of Abuse or Neglect—78A-6-103(6)**

JV Court has jurisdiction over substantiating allegations of abuse or neglect as part of an adjudication hearing in accordance with **78A-6-323**.

#### ***NEGLECTED OR DEPENDENT CHILDREN***

Petition, alleging facts showing that child was neglected by her father and that third person was providing care for her, was sufficient to confer jurisdiction on juvenile court to conduct inquiry into status and well-being of child, even though petition failed to state facts sufficient to show that child was "dependent child." *In re Olson*,

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Juvenile court erred in exercising exclusive jurisdiction where finding of dependency was premised solely on inability of father to furnish his children with personal guidance and care because of his incarceration despite father's arrangement for care of his children with relatives whose home was found to provide a fine, stable, and comfortable environment. *In re State ex rel. Valdez*, 29 Utah 2d 63, 504 P.2d 1372 (1973).

In the state's petition for custody alleging that a child was abused, dependent, and/or neglected, a juvenile court had subject matter jurisdiction because the mother had voluntarily placed the minor child in state custody and because, although the mother had not admitted abuse or neglect, she had admitted that her drug abuse prevented her from controlling her child's delinquent behavior, which supported the court's finding of neglect. *A.O. v. State (State ex rel. K.F.)*, 2009 UT 4, 201 P.3d 985.

**Establishing Subject Matter Jurisdiction—*Int'l Shoe v. State of Washington*, 326 U.S. 310 (1945)**

#### ***SUBJECT MATTER JURISDICTION***

In the state's petition for custody alleging that a child was abused, dependent, and/or neglected, a juvenile court had **subject matter jurisdiction** because the mother had voluntarily placed the minor child in state custody and because, although the mother had not admitted abuse or neglect, she had admitted that her drug abuse prevented her from controlling her child's delinquent behavior, which supported the court's finding of **neglect**. *A.O. v. State (State ex rel. K.F.)*, 2009 UT 4, 201 P.3d 985.

### **District Court Jurisdiction Concurrent with JV Jurisdiction**

**Child Protective Order—78A-6-103(1)(d)**

JV Court jurisdiction can be **transferred to District Court** if the court has a petition pending or an order related to custody or parent time (such as Divorce), and best interests of the child would be better served in District Court.

### **SUBSTANTIATIONS—DE NOVO REVIEW OF FINAL AGENCY ACTIONS**

**De novo Review—63G-4-402**

**(1) (a)** The district courts have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings, except that the juvenile courts

have jurisdiction over all state agency actions relating to:

- (i) the removal or placement of children in state custody;
- (ii) the support of children under Subsection (1)(a)(i) as determined administratively under Section 78A-6-1106; and
- (iii) **substantiated findings** of abuse or neglect made by the Division of Child and Family Services, after an evidentiary hearing.

### **Concurrent Jurisdiction When Minor Violates any Federal, State, Local Law—78A-6-104(1)(a)**

(a) When a person who is 18 years of age or older and who is under the continuing jurisdiction of the juvenile court under **78A-6-117** violates any federal, state, or local law or municipal ordinance.

→JV Jurisdiction for Serious Youth Offenders & Bind Overs (page 8)

### **JV/DC Concurrent Jurisdiction Areas—78-6-104(4)(b)**

The juvenile court may, by order, change the custody, subject to **30-3-10(4)**, support, parent-time, and visitation rights previously ordered in the district court as necessary to implement the order of the juvenile court for the safety and welfare of the child. The juvenile court order remains in effect so long as the jurisdiction of the juvenile court continues.

#### ***DISTRICT COURT JURISDICTION***

In an action brought by a grandfather to appoint a guardian of children's estates and persons, where the grandfather alleged in his petition that the natural guardian, the father, was not a fit person to have custody, the district court had jurisdiction to determine whether the father, who had custody, should retain it. *In re O'Hare's Guardianship*, 9 Utah 2d 181, 341 P.2d 205 (1959).

Juvenile court did not have exclusive original jurisdiction to determine custody of child where district court, after first having assumed original jurisdiction, referred custody question to juvenile court for investigation and recommendation; opinion of juvenile court was advisory only and the district court was required to make final determination. *In re State ex rel. Thornton*, 18 Utah 2d 297, 422 P.2d 199 (1967).

#### ***CUSTODY VESTED IN AGENCY***

Continuing jurisdiction of the juvenile court relating to the placement of children is not terminated by the vesting of legal custody in the Division of Family Services. *State ex rel. Summers v. Wulffenstein*, 571 P.2d 1319 (Utah 1977).

#### ***DISTRICT COURT REFERRALS***

Having once assumed original jurisdiction over question of custody of minor, district court could refer case to juvenile court for investigation and recommendation, but in so doing district court did not divest itself of further jurisdiction and juvenile court was required to return matter to district court for final determination; word "determination" in statute providing that "a district court

may at any time decline to pass upon a question of custody and may certify that question to the juvenile court for determination or recommendation" did not mean that once case was referred to juvenile court, decision of that court was final. *In re State ex rel. Thornton*, 18 Utah 2d 297, 422 P.2d 199 (1967).

#### ***CONFLICTING COURT ORDERS***

Where the juvenile court's jurisdiction was invoked to determine the custody and support of children of divorced parents and the district court had continuing jurisdiction over the same matter, such exercise of jurisdiction by the juvenile court was not exclusive and did not deprive the district court of further authority in the case, and an order by the district court which was contrary to an order by the juvenile court in such case would prevail. *Anderson v. Anderson*, 18 Utah 2d 89, 416 P.2d 308 (1966).

#### ***CONSTRUCTION WITH OTHER LAW***

A proceeding involving the termination of a parent's rights and obligations is not a custody proceeding; in conjunction with statutory provisions granting exclusive original jurisdiction to juvenile courts in termination proceedings, provides a specific statutory framework to follow in termination proceedings, and these specific statutory provisions prevail over the more general provisions of the Utah UCCJA, which makes no specific reference to termination proceedings. *T.B. v. M.M.J.*, 908 P.2d 345 (Utah Ct. App. 1995).

In a juvenile court proceeding held to determine whether a minor was an abused child under this chapter, provisions regarding the exemption of physical punishment of a child from criminal prosecution or the punishment of a minor child by a school official were inapplicable. *S.S.P. v. State*, 1999 UT App 157, 981 P.2d 848.

#### **Concurrent Jurisdiction Regarding Paternity issues—78A-6-104(1)(b)**

(b) The JV Court has jurisdiction to determine the paternity of an abandoned child, but the district court has jurisdiction over an action of paternity when the putative father is a minor.

#### ***PATERNITY ADJUDICATION***

Juvenile court had jurisdiction to determine paternity of abandoned child. *J.W.F. v. Schoolcraft*, 763 P.2d 1217 (Utah Ct. App. 1988), rev'd on other grounds sub nom. *State ex rel. J.W.F.*, 799 P.2d 710 (Utah 1990).

District court--not the juvenile court--had jurisdiction over action brought under the Uniform Act on Paternity, (former § 78-45a-1 et seq.; see now § 78B-15-104), when the putative father is a minor. *State ex rel. Utah State Dep't of Social Servs. v. Dick*, 684 P.2d 42 (Utah 1984).

#### **Concurrent Jurisdiction for Petitions to Modify Birth Certificates—78A-6-104(2)**

Except as otherwise provided by law, if the JV court has jurisdiction over a minor, they also have jurisdiction over petitions to modify a minor's birth certificate.

### **Concurrent Jurisdiction if Incidental to Determination of Cause in District Court—78A-6-104(3)**

(3) DC may have jurisdiction to appoint a guardian for a child, or to determine the support, custody, and parent-time of a child upon **writ of habeas corpus** or when the question of support, custody, and parent-time is incidental to the determination of a cause in the DC.

#### ***HABEAS CORPUS***

Where district court certified **petition for habeas corpus** to juvenile court for determination of question of custody rights which had been terminated by division of family services, juvenile judge had no authority to deny the writ but should have made recommendations and referred matter back to district court for final order. *State ex rel. Hales, 538 P.2d 1034 (Utah 1975).*

#### ***JURISDICTION OF DISTRICT COURT***

Where a petition for custody is filed with the juvenile court prior to the bringing of a habeas corpus proceeding in the district court, the district court is not prevented from taking jurisdiction and requesting the juvenile court to make inquiry and report its findings and recommendations back to it, nor is the district court deprived of its jurisdiction to make the ultimate determination in the case. *State ex rel. Izatt, 572 P.2d 390 (Utah 1977).*

Father's original petition for extraordinary relief challenging child welfare proceedings, claiming that the children were wrongfully detained by the Division of Child and Family Services, was in the nature of a habeas corpus petition. Thus, Utah R. App. P. 20 required transfer to the district court. *R.K.C. v. Dep't of Human Servs. (In the Interest of A.C.), 2011 UT App 134, 256 P.3d 237.*

#### ***JURISDICTION OF JUVENILE COURT***

The legislature intended to confer exclusive original jurisdiction to determine questions of custody of children and of parent's fitness and qualification to have child returned to him, in every case wherein the state became a party by the juvenile court's taking custody of a child because of neglect or delinquency. Accordingly, where juvenile court obtained jurisdiction of a child because of neglect, dependency or delinquency, district court was required to dismiss writ of habeas corpus. *Jensen v. Sevy, 103 Utah 220, 134 P.2d 1081 (1943).*

### **When JV Court May Acquire Jurisdiction of a Minor in a DC case—78A-6-104(4)**

(a) JV Court may acquire jurisdiction of a minor, where a support, custody, or parent-time award has been made by a district court with continuing jurisdiction in a divorce or other proceeding, involving the same child if the child is dependent, abused, neglected, or otherwise comes within the jurisdiction of the juvenile court under Section 78A-6-103.

(b) The JV Court may change the custody (subject to Subsection 30-3-10(4)), support, parent-time, and visitation rights previously ordered in the DC as

necessary to implement the order of the JV Court for the safety and welfare of the child. The JV Court order remains in effect so long the JV jurisdiction continues.

(c) When a copy of the findings and order of the juvenile court has been filed with the district court, the findings and order of the juvenile court are binding on the parties to the divorce action as though entered in the district court.

### Questions Concerning Custody, Support & Parent Time—78A-6-104(5)

JV Court has jurisdiction over questions of custody, support, and parent-time, of a minor who comes within the court's jurisdiction under this section or 78A-6-103.

#### ***SUPPORT ORDERS***

Juvenile court had authority to require father to contribute to support of neglected child even though custody was awarded to third person; however, it was necessary that father have been given adequate notice of proceeding before juvenile court. *In re Olson*, 111 Utah 365, 180 P.2d 210 (1947).

## Protective Custody

### CONDITIONS NECESSARY FOR PROTECTIVE CUSTODY INTERVENTION

#### **Court-ordered Removal/Protective Custody of a Child Following Petition—78A-6-302(1)**

(1) After a petition has been filed under 78A-6-304, a court may order that the child be removed or taken into protective custody if the court finds, by a **preponderance of the evidence** that:

In order to take the child into protective custody, state must show:

(a) There is imminent danger of child's physical health or safety;

→ **Additional info, see 78A-6-302(2)(a) below**

(b)(i) a parent or guardian engages in or threatens the child with unreasonable conduct that cause the child to suffer **emotional damage and** there are no reasonable means available to protect the emotional health of the child

(c) The child, or other children residing in the same household have been abused/exploited or are at risk of being abused/exploited;

→ **Additional info, see 78A-6-302(2)(b) below**

(d) Parent is unwilling to retain custody, child is abandoned, parent is in-custody and failed to make proper arrangements for the child,

(e) The child is abandoned or left without any provisions;

(f) The parent or guardian is incarcerated or in state custody and cannot arrange for appropriate care of the child;

(g)(2) If arrangements are no longer suitable and whereabouts of the parent are unknown **and** reasonable efforts to locate the parent are unsuccessful

(h) The child is in immediate need of medical care;

- (i) A parent or guardian's acts, omissions, habitual actions, or possibility of leaving the child alone create an unsafe environment that threatens the child's health or safety;
- (j) The child or another child residing in the same household has been neglected;
- (k) An infant has been abandoned, as defined in Section 78A-6-316;
- (l) Clandestine Drug Lab—parent, guardian, or other adult in the home was charged or arrested
- (m) The child is otherwise endangered.

***NEGLECTED CHILD***

Where a mother knew that the father's violence harmed their child in the past, and that there was great potential for future harm, but nevertheless returned to the abusive relationship with the father, the child fit within the definition of a neglected child. *H.M. v. State*, 1999 UT App 293, 989 P.2d 76.

***PRE-DEPRIVATION PROCEDURES REQUIRED***

Following this section did not entitle state defendants to qualified immunity who had removed a boy from the custody of his parents without a warrant or notice and pre-deprivation hearing since the statute does not authorize removal without pre-deprivation procedures. *Roska v. Peterson*, 328 F.3d 1230 (10th Cir. 2003). *See also Treff v. Hinckley*, 2001 UT 50, 26 P.3d 212; *Roska v. Sneddon*, 311 F. Supp. 2d 1307 (D. Utah 2004).

***UTAH LAW REVIEW***

Legislative Developments -- Family Law, 1994 Utah L. Rev. 1588.  
 Case Law Development: Family Law, 1998 Utah L. Rev. 644.  
 Recent Legislative Developments in Utah Law -- Taking Minor Into Protective Custody Without Warrant, 2003 Utah L. Rev. 803.  
 Recent Legislative Developments: Child Welfare Processes, 2005 Utah L. Rev.

359.

***A.L.R.***

Construction and effect of statutes mandating consideration of, or creating presumptions regarding, domestic violence in awarding custody of children, 51 A.L.R.5th 241.

Sufficiency of evidence to establish parent's knowledge or allowance of child's sexual abuse by another under statute permitting termination of parental rights for "allowing" or "knowingly allowing" such abuse to occur, 53 A.L.R.5th 499.

<b>PREVIOUS ADJUDICATIONS / SECURE FACILITIES / WARRANTS</b>
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Previous adjudications of abuse, neglect, or dependency in subsequent similar incidents—  
 78A-6-302(2)

(a) For purposes of Subsection (1)(a) (*see above*), if a child has previously been adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency occurs involving the same substantiated abuser or under similar circumstance as the previous abuse, that fact constitutes prima facie evidence that the child cannot safely remain in the custody of the child's parent.

(b) For purposes of Subsection (1)(c) (*see above*):

(i) Another child residing in the same household may not be removed from the home unless that child is considered to be at substantial risk of being physically abused, sexually abused, or sexually exploited as in Subsection (1)(c) or (2)(b)(ii); and

(ii) If a parent or guardian has received actual notice that physical abuse, sexual abuse, or sexual exploitation by a person known to the parent has occurred, and there is evidence that the parent or guardian failed to protect the child, after having received the notice, by allowing the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of being physically abused, sexually abused, or sexually exploited.

#### **Removal and Secure Detention Facilities—78A-6-302(4)**

A child removed from parents/guardians may not be placed or kept in a secure detention facility pending further court proceedings unless the child is detainable based on juvenile court guidelines.

#### **Warrants and Court Orders—78A-6-302(5)**

This section does not prevent/preclude removal of a child from the child's home without a warrant or court order under 62A-4a-202.1.

#### ***PRE-DEPRIVATION PROCEDURES REQUIRED***

Following this section did not entitle state defendants to qualified immunity who had removed a boy from the custody of his parents without a warrant or notice and pre-deprivation hearing since the statute does not authorize removal without pre-deprivation procedures. *Roska v. Peterson*, 328 F.3d 1230 (10th Cir. 2003).

<b>FACTORS <i>NOT</i> FOR SOLE CONSIDERATION IN DETERMINING REMOVAL</b>
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#### **Parent's Mental Illness, Disability, Poverty, Educational Neglect—78A-6-302(3)**

(3) In the absence of one of the factors described in Subsection (1), a court may not remove a child from the parent's or guardian's custody on the basis of:

(a) educational neglect, truancy, or failure to comply with a court order to attend school;

(b) mental illness or poverty of the parent or guardian; or

(c) disability of the parent or guardian, as defined in Section 57-21-2.

#### **Parent's Refusal to Consent to a Child's Psychiatric Evaluation or Medication—78A-6-302(6)**

(6) (a) Except as provided in Subsection (6)(b), a court or the Division of Child and Family Services **may not remove a child** from the custody of the child's parent or guardian on the sole or primary basis that the parent or guardian refuses to consent to:

- (i) the administration of a psychotropic medication to a child;
- (ii) a psychiatric, psychological, or behavioral treatment for a child; or
- (iii) a psychiatric or behavioral health evaluation of a child.

(b) Notwithstanding Subsection (6)(a), a court or the Division of Child and Family Services may remove a child under conditions that would otherwise be prohibited under Subsection (6)(a) if failure to take an action described under Subsection (6)(a) would present a serious, imminent risk to the child's physical safety or the physical safety of others.

## Hearings & Court Procedures

### WHO MAY ATTEND/BE EXCLUDED FROM HEARINGS

#### Juvenile Court Hearings—78A-6-114

(1) JV hearings are informal proceedings, **NOT open to the public and with no right to a jury.**

(1)(b) All persons who have a **direct interest in the case** and **persons requested** by the parent or legal guardian may be present. The court shall exclude all other persons except as in (1)(c).

(c) when 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:

- (i) the minor has been charged with an offense which would be a **felony** if committed by an adult; or
- (ii) 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)-(e) **Upon request, the victim** of any act charged in a petition or information involving an offense committed by a minor which if committed by an adult would be a felony or a class A or class B misdemeanor shall be afforded all applicable victims' rights. (e) And have the right to inspect and duplicate juvenile court legal records that have not been expunged concerning court schedules/hearings, findings made, and sentences imposed by the court. :

#### Welfare Hearings—Who May be Excluded—78A-6-114(1)(a)(i)

Welfare Hearings (abuse, neglect, and dependency cases) are open to the public, but individuals can be excluded if their presence is detrimental to any party (including the best interests of the child) or would impair fact-finding.

#### How to Exclude a Person from a Hearing—78A-6-114(1)(a)(ii)

The court may exclude a person from a hearing on its own motion or by motion of a party to the proceeding.

#### ***CONSTITUTIONALITY OF EXCLUSION***

The people do not have a constitutional right of public access to juvenile court proceedings in *Utah. In re N.H.B.*, 769 P.2d 844 (Utah Ct. App. 1989).

The presumption of openness applied in criminal trials under the first amendment does not extend to juvenile proceedings, because the state has a compelling interest in maintaining the confidentiality of juvenile court proceedings that outweighs the media's right of access. *In re N.H.B.*, 769 P.2d 844 (Utah Ct. App. 1989).

#### ***PRESENCE OF WITNESSES***

It was not error for court to refuse parent's request that witnesses be excluded from hearing while other witnesses were testifying. *State ex. rel. S.J.*, 576 P.2d 1280 (Utah 1978).

#### ***GENERAL PUBLIC VS. DIRECT INTEREST***

The categories of persons who may be allowed into a hearing pursuant to this section and the "general public" are mutually exclusive groups; one who has a "direct interest" in the case or in the work of the court is no longer a member of the class of persons described as the "general public." *Kearns-Tribune Corp. v. Hornak*, 917 P.2d 79 (Utah Ct. App. 1996).

The discretion afforded the juvenile court under this section is in determining who qualifies as persons falling under one of the three categories permitted entry: (1) persons with a direct interest in the case, (2) persons with a direct interest in the work of the court, or (3) persons whose presence is otherwise appropriate and has been requested by the parent or guardian. *Kearns-Tribune Corp. v. Hornak*, 917 P.2d 79 (Utah Ct. App. 1996).

#### ***DIRECT INTEREST—THE MEDIA AND GENERAL PUBLIC***

As a matter of law, neither the general public nor the media had a direct interest in case involving defendant under sixteen or in the work of the court; consequently, the juvenile court had no discretion to admit either the general public or the media to proceedings involving defendant. *Kearns-Tribune Corp. v. Hornak*, 917 P.2d 79 (Utah Ct. App. 1996).

#### ***DISCRETION OF COURT—ALLOWING THE PRESS***

This section absolutely excludes the press from most proceedings, but gives the juvenile court judge considerable discretion in determining whether the media may attend hearings involving acts that would constitute felonies in the adult system. *In re N.H.B.*, 769 P.2d 844 (Utah Ct. App. 1989).

#### ***RECALL HEARINGS***

As in certification hearings, the purpose of the recall hearing is not to ascertain

whether or not the child committed the offense but to determine if the best interest of the child or of the public would be served by returning jurisdiction to the juvenile court; information presented in this setting, if made public, could bias the later adjudication on guilt. *In re N.H.B.*, 769 P.2d 844 (Utah Ct. App. 1989).

***A.L.R.***

Use of judgment in prior juvenile court proceeding to impeach credibility of witness, 63 A.L.R.3d 1112.

Propriety of exclusion of press or other media representatives from civil trial, 39 A.L.R.5th 103

<b>CHILDREN AT HEARINGS</b>
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**Children at Hearings—Opportunity for a Child to Address the Court—78A-6-305**

(1) Children **shall** be present at all post adjudication hearings (*i.e.*, dispositional, permanency, review hearings) relating to the abuse, neglect, or dependency of the child,

(2)(a) **UNLESS** it is impractical or detrimental to child, or (b) the child is not sufficiently mature to articulate his/her wishes in relation to the hearing.

(3) A court may, in the court's discretion, order that a child described in Subsection (2) be present at a hearing that is not a post adjudication hearing.

(4)(a) At each hearing the court **shall** ask the child whether the child desires the opportunity to address the court or testify and allow the child to do so, but

(b) Subsection (4)(a) does not apply if the court determines that (i) it would be detrimental to the child (ii) the child is not sufficiently mature to articulate the child's wishes in relation to the hearing.

(c) The court may allow the child to address the court in camera.

(5) **Children may attend all hearings**, even those not required, unless otherwise ordered by the court.

***PRESENCE OF JUVENILE***

While statute gave court power to hear evidence in absence of delinquent, and, no doubt, in many instances it might be necessary to do so, yet it was better, at least in case of children over ten years of age, to permit them to be present and to be heard in their own defense respecting their custody, conduct and control. *Stoker v. Gowans*, 45 Utah 556, 147 P. 911, Ann. Cas. 1916E, 1025 (1915).

***UTAH LAW REVIEW***

Recent Legislative Developments: Child Welfare Processes, 2005 Utah L. Rev. 359.

***JOURNAL OF LAW AND FAMILY STUDIES***

David C. v. Leavitt: Utah's Foster Care System and Children at Risk, 2 J. L. Fam. Stud. 71 (2000).

***AM. JUR. 2D***

47 Am. Jur. 2d Juvenile Courts and Delinquent and Dependent Children § 96.

***C.J.S.***

43 C.J.S. Infants §§ 296, 297.

**HEARING CASES SEPARATELY**

**Minor's Cases Separate from Adult—78A-6-114(2)**

Minor's cases shall be heard separately from adult cases. The minor or the parents or custodian of a minor may be heard separately when considered necessary by the court. The hearing may be continued from time to time to a date specified by court order.

**Separate Hearings May be Appropriate if Case Involves More than One Child—78A-6-114(3)**

When more than one child is involved in a home situation which may be found to constitute neglect or dependency, or when more than one minor is alleged to be involved in the same law violation, the proceedings may be consolidated, except that separate hearings may be held with respect to disposition.

**EMPLOYERS' DUTY TO PARENTS**

**Employers' Duty to Give Parents' Permission to Attend Court Appearances—78A-6-111(2)(b)**

Parents' employers must grant permission for parents to leave the workplace, with or without pay, if the employee has requested permission at least seven days in advance, or within 24 hours of the employee receiving notice of the hearing.

**EVIDENCE AT HEARINGS**

**Evidence for Hearings Must be Provided 5 Days Prior—78A-6-115(5)(b)(i)**

Any information that will be disclosed at a child welfare hearing should be provided to the parties and counsel 5 days prior to any hearing. Information received after the deadline is exempt from this rule 78A-6-115(5)(c).

**Statements by Children Regarding Child Abuse—78A-6-115(6)**

In child abuse cases, the Court may consider statements made by a child under the age of 8 to a person in a trust relationship.

***EVIDENCE—HEARSAY EXCEPTION***

It was not an abuse of discretion for court to admit as evidence statements made exceptions to the hearsay rule by U.R.E. 63. *State ex rel. K.D.S.*, 578 P.2d 9 (Utah 1978).

### ***EVIDENCE OF COMPETENCY***

In action to determine competency of mother to care for her children, use by juvenile court of "social file" which had not been introduced in evidence was denial of due process of law since mother had no opportunity to know, cross-examine, explain or rebut such secret evidence. *State ex rel. Pilling v. Lance*, 23 Utah 2d 407, 464 P.2d 395 (1970).

### ***TRUST RELATIONSHIP***

To consider as evidence statements made by a six-year-old to his foster mother, the court was required to find that a trust relationship existed between them. *L.N. v. State*, 2004 UT App 120, 498 Utah Adv. Rep. 19, 91 P.3d 836.

### ***A.L.R.***

Use of judgment in prior juvenile court proceeding to impeach credibility of witness, 63 A.L.R.3d 1112.

Validity and efficacy of minor's waiver of right to counsel—modern cases, 25 A.L.R.4th 1072.

Right of indigent parent to appointed counsel in proceeding for involuntary termination of parental rights, 92 A.L.R.5th 379.

<b>SHELTER HEARINGS</b>
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**78A-6-306(1)**—Must Be Held within (72 hours) 3 days of removal or anytime there is a removal or expedited request for removal—the first court hearing after removal of child.

**Based on Presented Evidence, the Judge Determines—78A-6-306(6):**

- (1) Whether removal by DCFS was **reasonable**, and
- (2) Whether continued removal is **necessary**.

**Purpose of Shelter Hearing—78A-6-306(6)**

If the child is in the protective custody of the division, the division shall report to the court:

- (a) the reason why the child was removed from the parent's or guardian's custody;
- (b) any services provided to the child and the child's family in an effort to prevent removal;
- (c) the need, if any, for continued shelter;
- (d) the available services that could facilitate the return of the child to the custody of the child's parent or guardian; and
- (e) subject to 78A-6-307(18)(c) through (e), whether any relatives of the

child or friends of the child's parents may be able and willing to accept temporary placement of the child.

#### **Shelter Petition—78-6-107**

Petitions must include allegations of abuse, neglect, and dependency.

#### **Testimony Allowed at Shelter Hearings—78A-6-306(5)(a)-(b)**

(a) Children may testify, as well as any others present having relevant testimony on behalf of the child's parent or guardian;

(b) The court may consider all relevant evidence including that which is presented by the child, the child's parent or guardian, the requesting party, or their counsel; and may in its discretion limit testimony and evidence to only that which goes to the issues of removal and the child's need for continued protection.

#### **Examined at the Shelter Hearing: Determining Factors When Child Should Remain in Custody—78A-6-306(9)**

The Child should remain in custody if the state shows by preponderance that there is a substantial danger to the child and there is no way to protect the child without removal; the child is suffering emotional damage and there are no reasonable means available to by which the child's emotion health may be protected without removal; or the child is a sibling at risk.

#### **Outcome of Shelter Hearing: Where does a Child go if Removal is Necessary?**

First, the child goes the other natural parent if it not unsafe or otherwise detrimental to the child. If not, placement with a relative or friend is the preferred outcome. If placement with a relative or friend is not possible, the child will be placed in foster care. If the State is awarded ongoing custody of the children or intends to monitor the parenting of the children, the State will file a Petition for Custody or for Protective Supervision. The Petition further asks for findings of neglect, abuse, or dependency of the children.

1. **Natural Parent—Parental Fitness and Appropriate Placement Considered:** “If another natural parent requests custody under Subsection (2)(a), the court **shall** place the child with that parent unless it finds that the placement would be unsafe or otherwise detrimental to the child.” Court must make findings as to the fitness of the parent and the appropriateness of placement. **UCA 78A-6-307(2)(b).**
2. **If No Natural Parent—Friends and Relatives:** If a parent is unavailable, the court **SHALL** consider friends and relatives of the parents. **78A-6-307(7).**

**Any preference for placement expires after 120 days.**

**Adjudication (by trial or admission at pretrial)** Court must find by clear and convincing evidence that the allegations contained in the petition are true **78A-6-311(1)**

### ***APPEAL***

A shelter hearing order entered under this section is not final and appealable as a matter of right, and, accordingly, an immediate appeal can be taken only if the appellate court grants a petition for permission to appeal pursuant to Rule 5, Rules of Appellate Procedure. *E.V. v. State*, 937 P.2d 1049 (Utah Ct. App. 1997).

### ***NOTICE / DUE PROCESS***

Father whose identity and location were unknown by the Division of Family Services and the juvenile court at the time of a shelter hearing was not entitled to notice of the hearing. *R.S. v. State*, 940 P.2d 527 (Utah Ct. App. 1997).

Termination of parental rights of out-of-state father, who had not been given proper of earlier proceedings involving the removal of the children from the mother's home, violated the father's due process rights. *T.H. v. State (State ex rel. A.H.)*, 2004 UT App 39, 493 Utah Adv. Rep. 15, 86 P.3d 745. See also *State v. D.M.*, 922 P.2d 1282 (Utah 1996).

### ***UTAH LAW REVIEW***

Recent Legislative Developments in Utah Law—Taking Minor Into Protective Custody Without Warrant, 2003 Utah L. Rev. 803.

## **MEDIATION**

***Mediation*** – Can occur after Shelter Hearing.

Mediation is an out-of-court process where a specially trained mediator attempts to resolve disputes between the State's Petition and the parent's view of the initial finding of facts in the Petition. The State (AG and DCFS) may change language in the Petition if the explanations by the parents in mediation warrant a change. If the parties are unable to reach an agreement as to the language of the Petition, the parties may request trial to determine the initial findings of fact. At Trial, the State must prove its initial findings of fact by clear & convincing evidence.

## **PRETRIAL HEARING**

**Within 15 days of the Shelter Hearing/filing petition, and 72 hours of removal—78A-6-309**

May be continued but no more than 60 days. If parties are unable to agree on the language in Petition, a trial on the Petition will be held. At the Pretrial Hearing, the Court will establish the time frames and the trial date.

### ***RESPONSIBILITY FOR COMPLIANCE***

The ultimate responsibility to ensure compliance with this section is on trial courts alone, and may not be shifted to the parties or their counsel. *Office of the Guardian Ad Litem v. Anderson*, 1999 UT App 251, 987 P.2d 611.

### ***WAIVER***

The mandatory 60-day time limit on adjudication hearings may be waived only when the parties and guardian ad litem stipulate to a continuance and the juvenile court finds that the continuance will not adversely affect the child's interests. *Office of the Guardian Ad Litem v. Anderson*, 1999 UT App 251, 987 P.2d 611.

A guardian ad litem's five-day delay in seeking extraordinary relief and her failure to comply with the trial court's scheduling request did not waive of the 60-day time limitation. *Office of the Guardian Ad Litem v. Anderson*, 1999 UT App 251, 987 P.2d 611. See also *State v. D.M.*, 922 P.2d 1282 (Utah 1996); *State, Div. of Child & Family Servs. v. N.R.*, 2000 UT App 143, 2 P.3d 948; *E.R. v. State (State ex rel. V.H.)*, 2007 UT App 1, 154 P.3d 867.

## TRIAL/ADJUDICATION

***Trial (Adjudication)*** – Within 60 days of the Shelter Hearing. Court will receive evidence (witness testimony and document evidence) from the State and the Parents in regarding the allegations made in the Petition. The Court, based on the evidence at trial, will determine whether child was abused, neglected, or dependent. If the Court determines that the children are abused, neglected or dependent, the court will set the matter for a Dispositional Hearing to determine how to resolve the abuse, neglect, or dependency.

### **CONSTRUCTION**

The use of the term "shall" in this section requires a juvenile court to hold the adjudication hearing on an abuse, dependency, or neglect petition within 60 days of the shelter hearing. *Office of the Guardian Ad Litem v. Anderson*, 1999 UT App 251, 987 P.2d 611.

## DISPOSITIONAL HEARINGS

**Must be held Within 30 days of Trial.**

At the dispositional hearing, the Court will determine the temporary placement of the children. The Court will also determine primary and secondary goals for permanent child placement. In most cases the Court will find that reunification with one or both parents to be the primary goal. Other permanent goals include, guardianship with family or friends, individual self-sufficiency (usually reserved for children 16 and older), and adoption. At this hearing, DCFS will generally present a Service Plan that has been developed, with the assistance of parents, to resolve the abuse, neglect, or dependency. Parents have 10 days to object to the Service Plan after receiving it. The Court will review the Plan and determine if it adequately addresses the concerns outlined in the Petition. The Court will also set the matter for review.

**What JV Court may do at a Dispositional hearing—78A-6-312(1)**

→ Make any of the dispositions described in Section 78A-6-117

→ Place the minor in the custody or guardianship of any individual, public or private

entity or agency; or

→ Order protective supervision, family preservation, medical or mental health treatment (78A-6-117(2)(n)(iii)), or other service

## REUNIFICATION

**JV Court Must Establish Primary and Secondary Permanency Goals if Child is to Remain in Custody after Hearing—78A-6-312(2)**

(a) Establish a primary permanency goal for the minor; and

(b) Must determine if reunification goals for the child and the child's family are appropriate under the primary permanency goal in 78A-6-312(2)(a)(i)(B)

### **IF REUNIFICATION IS THE GOAL:**

→ The JV court must allow for parent-time. If none is awarded the court must make specific findings under 78A-6-312(2)(b)(i)

→ Reasonable efforts must be made—78A-6-312(2)(d)(i)(A). The JV court shall order that DCFS make reasonable efforts to provide services to the minor and family for the purposes of reunification.

→ Reunification services should not exceed 12 months—78A-6-312(2)(d)(iii)(A)

→ Termination of Services—78A-6-312(2)(d)(iv)

Court can terminate reunification services at any time.

## **DETERMINING WHETHER REUNIFICATION IS APPROPRIATE**

There is a presumption that reunification services should not be provided to a parent if the court finds, by clear and convincing evidence, that any of the following circumstances exist—78A-6-312(21):

→ (a)—Whereabouts of parents are unknown and reasonable efforts to locate have been in vain;

→ (b)—Mental illness

→ (c)—Minor was previously adjudicated abused and was removed and returned and is now removed again

→ (d)—The parent caused or assisted the death of another child, is a registered sex offender;

→ (e)—The child has been subject to severe abuse by the parent, or parent failed to protect from severe abuse

→ (f)—the minor is adjudicated an abused child as a result of severe abuse by the parent, and the court finds that it would not benefit the minor to pursue reunification services with the offending parent;

→ (g)—Parent's rights have been terminated with regard to any other minor;

→ (h)—Minor has been removed from home on at least two previous occasions, where reunification services were offered at those times;

→ (i)—Parent has abandoned the minor for a period of six months or longer;

→ (j)—Parent permitted the child to reside, on a permanent or temporary basis, at a

location where the parent knew or should have known that a clandestine laboratory operation was located;

→(k)—Except as provided in Subsection (22)(b), with respect to a parent who is the child's birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was exposed to an illegal or prescription drug that was abused by the child's mother while the child was in utero, if the child was taken into division custody for that reason, unless the mother agrees to enroll in, is currently enrolled in, or has recently and successfully completed a substance abuse treatment program approved by the department; or

→(l)—Any other circumstance that the court determines should preclude reunification efforts or services.

**In determining whether reunification services are appropriate, the court shall take into consideration—78A-6-312(23):**

→(a) failure of the parent to respond to previous services or comply with a previous child and family plan;

→(b) the minor was abused while the parent was under the influence of drugs or alcohol;

→(c) any history of violent behavior directed at the child or an immediate family member;

→(d) whether a parent continues to live with an individual who abused the minor;

→(e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;

→(f) testimony by a competent professional that the parent's behavior is unlikely to be successful; and

→(g) whether the parent has expressed an interest in reunification with the minor.

**ARE REUNIFICATION EFFORTS REASONABLE?**

**Determining if DCFS' Reunification Efforts are Reasonable—78A-6-312(2)(d)(i)(B)—(C)**

The division will offer services, and the Court will determine whether those services constitute reasonable efforts.

***REASONABLE REUNIFICATION EFFORTS***

Juvenile courts have broad discretion in determining whether reasonable reunification efforts were made. Evidence that the service plan required a mother to participate in therapy sessions and that the mother moved out of state and made only two visits to see her child in ten months supported the court's determination that the Division of Child and Family Services had made reasonable reunification efforts. *A.O. v. State (State ex rel. K.F.)*, 2009 UT 4, 201 P.3d 985.

After father had received a full year of reunification services, he was not entitled to additional reunification services upon his children's return to state custody. *State ex rel. S.F. & C.F. v. State*, 2012 UT App 10, 268 P.3d 831. *See also State v. D.M.*, 922 P.2d

1282 (Utah 1996); *V.K.W. v. State*, 2003 UT App 87, 67 P.3d 1037; *H.O. v. State (State ex rel. S.O.)*, 2005 UT App 393, 122 P.3d 686.

### **Handling Services for Incarcerated Parents—78A-6-312(25)**

(a) If a parent is incarcerated the Court shall order reasonable services unless detrimental. Still subject to time limitations—**78A-6-312(26)**

(b) In making the determination described in Subsection (25)(a), the court shall consider:

- (i) the age of the minor;
- (ii) the degree of parent-child bonding;
- (iii) the length of the sentence;
- (iv) the nature of the treatment;
- (v) the nature of the crime or illness;
- (vi) the degree of detriment to the minor if services are not offered;
- (vii) for a minor 10 years of age or older, the minor's attitude toward the implementation of family reunification services; and
- (viii) any other appropriate factors.

(c) Reunification services for an incarcerated parent are subject to the time limitations imposed in Subsections (2) through (19).

(d) Reunification services for an institutionalized parent are subject to the time limitations imposed in Subsections (2) through (19), unless the court determines that continued reunification services would be in the minor's best interest.

### **Denying Parent Time—78A-6-312(6)-(7)**

(6) For purposes of Subsection (3), parent-time is in the best interests of a minor unless the court makes a finding that it is necessary to deny parent-time in order to:

- (a) protect the physical safety of the minor;
- (b) protect the life of the minor; or
- (c) prevent the minor from being traumatized by contact with the parent due to the minor's fear of the parent in light of the nature of the alleged abuse or neglect.

(7) Notwithstanding Subsection (3), a court may not deny parent-time based solely on a parent's failure to:

- (a) prove that the parent has not used legal or illegal substances; or
- (b) comply with an aspect of the child and family plan that is ordered by the court.

### ***CONSTITUTIONALITY OF LIMITED REUNIFICATION SERVICES***

Limiting the availability of reunification services does not violate the Equal Protection Clause, U.S. Const. Amend. XIV, § 1, as the classification of mentally ill parents in this section bears a rational relation to a legitimate legislative purpose. The state has a strong interest in protecting neglected or abused children and in providing such children with permanent placement and such an interest is rationally related to this section's classification of parents based on mental illness; further, this section does not single out mentally disabled parents for special treatment. *L.R. v. State*, 967 P.2d 951 (Utah Ct. App. 1998).

The strict scrutiny test does not apply to the classification of mentally disabled

parents in this section, as mental disability is not a suspect class and this section does not involve a fundamental right; parents have no constitutional right to reunification services. *L.R. v. State*, 967 P.2d 951 (Utah Ct. App. 1998).

### ***APPLICABILITY OF REUNIFICATION***

A maternal grandparent's argument regarding her right to reunification services under this section failed because the trial court had already determined she had no custodial relationship with the child, and, because she had failed to appeal from that determination, she lacked the basis upon which to argue her claimed rights as a parent. *C.S. v. State*, 927 P.2d 1124 (Utah Ct. App. 1996).

Only if reunification services were ordered must a court make a finding regarding whether the Utah Division of Child and Family Services made reasonable efforts to provide those services before terminating parental rights on particular grounds. (Unpublished decision.) *C.A. v. State (State ex rel. J.J.)*, 2004 UT App 307.

## **REVIEW HEARINGS**

### **→Held every 6 months—78A-6-313**

Must be held within six months after removal from home, and at least every six months while the child is in state custody. The purpose of the hearing is to determine if the division is providing reasonable efforts to reunify the family and whether the parent is fulfilling or has fulfilled their part of the child and family plan.

## **PERMANENCY HEARINGS**

The Court evaluates the permanent placement goal and determines if the goal is still appropriate. If the parents have failed to comply with their service plan or have otherwise failed to fix the problems that brought about State involvement, the Court can change the permanent placement goal and order DCFS to stop assisting the parents in their goal of having their child returned home.

### **→Held Within 8 months to 1 year of removal, depending on the child's age.**

No more than 12 months from removal (8 months, if child is younger than 3 at time of removal). 78A-6-312(2)(f)(ii) and 78A-6-312(2)(g).

### **90-DAY EXTENDED REUNIFICATION SERVICES WITH SUBSTANTIAL COMPLIANCE—78A-6-314**

(8) (a) Subject to Subsection (8)(b), the court may extend reunification services for no more than 90 days if the court finds, beyond a **preponderance** of the evidence, that:

- (i) there has been **substantial compliance** with the child and family plan;
- (ii) reunification is **probable** within that 90-day period; and
- (iii) the extension is in the best interest of the minor.

(b) (i) Except as provided in Subsection (8)(c), the court may not extend any reunification services beyond 15 months after the day on which the minor was initially removed from the minor's home.

(ii) Delay or failure of a parent to establish paternity or seek custody does not provide a basis for the court to extend services for that parent beyond the 12-month period described in Subsection (7).

(c) In accordance with Subsection (8)(d), the court may extend reunification services for one additional 90-day period, beyond the 90-day period described in Subsection (8)(a), if:

(i) the court finds, by **clear and convincing** evidence, that:

(A) the parent has **substantially complied** with the child and family plan;

(B) it is **likely** that reunification will occur within the additional 90-day period; and

(C) the extension is in the best interest of the child;

(ii) the court specifies the facts upon which the findings described in Subsection (8)(c)(i) are based; and

(iii) the court specifies the time period in which it is likely that reunification will occur.

(d) A court may not extend the time period for reunification services without complying with the requirements of this Subsection (8) before the extension.

(e) In determining whether to extend reunification services for a minor, a court shall take into consideration the status of the minor siblings of the minor.

#### ***PERMANENCY PLAN***

The permanency plan for a child may be finalized at the time of the dispositional review hearing. *D.M. v. State*, 965 P.2d 576 (Utah Ct. App. 1998).

In a termination of parental rights case, the court did not plainly err, nor violate the father's due process rights, in failing to hold a permanency hearing where, under the circumstances, the father could not have successfully argued that the state failed to make reasonable efforts to provide services to him. Thus, the father did not show that had the court held a permanency hearing, it would have made a different decision regarding the termination of the father's parental rights. *R.C. v. State (State ex rel. M.C.)*, 2003 UT App 429, 488 Utah Adv. Rep. 27, 82 P.3d 1159.

## **PARENTAL PRESUMPTION, TERMINATION OF PARENTAL RIGHTS, & VOLUNTARY RELINQUISHMENT**

### **PARENTAL PRESUMPTION**

There is no parental presumption present where the natural parent has lost custody of the child or has had his or her parental rights terminated. See *In re M.W.*, 12 P.3d 880 (Utah 2000), see also, *Hutchison v. Hutchison*, 649 P.2d 38, 40 (Utah 1982).

#### ***PARENTAL PRESUMPTION***

Having been adjudicated a neglectful parent, the father was not entitled to the parental presumption in a subsequent custody dispute with the children's grandmother. *State ex rel. M.W.*, 2000 UT 79, 12 P.3d 80.

### **TERMINATION OF PARENTAL RIGHTS**

Upon unsuccessful completion of reunification requirements, the state must file TPR—78A-

#### **6-314(4)**

(4) With regard to a case where reunification services were ordered by the court, if a minor is not returned to the minor's parent or guardian at the permanency hearing, the court shall, unless the time for the provision of reunification services is extended under Subsection (8):

- (a) order termination of reunification services to the parent;
- (b) make a final determination regarding whether termination of parental rights, adoption, or permanent custody and guardianship is the most appropriate final plan for the minor, taking into account the minor's primary permanency goal established by the court pursuant to Section 78A-6-312; and
- (c) establish a concurrent plan that identifies the second most appropriate final plan for the minor.

(5) If the Division of Child and Family Services documents to the court that there is a compelling reason that adoption, reunification, guardianship, and a placement described in Subsection 78A-6-306(6)(e) are not in the minor's best interest, the court may order another planned permanent living arrangement, in accordance with federal law.

(6) If the minor clearly desires contact with the parent, the court shall take the minor's desire into consideration in determining the final plan.

(7) Except as provided in Subsection (8), the court may not extend reunification services beyond 12 months after the day on which the minor was initially removed from the minor's home, in accordance with the provisions of Section 78A-6-312.

#### **Termination of the legal parent-child relationship, including termination of residual parental rights and duties—78A-6-103(1)(g)**

→The authority to terminate parental rights lies primarily with the juvenile court. The juvenile court has exclusive original jurisdiction in proceedings concerning the termination of the legal parent-child relationship in accordance with (Part 5, Termination of Parental Rights Act) including termination of residual parental rights and duties.

#### **2 Part Test for Termination:**

1. Parental Unfitness
2. The Child's Best Interest

#### **VOLUNTARY RELINQUISHMENTS V. FORCED TERMINATION OF PARENTAL RIGHTS**

1. **Voluntary Relinquishment:** Benefits of Voluntarily Relinquishing Rights— while it applies to the current case/child, voluntarily relinquishing parental rights cannot be used against a parent in future cases or with future issues regarding this and other children.
2. **Forced Termination:** lose presumption in favor of reunification with this and other children/parental issues in the future.

#### ***GUARDIAN AD LITEM & TERMINATION OF PARENTAL RIGHTS***

Guardian ad litem is not required to remain neutral between the two positions taken by the parties in a parental rights termination proceeding; thus, there was no improper action where guardian ad litem advocated that

the best interests of the children would be served by the termination of parental rights. *State ex rel. Orgill*, 636 P.2d 1075 (Utah 1981).

***TERMINATION OF PARENTAL RIGHTS***

The authority to terminate parental rights lies primarily with the juvenile court. Thus, where a parent relinquishes her parental rights in anticipation of an adoption by relatives, but the adoption does not go through, the district court that heard the adoption proceeding does not have jurisdiction to terminate the parent's rights and must set aside the relinquishment. *T.J. v. State*, 1999 UT App 362, 993 P.2d 257.

***FAILED ADOPTION AND RELINQUISHMENT***

Where a parent relinquishes her parental rights in anticipation of an adoption by relatives, but the adoption does not go through, the district court that heard the adoption proceeding does not have jurisdiction to terminate the parent's rights and must set aside the relinquishment. *T.J. v. State*, 1999 UT App 362, 993 P.2d 257.