

5-1-2000

## Helping Children Through The Juvenile Justice System: A Guide For Utah Defense Attorneys

Paul Wake

Follow this and additional works at: <https://digitalcommons.law.byu.edu/jpl>

 Part of the [Criminology and Criminal Justice Commons](#), and the [Juvenile Law Commons](#)

---

### Recommended Citation

Paul Wake, *Helping Children Through The Juvenile Justice System: A Guide For Utah Defense Attorneys*, 15 BYU J. Pub. L. 31 (2013).  
Available at: <https://digitalcommons.law.byu.edu/jpl/vol15/iss1/3>

This Article is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Brigham Young University Journal of Public Law by an authorized editor of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

# Helping Children through the Juvenile Justice System: A Guide for Utah Defense Attorneys

Paul Wake\*

## I. INTRODUCTION

Attorneys venturing into juvenile court enter a different type of justice system, sometimes at their clients' peril. As one judge put it, "[c]riminal defense attorneys unfamiliar with Juvenile Court procedure tend to be the worst at unwittingly hurting their clients' positions."<sup>1</sup> However, a basic familiarity with the purposes and procedures of juvenile court is not hard to come by and can quickly convert one into an effective practitioner.<sup>2</sup>

---

\* Copyright © 2000 by Paul Wake. Mr. Wake is a Deputy Utah County Attorney.

1. J. Mark Andrus, *Juvenile Court Practice*, UTAH B. J., Oct. 1995, at 33.

2. This article is intended to provide some level of familiarity with the Utah juvenile justice system. However, reading this article is no substitute for reading and re-reading both the Juvenile Court Act, UTAH CODE ANN. §§ 78-3a-101 to -914 (2000), and the UTAH R. JUV. P. It would also help to read the Juvenile Court Operations provisions as found in Rule 4 of the UTAH R. JUD. ADMIN.

See also Joseph W. Anderson, *This Is Not "Kiddie" Court*, VOIR DIRE, Wint. 1997, at 20 (VOIR DIRE was a biannual publication of the Utah State Bar litigation section that was distributed to bar members as the issue of the *Utah Bar Journal* for those months); Mark Andrus, *Juvenile Court Practice*, UTAH B. J., Oct. 1995, at 33; Katherine Bernards-Goodman, *The Beginner's Guide to Delinquency Representation*, UTAH B. J., Feb. 2000, at 8; Katherine Bernards-Goodman, *The Defense Expert's Guide to Juvenile Court (SYO and Certification)*, UTAH B.J., May 2000, at 18; Mary E. Boudreau and Regnal W. Garff, *The Family Court Issue: A Vital Question Quietly Visits Utah's Judicial Council*, UTAH B. J., June/July 1999, at 18 (discussing the perennial debate over replacement of Utah's juvenile courts with family courts); Hans Q. Chamberlain, *What's New in the Juvenile Court?*, UTAH B. J., Dec. 1997, at 38; Kimberly K. Hornak, *A View From the Juvenile Court Bench*, UTAH B. J., Oct. 1995, at 31; J. Scott N. Johansen, *Utah Juvenile Justice System Isn't Broken*, UTAH B. J., Aug./Sept. 1996, at 42; Frederic M. Oddone, *The Serious Juvenile Offender*, UTAH B. J., Oct. 1995, at 34; Sterling B. Sainsbury, *Juvenile Court*, UTAH B. J., Oct. 1995, at 35; Stephen A. Van Dyke, *Whose Children are These? A Primer for Juvenile Court Practice*, UTAH B. J., Mar. 1994, at 31; Stephen A. Van Dyke, *Utah Juvenile Justice for the '90's*, UTAH B. J., Feb. 1990, at 23.

Utah's Juvenile Court Administrator published the *Utah Juvenile Court Handbook* in 1986, and it was an excellent resource for its time. The handbook replaced a loose-leaf reference, the *Utah Juvenile Court Guidelines for Practice and Procedure*, published in the 1970's. Unfortunately, the handbook is outdated and the Administrative Office of the Courts has not updated it. However, Lynn D. Wardle, a professor at the J. Reuben Clark Law School, Brigham Young University, recently published the *Utah Juvenile Court Guidebook*, which is essentially a student-created version of these earlier publications.

Practitioners new to juvenile court should realize that they are not in criminal court and recognize that the juvenile justice system's aims are different from those of the criminal justice system.<sup>3</sup> Juvenile courts exist because children are children, and the criminal justice system does not provide appropriate means to deal with their misbehavior. Children are still developing and do not have the maturity to function without adult guidance. Society does not allow children to contract, vote, smoke, drink, serve in the military, or, in most cases, marry. Society makes sure that children are in someone's custody. We do not consider them as accountable as adults, who are presumed to be responsible for their actions and can therefore be treated accordingly. We try to help children become decent, productive adults rather than simply condemning them and throwing them away when they go astray. The State, through its juvenile jus-

---

West had been publishing and updating *The Law of Juvenile Court in a Nutshell*. However, this book has not been published since 1984 and West reportedly does not plan an update in the foreseeable future. Many of the juvenile justice books and treatises in local law libraries are similarly outdated.

The *Juvenile and Family Law Digest* provides a useful survey of recent case law from across the country dealing with juvenile and family courts. The *Juvenile and Family Court Journal* sometimes publishes interesting articles, and the fall 1998 and the fall 1999 issues, celebrating the centennial of the juvenile court, provide both an interesting look at the past and a helpful hint of the future.

The National District Attorney's Association is about to publish a deskbook for juvenile prosecutors, and its research arm, APRI (American Prosecutors Research Institute), publishes a newsletter on juvenile justice, *In Re . . .*, and is compiling a list of prosecutor-led juvenile justice programs. The American Bar Association periodically publishes material on juvenile justice that appeals primarily to the defense bar.

There are numerous Internet sites with information on juvenile justice and links to other relevant sites. The Utah sites are particularly useful. These sites include the following: <http://www.juvenile.state.ut.us/>; <http://www.sentencing.state.ut.us/JuvenileGuidelines/>; <http://courtlink.utcourts.gov/knowcts/juvenile.htm>; <http://www.hsdyc.state.ut.us/>; <http://attygen.state.ut.us/juvmatt.htm>; <http://www.ncjrs.org/jjhome.htm>; <http://www.ojdp.ncjrs.org/>; <http://www.ndaa.org/apri/juvenilejustice/jjhome.htm>; <http://www.ncjfcj.unr.edu/>; <http://www.ncjj.org/stateprofiles/index.html>; <http://www.cjcj.org/centennial/stories.html>; <http://www.ajca.org/index.htm>; <http://www.law.cornell.edu/topics/juvenile.html>; <http://www.juvenilejustice.com>; <http://www.pbs.org/wgbh/pages/frontline/shows/little/>; <http://home.earthlink.net/~chumes/homejuv.htm>; and <http://www.abanet.org/crimjust/juvjus/home.html>.

3. In fact, juvenile court proceedings are legally considered civil proceedings and adjudications are not deemed as convictions, except for traffic offenses. See UTAH CODE ANN. § 78-3a-117 (2000). Legal standards applicable to juvenile court are not always as clear as one might expect. For example, there is no juvenile competency statute. Also, since children do not in most cases commit "crimes," but rather commit offenses that would be crimes if committed by adults, it is sometimes unclear which parts of the Utah Code discussing "crimes" apply to children. In 2000 the Utah legislature finally amended UTAH CODE ANN. § 78-3a-117 to make it clear that adjudications count as prior convictions for purposes of enhancing penalties. Part of the fun of juvenile practice is working out sensible and agreeable ways to operate in these gray areas. What is not as fun is watching a defense attorney get cut off at the knees for blustering in and waving handfuls of forms applicable to district court proceedings, wailing about a preliminary inquiry supposedly being a violation of his client's rights, or otherwise posturing for a client and not realizing how such antics erode the client's position.

tice system, responds to delinquent children more as a concerned parent than as an avenging angel.<sup>4</sup>

Because of their focus on rehabilitation, juvenile courts have traditionally been paternalistic institutions focused more on a child's custody interest than on her liberty interest. Juvenile judges, assisted by their probation officers, have been more concerned with administering individualized justice on the child's behalf than with jumping through procedural hoops intended to guarantee due process. In the 1960s, federal courts began intervening in juvenile justice to require more attention to due process.<sup>5</sup> Since that time, juvenile courts have become less informal and more adversarial. Still, juvenile courts retain more informality than the criminal justice system.

A more recent change has hardened the juvenile justice system's approach. As juvenile offense rates soared in the 1980s, many legislatures responded with a "get tough" approach. In the mid-1990s Utah's legislature passed the Serious Youth Offender Act, which mandated that certain kinds of offenders be transferred to the criminal justice system to be tried as adults.<sup>6</sup> This Act abandons any attempt at juvenile court rehabilitation of certain categories of offenders, including some first-time offenders.

However, Utah's juvenile justice system endeavors to take a balanced approach, working toward community protection, competency development on the part of the child, and accountability to victims.<sup>7</sup> This approach is intended to benefit the child, rather than punish her. Accordingly, defense attorneys should be aware that people within the juvenile justice system do not consider themselves adversaries of the child, but

---

4. Judge Van Dyke does a better job of explaining the importance of the juvenile justice system. See Van Dyke, *supra* note 2 (both articles). The statutory purposes of the juvenile courts are described in UTAH CODE ANN. § 78-3a-102(5) (2000).

5. Some decisions have demanded that juvenile courts provide many of the same due process procedures in juvenile court that are available to adults in criminal court. See, e.g. *In re Gault*, 387 U.S. 1 (1967). Such decisions ultimately allowed some "law and order" legislatures to more easily decide that if children were going to have adult rights they should face adult responsibilities, including being subject to punishment as adults.

The rights of children who are the subject of delinquency petitions are listed in Rule 26 of the UTAH R. JUV. P., and include the right to appear and defend personally or through counsel, the right to receive a copy of the petition, the right to testify, the right to be confronted by the prosecution's witnesses, the right to subpoena one's own witnesses, the right to counsel at all stages and the right to appointed counsel if indigent, the right to avoid self-incrimination, and the right to appeal an adjudication.

6. This act was passed despite the fact that offense rates in Utah have steadily and dramatically decreased since the early 1990s.

7. The "balanced approach" describes the mindset of most people in juvenile justice. Admittedly, changes in the statutory purposes of juvenile court de-emphasized rehabilitation in favor of community protection. However, a rehabilitated child is the safest child the court can return to the community.

instead are on the child's side, even though the child may not see it that way.

This article seeks to provide familiarity with the delinquency-related<sup>8</sup> aspects of juvenile court practice so that attorneys new to juvenile defense can get the system to do what is best for their clients. The second section of this article will examine the actual mechanics of the juvenile justice system, including concepts such as jurisdiction, intake, prosecution, and disposition. The third section will then explore the procedure for and consequences of transferring a child to the criminal justice system. Finally, the fourth section concludes the article.

## II. THE "NUTS AND BOLTS" OF THE JUVENILE JUSTICE SYSTEM

### *A. Jurisdiction*

The juvenile court has jurisdiction over all people under the age of twenty-one for most offenses committed before the age of eighteen.<sup>9</sup> Al-

---

8. Juvenile court deals with two general areas: delinquency cases and dependency, neglect, and abuse cases. This article deals only with the delinquency-related aspects of juvenile practice. Delinquency cases are dealt with separately from dependency cases; the former involve the county attorney and defense attorney, while the latter involve the Attorney General's office (on behalf of the Division of Child and Family Services, or DCFS), a guardian ad litem (representing the child), and family law attorneys. Status offenses—behavior that is only illegal when committed by a minor—are technically a third category, but in practice are rolled into one of the first two categories depending on their nature. For example, ungovernability and truancy are status offenses that are typically handled by DCFS and school district officials while delinquent-type status offenses such as curfew violations are dealt with by county attorneys much like other delinquent acts. The practical difference between status offenses and other delinquent offenses is that status offenses do not result in detention placements and do not count in one's offense history when figuring one's placement on the Disposition Assessment Matrix, which is part of the Juvenile Sentencing Guidelines. Copies of the guidelines are available from the Utah Sentencing Commission and are also on the Web at <http://www.sentencing.state.ut.us/JuvenileGuidelines/>. A copy is included as Appendix 1. In reality, the impact of status offenses on a child, her family and community can be severe. As a result, juvenile judges should be able to treat most status offenses the same as other offenses. However, because of the *Juvenile Justice and Delinquency Prevention Act*, 18 U.S.C. §§ 5031-42 (1996), a misguided federal law passed in 1974, states that want federal juvenile justice grants have had to minimize the importance of status offenses in order to get those grants.

9. See UTAH CODE ANN. § 78-3a-104 (2000) describes the juvenile court's exclusive jurisdiction in delinquency matters, as well as over other matters not discussed in this article such as ungovernability, truancy, and situations of dependency, neglect, and abuse. UTAH CODE ANN. § 78-3a-102(7) (2000) points out that "the juvenile court is of equal status with the district courts." UTAH CODE ANN. § 78-3a-106 (2000) adds that the juvenile courts, similar to other trial courts, can issue search warrants and subpoenas. Aside from most traffic offenses, and a few serious offenses tried in district court, if a child commits a delinquent offense the juvenile court will handle the matter. The juvenile court can try these cases after the child turns eighteen, as long as she is not yet twenty-one. Jurisdiction of the juvenile court can continue past the twenty-first birthday for purposes of enforcing preexisting court orders. See UTAH CODE ANN. § 78-3a-104 (2000). People who committed offenses when children, temporarily escaped justice, and turned twenty-one before juvenile court adjudication would be dealt with in district court if the statute of limitations has not run on their offenses. Interestingly, under UTAH CODE ANN. § 78-3a-105(1)(a) (2000), a concurrent juris-

though the juvenile court has concurrent jurisdiction over most traffic offenses committed by sixteen and seventeen-year-olds, the district court or justice court will typically try those crimes unless they were committed along with an offense over which the juvenile court has exclusive jurisdiction. The juvenile court does have exclusive jurisdiction over automobile homicide, DUI, reckless driving, joyriding for an extended time, and "fleeing" cases. The juvenile court has concurrent jurisdiction over adults for specified crimes, such as contributing to the delinquency of a minor. Adults tried for such crimes can have a criminal jury trial in juvenile court or go to district court or justice court.<sup>10</sup> Typical delinquency cases handled by juvenile court include curfew, theft, tobacco possession, alcohol possession or consumption, marijuana possession, criminal mischief, and assault.<sup>11</sup> Such misdemeanor-level offenses make up the bulk of the delinquency cases dealt with by juvenile court personnel.<sup>12</sup>

In addition, it helps to understand where cases will be handled. In terms of venue, cases will probably start in the court where the child lives. If the child denies the charge, she will be transferred to the county where the offense occurred.<sup>13</sup>

---

diction provision, it might be possible for the juvenile court to try adults under the age of twenty-one for any crime committed as an adult, as long as the juvenile court still has jurisdiction over the person in some way, as through continued monitoring on probation. Pursuing that jurisdictional angle is not a common practice. Cases improperly filed in justice or district court must be transferred back to juvenile court. *See* UTAH CODE ANN. § 78-3a-501 (2000). Also, some traffic cases handled in justice or district court under concurrent jurisdiction can be transferred to juvenile court for post-judgment proceedings. *See* UTAH R. JUD. ADMIN. 4-110; UTAH CODE ANN. § 78-5-105 (2000).

10. *See* UTAH CODE ANN. § 78-3a-801 to 802, 804 (2000); UTAH R. JUV. P. 38. Adults can be tried in juvenile court for selling alcohol to minors, failing to report child abuse, harboring a runaway, misdemeanor custodial interference, contributing to the delinquency of a minor, and failure to comply with certain compulsory education requirements. Changes made to the contributing to delinquency statute by the 1999 legislature curtailed the reach that the contributing to delinquency statute had under *State v. Tritt*, 463 P.2d 806 (Utah 1970), and *State v. Krueger*, 975 P.2d 489 (Utah Ct. App. 1999).

11. *See* UTAH ADMINISTRATIVE OFFICE OF THE COURTS, UTAH'S JUVENILE COURTS (n.d.).

12. Since many delinquency cases are handled non-judicially and because the dependency, neglect and abuse cases take a disproportionate amount of time, a juvenile judge's in-court time might be more evenly divided between delinquency and dependency cases.

13. *See* UTAH CODE ANN. § 78-3a-111 (2000); UTAH R. JUV. P. 16 (but note that a pending rule change would clarify this rule); UTAH R. JUV. P. 29. Juvenile courts can transfer a case between Utah judicial districts when appropriate. The Interstate Compact on Juveniles allows transfer of probation or parole supervision between states, and provides for the return of escapees and runaways. UTAH CODE ANN. § 55-12-1 to -6 (2000). Those states that have signed the Interstate Rendition Amendment (Utah and most nearby states have signed the amendment) can requisition the return of a child who is charged with an offense but has not yet been adjudicated. The Interstate Compact Administrator at the Administrative Office of the Courts coordinates these juvenile extraditions. *Id.*

### B. Arrest and Referral

Children<sup>14</sup> enter the juvenile justice system through referral by a law enforcement agency when they are accused of committing offenses that would be crimes if committed by adults.<sup>15</sup> If a law enforcement officer believes a child should come within the jurisdiction of the juvenile court, the officer will refer the child to juvenile court by submitting a police report or citation<sup>16</sup> to the court.<sup>17</sup> Officers can refer a child of any age to juvenile court, for almost any violation of law, although a few crimes require direct filing in the criminal justice system, as described below, and many traffic offenses remain crimes tried in district court or justice court.<sup>18</sup>

Officers can take a child into custody on the following grounds: if the officer sees a child break the law or has reasonable grounds to believe the child committed an act that would be a felony if committed by an adult; if the child is seriously endangered or is endangering others and immediate removal is necessary; if the child is a runaway; or if the child is truant.<sup>19</sup>

A child is seldom taken to detention following arrest but, instead, is more commonly released to her parents with a referral going to juvenile court later.<sup>20</sup> When a child is taken into temporary custody, the officer must notify her parents without unreasonable delay and release the child

---

13. Although this article repeatedly refers to "children," the common statutory terminology is "minors."

15. See UTAH CODE ANN. § 78-3a-117 (2000); UTAH R. JUV. P. 14. Technically, anyone can refer a child to juvenile court.

16. Citable offenses are described in UTAH CODE ANN. § 78-3a-503(6) (2000), and include such things as wildlife violations and misdemeanor-level offenses at the class B level and below. Bail can be posted and forfeited with appropriate consent. See also UTAH R. JUV. P. 30. Citations must be filed within five days or must include a written excuse for being tardy. See UTAH CODE ANN. § 78-3a-503(2), (5) (2000).

17. UTAH R. JUV. P. 14(2) provides a recourse for those who refer a child and are dissatisfied with the juvenile probation department's action (or inaction).

18. It is unlikely, of course, that five or six-year-olds would be referred, but referrals of nine and ten-year-olds are not unheard of. There are some age-related limits to what the system can do in terms of photographing, fingerprinting, or HIV screening. See UTAH CODE ANN. § 78-3a-904 (2000); UTAH R. JUV. P. 27. But see UTAH CODE ANN. § 76-5-502 (2000). There are also practical limits to when police can question children since statements made by a child under the age of fourteen without a parent being present are probably inadmissible as evidence. See UTAH R. JUV. P. 43 (but note that proposed rule changes would delete Rule 43(c) and add a new rule, Rule 27A, containing similar language). Children under ten do not go to detention, and children under 12 do not go into Youth Corrections custody. Instead, their custodial needs would probably be met by DCFS if out-of-home placement is necessary.

19. See UTAH CODE ANN. § 78-3a-113 (2000).

20. If a child is picked up because a judge issued a bench warrant (sometimes called a pick-up order) pursuant to UTAH CODE ANN. § 78-3a-112 (2000) and UTAH R. JUV. P. 39, the child will go to detention. See also UTAH R. JUV. P. 51; UTAH R. JUD. ADMIN. 4-701. The court can even have adults apprehended in certain circumstances if they do not bring their child to court. *Id.*

to them after gathering necessary information, such as name and address.<sup>21</sup> If the child is not released to her parents, she must be taken to detention or shelter without unreasonable delay.<sup>22</sup>

In addition, children who are kept in detention following an arrest must have a hearing within two working days to determine whether it is safe to release the child from detention. The child should be released unless she falls within specified categories.<sup>23</sup> Bail is not usually available in juvenile court,<sup>24</sup> but home detention is an option.<sup>25</sup> If an officer does not want to take a child to detention but a parent cannot be located, the officer may take a child to a youth receiving center. Such centers keep the child temporarily until a parent can be located. Depending on the area, children picked up for truancy may be taken to a school district truancy center.<sup>26</sup>

---

21. See UTAH CODE ANN. § 78-3a-113(4a).

22. See UTAH CODE ANN. § 78-3a-113(4b). There are distinct limitations on placing a child in detention. See UTAH CODE ANN. §§ 78-3a-113(5) to -114 (2000); UTAH R. JUV. P. 6. For a specific description of those offenses for which detention will hold a child brought in by the police, see UTAH ADMIN. CODE R. 547-13-1 to -14 (1997). To oversimplify, these rules allow holding a child who has committed any offense on the holdable offenses list (which consists primarily of felony-level offenses), any child who has committed any three non-status offenses, and any child who is an escapee, fugitive, and runaway. Coincidentally, officers who bring a child to detention who has not committed a holdable offense sometimes charge her with three minor offenses. If a child is not appropriate for detention, detention staff must find another placement. See UTAH CODE ANN. § 78-3a-113(5)(d) (2000). Children can only be held in adult lockups under limited circumstances, which include being sixteen or older and a danger to other children in detention (as determined by the judge). See UTAH CODE ANN. § 76A-7-201(2000); UTAH CODE ANN. §§ 78-3a-114(8) to -(9); UTAH R. JUV. P. 35.

23. See UTAH CODE ANN. § 78-3a-114(4)(a)(2000); UTAH R. JUV. P. 9, 11. Once a detention hearing is held, only the judge can release a child from detention. Factors allowing a judge to keep a child in detention include such things as risk of flight, seriousness of the offense and threat to public safety, and inability to return the child to her family. The rights of a child held in detention are listed in UTAH R. JUV. P. 8 and include the right to phone home and to have parental, legal, and religious visits. The rule also prohibits non-probation officers or detention staff from interviewing the child without parental permission and a waiver of UTAH R. JUV. P. 26 rights (but note that a proposed rule change would explicitly limit this restriction to interviews dealing with offenses chargeable against the child). For a child held in detention for a class A misdemeanor-level offense or above, a formal referral (apart from the request for detention an officer made upon taking the minor to detention) must be filed within three working days, although missing this deadline is not a basis for dismissal. UTAH CODE ANN. § 78-3a-501 (2000). A petition must be filed in five days and arraignment held within ten days, although written requests for extensions of time may be granted. UTAH R. JUV. P. 11.

24. See UTAH CODE ANN. § 78-3a-114(12) (2000). Exceptions to the no bail rule include situations involving out-of-state offenders and failure to appear for a citation following an arrest.

25. When home detention is used, the court is required to notify local law enforcement and the child's school. See UTAH CODE ANN. § 78-3a-114(4)(e) (2000). Youth Corrections will check on the child's compliance with home detention. If a child is not released from home detention or is released on other conditions and a petition is not filed within thirty days, the order automatically terminates. See UTAH R. JUV. P. 11. Some areas of the state have other detention diversion programs apart from home detention.

26. This article does not deal with truancy because truancy matters within juvenile court are often handled by school district truancy officers rather than by juvenile prosecutors, and attorneys

### *C. Intake, Preliminary Inquiry, and Non-judicial Closure*

When the juvenile court receives a referral, a juvenile court probation officer (often called "P.O.s") assigned to intake will make a preliminary determination as to whether the facts may give the court jurisdiction and will enter the referral on the child's Form 5 (computer rap sheet).<sup>27</sup> If the intake officer has a question about the charges, she can ask the county attorney to screen the charge. The court will send a letter requesting that the child and at least one parent come to court for a meeting with a probation officer. At this preliminary inquiry, the probation officer will gather some social information on the child; such as home environment, school status, etc. If the child does not controvert the allegations in the referral, the probation officer may either reach a non-judicial adjustment with the child, which results in a closing of the case, or may schedule the case for further proceedings before a judge.<sup>28</sup> Non-judicial closure involves working out an agreement that might require the child to pay a fine, attend a class, or do similar work.<sup>29</sup> By completing the agreement, the child will avoid going before a judge and getting a record of a judicial adjudication that could hurt the child down the road.<sup>30</sup>

Depending on the procedures used and the services available locally, children may be steered to non-judicial closure in a number of different

---

are seldom involved. Defense attorneys should take note, though, that 1999 legislative amendments to the compulsory education statute made it a class B misdemeanor for a parent to knowingly fail to enroll a child in school, or refuse to respond to a school's written request sent by certified mail asking for cooperation in obeying the compulsory education law. Parents violating these provisions can be prosecuted in juvenile, justice, or district court. See UTAH CODE ANN. §§ 53A-11-101 to -105 (2000).

27. See UTAH CODE ANN. § 78-3a-502(2)(c) (2000); UTAH R. JUV. P. 14; UTAH R. JUD. ADMIN. 7-301. The intake probation officer can also ask to close the case without taking action.

28. See UTAH R. JUV. P. 14, 15; UTAH R. JUD. ADMIN. 7-301. In addition, the probation officer must tell the child and her parents that the preliminary inquiry is voluntary, that anything they say during the preliminary inquiry cannot be used against the child to establish the truth of the allegations (but may affect a dispositional recommendation later) and that they may have an attorney present at the preliminary inquiry. The probation officer cannot attempt non-judicial adjustment if the child denies committing the offense. *Id.* Efforts to come up with a written non-judicial adjustment agreement cannot extend beyond two months without judicial approval. See UTAH CODE ANN. § 78-3a-502(2)(c).

29. See UTAH CODE ANN. § 78-3a-502(2)(d) (2000). This section limits non-judicial financial penalties to no more than \$100.00. See also UTAH R. JUV. P. 14, 15.

30. Probation officers may tell a child that "nonjudicialing" a case (a term used within the juvenile justice system that refers to the avoidance of a formal judicial process) will prevent them from getting a record. This is true in that there will be no record of adjudication by the court and UTAH R. JUV. P. 15 specifically states that non-judicial adjustment does not count as a juvenile record. However, defendants should be aware that a non-judicial adjustment will show up in the child's file at juvenile court and may affect the mindset with which juvenile probation approaches any future offenses committed by the child. If for no other reason, the court will track non-judicial adjustments so that a child does not get too many such breaks before being sent before a judge.

ways.<sup>31</sup> For example, the police may divert a child into a youth court<sup>32</sup> program, which can deal with lesser offenses. If the child agrees with the decision of the youth court, the child's case may never be referred to juvenile court. The juvenile court may divert incoming citations into a youth court program designed to deal non-judicially with certain offenders within two to three weeks of the citation being issued. The citation may even give a specific time to attend the program involving a group class on obeying the law, followed by possible non-judicial closure.

Another option involves an alternative drug program offered by juvenile drug court personnel, which could save a child's driver's license. In some areas, primarily along the Wasatch Front, juvenile prosecutors have begun screening earlier in the process, even twisting the normal procedure into something mimicking the criminal justice system in that referrals flow to the prosecutors and then on to the juvenile court. It is helpful to identify the particular procedures used in one's own area and the services available locally.

If at the preliminary inquiry (often called a "P.I.") the child controverts the allegations in a referral, declines to attend the preliminary inquiry altogether, or the probation officer does not wish to use a non-judicial remedy, then the case will be petitioned<sup>33</sup> and set for arraignment<sup>34</sup> before a juvenile court judge.<sup>35</sup> Alternatively, the child and a par-

---

31. This oversimplified view of the system not only represents how juvenile justice is done in Utah, but also in most of the United States. See PAUL BERGMAN & SARA J. BERMAN-BARRETT, *THE CRIMINAL LAW HANDBOOK: KNOW YOUR RIGHTS, SURVIVE THE SYSTEM* ch. 25 (1999).

32. Youth courts, also called teen or peer courts, were operating in Utah before 1999, when the legislature thoughtfully formalized and bureaucratized the youth court system. See UTAH CODE ANN. §§ 78-57-101 to -110 (2000). Children who are offered the chance to go to youth court are usually better off than hiring a defense attorney to fight things out in juvenile court.

33. UTAH CODE ANN. §§ 78-3a-109 to -110 (2000) and UTAH R. JUV. P. 3, 17 and 18 describe the requirements for drafting a petition and summons. Service of a summons is supposed to occur at least forty eight hours before the date of appearance, although a child can waive time and notice. Petitions can be amended anytime during the course of the proceedings to conform to the evidence. See UTAH CODE ANN. § 78-3a-902 (2000).

Petitions will likely include an acronym consisting of a combination of six letters and numbers, such as "POTPS9." The juvenile court uses these acronyms in its computer system to describe each charge. The first few letters bear some resemblance to the name of the charge, and the last letter or number somewhat cryptically describes the charge level. For example, "POTPS9" means possession of marijuana at the third degree felony level. People at juvenile court tend to focus on acronyms rather than on a petition's charging language and the software that tries to calculate disposition matrix placement looks solely at acronyms. Because of this, it is important to make sure that the acronym of the original charge and of any amended charge is correct. Unfortunately, the bound printouts of the rather lengthy acronym lists are neither widely available nor particularly self-explanatory, and are often outdated. Therefore, ask for help.

34. Arraignment should be held within thirty days of filing the petition unless the child is in detention, in which case it should be held within ten days. The court may extend the deadlines for good cause. See UTAH R. JUV. P. 24.

35. Some areas use juvenile court commissioners to take some of the caseload off of juvenile judges. See UTAH R. JUD. ADMIN. 7-102. Also, UTAH R. JUV. P. 28 deals with the scheduling of

ent may sign an arraignment waiver form and skip arraignment.<sup>36</sup> At arraignment, the judge will inform the minor of her rights.<sup>37</sup> The judge will then ask the child to admit or deny the truth of the allegations in the petition. Some judges ask the child to "admit or deny" the charge, while others ask if the charge is "true or not true." If the child admits the charge, the judge will adjudicate that the child is within the jurisdiction of the court.<sup>38</sup> The judge will then either proceed to disposition, or sentence, or continue disposition until probation can complete a report recommending a disposition.<sup>39</sup> Occasionally, there may be a separate disposition hearing.

It should be obvious at this point that juvenile probation officers are an important part of the system. To be effective, it is not enough for a defense attorney to speak only with the juvenile prosecutor. By then, one may have already lost out on the chance to get non-judicial closure or to affect a dispositional recommendation. The effective juvenile defense attorney will talk to the probation officer early on, find out what direction the probation officer is headed, and provide any relevant information of which the probation officer may not be aware. If the child is in Youth Corrections custody, a Youth Corrections case manager will be involved in the court process, and juvenile probation will have little, if any, involvement.<sup>40</sup>

---

minors' cases.

36. This creates an interesting situation when the child waives arraignment based on what the probation officer told her she was referred for, and the county attorney subsequently screens and petitions the charges at a different level.

37. The rights the judge must explain at arraignment include the following: the right to more time if there was a problem with service of process; notice of the allegations in the petition; an explanation of the right to counsel and the right to appointed counsel if indigent; additional time to consult with counsel before entering a plea; notification that the child need not incriminate herself; and a description of the prosecution's burden of proof. *See* UTAH R. JUV. P. 24.

38. *See* UTAH CODE ANN. § 78-3a-118 (2000); UTAH R. JUV. P. 44. The jurisdiction of the court may continue until the child turns twenty-one unless terminated by one of the following ways: by court order; by the child being committed to a Youth Corrections secure facility; or by commencement of adult proceedings. *See* UTAH CODE ANN. § 78-3a-121 (2000).

39. *See* UTAH CODE ANN. § 78-3a-505 (2000). Before preparing a dispositional report, probation officers may review a case in a multi-agency staffing meeting.

40. In 1999 the Legislative Auditor General drafted a deeply flawed and potentially destructive audit of the juvenile justice system, criticizing how the sentencing guidelines have been applied and suggesting, among other things, consolidating juvenile probation and Youth Corrections. The audit came on the heels of a very helpful spurt of funding that added new probation officers and secure beds in order to make the new disposition guidelines possible. It will be interesting to see if the legislature reverses course, follows the audit's recommendations, and destroys the progress it made when it strengthened juvenile probation and the entire regimen of graduated sanctions.

### *D. Prosecution and Trial*

Cases that continue past arraignment will typically be set for a pre-trial conference, at which time the child and her parents, or the child's attorney,<sup>41</sup> can discuss a possible plea agreement<sup>42</sup> with the juvenile prosecutor. The prosecutor's options include pushing charges to trial, reducing or dismissing charges, or working out a plea in abeyance or a diversion agreement. Depending on the flexibility of the prosecutor and the judge, plea agreements can be fairly creative. In addition to going a period of time with no new offenses, a plea in abeyance agreement might require payment of a fine, attending school and passing all classes, taking random drug tests, and writing a letter of apology.<sup>43</sup> Upon complying, the child's charges would be dismissed and the record cleared. She may also avoid more severe mandatory sanctions that could accompany an admission or adjudication that the allegations in the petition are true. More importantly, the child will have an incentive to behave in the future.

Of course, neither party need pursue a plea agreement if compromise seems inappropriate. Keep in mind that, like district court judges, juvenile court judges are not always overjoyed when cases settle at the beginning of trial rather than at pre-trial. There is less excuse for late settlement in juvenile court. Disposition on admitted offenses often takes place at the pre-trial hearing, although the judge may conduct disposition later.<sup>44</sup>

If a case goes to trial, proceedings will be similar to those in criminal court.<sup>45</sup> Pre-trial motions may be brought, but in practice are not used as

---

41. A public defender would typically enter the case at this point. UTAH CODE ANN. § 78-3a-913 (2000) describes the right to counsel. Note that a child fourteen or older is presumed capable of intelligently waiving her right to counsel. See UTAH R. JUV. P. 43. UTAH R. JUV. P. 53 deals with appearance and withdrawal of counsel. See also UTAH R. JUD. ADMIN. 4-604. UTAH R. JUV. P. 54 deals with continuances (one continuance by stipulation should be readily available from the court clerk when appropriate).

43. Pleas are governed by UTAH R. JUV. P. 25.

44. Some judges have actually discouraged pleas in abeyance because they negatively affect the quarterly case management statistics that compare how rapidly each judge is processing cases.

44. See *infra* note 50.

45. The UTAH R. JUV. P. and UTAH R. EVID. apply. See generally UTAH R. JUV. P. 40 (discussing order of presentation); UTAH R. JUV. P. 41 (discussing burden of proof, which in delinquency trials is "beyond a reasonable doubt"); UTAH R. JUV. P. 42 (discussing exhibits); UTAH R. JUV. P. 43 (discussing evidence and allowing narrative testimony and testimony by stipulated proffer). UTAH R. JUV. P. 2 specifically adopts selected UTAH R. CRIM. P. to apply in delinquency proceedings. This largely refers to the discovery rule, UTAH R. CRIM. P. 16, a rule that also allows the prosecution to request reciprocal discovery. See also UTAH R. JUV. P. 20 (discussing discovery). Note that although UTAH R. JUV. P. 2 mentions that the UTAH R. CIV. P. are used in status offense cases, in practice they would only be used for status offenses such as ungovernability and truancy. Delinquent-type status offenses will be handled much like other delinquency charges.

much as one may expect.<sup>46</sup> At trial, there will be no jury and likely no spectators. Although the legislature has been chipping away at the confidentiality of juvenile court proceedings<sup>47</sup> and records,<sup>48</sup> many proceedings are still closed to the public. Trial procedure will be familiar, although attorneys may be more likely to waive opening statements and/or closing arguments in juvenile court than in district court. Disposition on adjudicated charges may follow immediately, with a probation officer making a dispositional recommendation to the judge, or they may take place later, if the judge requires further information before making a decision.<sup>49</sup> The judge need not make written findings of fact.<sup>50</sup>

### *E. Disposition*

Typically, dispositions include some mix of compensatory service hours (often still called community service despite the statutory change), fines, and restitution.<sup>51</sup> Occasionally, a short stay in detention, not to exceed thirty days, is imposed. When restitution is contested, the court may

---

46. UTAH R. JUV. P. 19 deals with motions practice and states that motions will be governed by the UTAH R. CRIM. P. Remember that UTAH R. CRIM. P. 12 requires motions *in limine*, suppression motions, and the like to be made at least five days before trial. Also, remember to use the correct style of caption. See UTAH R. JUV. P. 3.

47. In cases involving children fourteen years of age or older who have been petitioned for a felony-level offense, or for a class A or B misdemeanor-level offense, and who have a prior misdemeanor or felony-level offense, proceedings are open unless the judge makes a finding on the record closing the proceedings for good cause. See UTAH CODE ANN. § 78-3a-115 (2000). In an odd contrast, preliminary examinations held under the Serious Youth Offender Act can be closed upon request of either party. See UTAH R. JUV. P. 22(1)(3).

48. If someone fourteen or older is petitioned for an offense that would be a felony if committed by an adult, the petition, delinquency history, and adjudicatory and dispositional orders are open for anyone to review unless the judge makes a finding on the record closing the records for good cause. See UTAH CODE ANN. § 78-3a-206 (2000); UTAH R. JUD. ADMIN. 4-202.03(9), (10). In another odd contrast, although law enforcement agencies can view juvenile records on their computer screens, they are not supposed to print the records out in physical form. See UTAH R. JUD. ADMIN. 7-202. In 2000, the legislature specifically authorized background checks of juvenile records as part of firearms purchasing. The legislature also clarified how a juvenile record affects one's status as a restricted person for purposes of purchasing firearms. The original idea behind confidentiality was to avoid stigmatizing children in ways that prevent them from leaving adolescence with their life chances intact.

49. Technically, without consent juvenile probation is not even supposed to begin investigation of facts for preparing a predisposition report until after adjudication. In practice, a report based on information gathered in the preliminary inquiry will often be ready by pretrial. See UTAH R. JUD. ADMIN. 7-302 (terming these reports "social studies"). UTAH R. JUV. P. 46 allows a disposition hearing either immediately after the hearing in which the petition is proved, or later. Often, after adjudication judges will often simply ask the probation officer for a written or oral recommendation, listen to anyone else who has something to add (including those who wish to share reliable hearsay statements), and then enter an appropriate order and have it reduced to writing.

50. See UTAH R. JUV. P. 44.

51. UTAH CODE ANN. § 78-3a-118 (2000) lists the dispositional alternatives available to the judge. Note that apart from juvenile court disposition, UTAH CODE ANN. §§ 78-11-16 and -20 (2000) make parents liable for damages in certain shoplifting and criminal mischief cases.

use a victim-offender mediation program to resolve the dispute if such a program is available in that jurisdiction. Such programs typically work better than a restitution hearing. Other requirements may also be included, such as taking an anger management class or tobacco cessation class. The court may place a child in a court-run work program in which the child can work off some hours or make restitution. One sanction defendants may be concerned with is the mandatory driver license suspension for all children thirteen or older accompanying adjudication of drug or second alcohol-related charges.<sup>52</sup> For repeat offenders, a regimen of graduated sanctions provides for increasingly intense intervention. The misnamed "Juvenile Sentencing Guidelines" lay out recommended dispositions.<sup>53</sup>

If a child has failed to respond to sanctions imposed for earlier offenses, she may then be placed on probation for repeat offenses (or a serious first offense). A juvenile court probation officer may monitor school attendance, drug use, or other problem areas.<sup>54</sup> Probation generally lasts for at least a few months and can involve anything from minimal supervision to effective weekly contacts and frequent checks on compliance with the terms of probation. The next step is state supervision, an intense form of probation incorporating intermediate sanctions in the form of various intrusive but helpful services.

If the child does not change her behavior, future offenses may put her within the custody of Youth Corrections, which will utilize various community placement options such as group homes.<sup>55</sup> The end of the line is secure confinement, which involves being locked up for months or

---

52. See UTAH CODE ANN. § 78-3a-506 (2000). License suspension is optional for a first alcohol charge, but mandatory starting with a second alcohol charge or a first drug charge. Occasionally, when a person has turned eighteen before coming to court and has a demonstrable need for transportation, judges will not suspend the driver license.

53. Copies of the guidelines are available from the Utah Sentencing Commission and are also on the Web at <http://www.sentencing.state.ut.us/JuvenileGuidelines/>. A copy of the guidelines is included as Appendix 1. The matrix would allow better early intervention if row I were eliminated and children not being handled non-judicially would enter the matrix on what is now row II. Unfortunately, early intervention fell prey to budgetary concerns.

54. UTAH R. JUD. ADMIN. 7-304 describes probation supervision.

55. The Division of Youth Corrections is part of the Department of Human Services and not an arm of the juvenile court as is juvenile probation. Youth Corrections generally decides for itself what sort of placement to use; the specific placement is not determined by the judge. As a child moves up the ladder of graduated sanctions, expenses to parents increase since they may be billed for the cost of some services and placements. See UTAH CODE ANN. § 78-3a-906 (2000). For a summary of what Youth Corrections does, see Office of Research, Evaluation, & Planning, *DYC Annual Report 1999*. See also UTAH CODE ANN. §§ 62A-7-101 *et. seq.* (2000). There is no equivalent information source for juvenile probation, but for a few bits of interesting information on juvenile justice in Utah see Administrative Office of the Courts, *1999 Utah State Courts Report to the Community: Courts in Service of the Public* (1999). See also the DYC and Utah courts web sites cited *supra* note 2.

possibly years.<sup>56</sup> Citizens who make up the Youth Parole Authority control the length of a child's stay in secure confinement, as well as what happens on parole afterward. The Youth Parole Authority has its own matrix scheme for determining likely lengths of stay and can keep a child in secure confinement until she turns twenty-one.<sup>57</sup> Various other options available anywhere along this continuum of graduated sanctions include: short-term stays in detention; use of a residential Observation and Assessment facility<sup>58</sup> to do in-depth assessments of a child's psychological makeup and needs; and placement in the Genesis work facility, if the child needs that level of supervision to work off fines or restitution.<sup>59</sup>

By looking at a child's offense history and then noting the severity of the presenting offense, one can plug a child into a particular box in the Disposition Assessment Matrix on the Juvenile Sentencing Guidelines and see what sort of disposition the child is most likely to receive. The guidelines also list aggravating and mitigating factors that may affect final disposition. It is important to carefully study the written explanation of the guidelines to become familiar with what does and does not count in terms of offense history and to note which offenses can result in major jumps up the matrix. For example, infractions, status offenses, and non-drug related moving and non-moving traffic violations are not within the scope of the guidelines. Likewise, probation violations, contempt charges, and non-judicial closures are not counted in the offense history assessment, although they may be considered aggravating factors. Unlike other felony-level offenses, a single prior offense against a person or a firearm felony-level offense will bounce a child up to row IV for

---

56. Secure confinement (sometimes called secure care) differs from detention in that detention is used for short-term confinement to hold a child pending adjudication or placement, or to provide a short-term wake up call. Secure confinement facilities may be housed in the same complex as detention facilities, but the populations are different. Detention stays can involve credit for good time, and release from secure confinement to parole is similarly easier if the child behaves. Thus, it behooves defense counsel to encourage their clients to be model citizens while guests of the state. See UTAH CODE ANN. § 78-3a-504 (2000).

57. The Youth Parole Authority has been known to have its own mind when it comes to placing children within its matrix. The VICTIM HANDBOOK pamphlet, available from the Youth Parole Authority, provides a good overview of how the Youth Parole Authority decides appropriate lengths of stay in secure confinement, when to release to parole, and so forth. Attorneys are typically not involved in most hearings held by the Youth Parole Authority, but could take more of a role in supporting clients, especially at parole revocation hearings.

58. Observation and Assessment centers (often called "O & A") are run by Youth Corrections, but the juvenile court retains jurisdiction over children sent there.

59. One flaw in the administration of juvenile justice in Utah is that the system frequently refuses to deal seriously with the most culpable offenders, specifically those who are about to turn eighteen or already have, and therefore have the least excuse for misbehavior. Rather than place such individuals on probation or in Youth Corrections custody, juvenile court officials too frequently wash their hands of such cases by imposing only fines and compensatory service hours (or perhaps detention or jail time) in order to be finished with such cases. Defense attorneys may capitalize on this if their desire is to minimize services to miscreants.

purposes of evaluating a new offense. Also, any felony-level offense committed after a community placement, including the presenting offense, puts a child on row V.

### *F. Reviews, Appeals, and Expungement*

Disposition is often not the end of court proceedings for a child, as juvenile court judges may schedule periodic reviews to check on the child's progress.<sup>60</sup> Other future proceedings may include reviews of plea agreement compliance, new hearings or appeals,<sup>61</sup> and expungement hearings. Cases dealt with by pleas in abeyance are not closed until the court ultimately either dismisses the petition or disposes of the case, depending on compliance with the plea agreement. Defense attorneys sometimes think that their job is complete when the plea agreement is entered. However, defendants may expect the attorney to help them when the juvenile prosecutor claims at a review hearing that the plea agreement was violated. Defense attorneys should make sure they and their clients are clear on when representation ends.

Appeals go to the Utah Court of Appeals and must be undertaken within thirty days. In proceedings that result in adjudication and where the child is not represented by counsel, the juvenile court is required to tell a child she has a right to appeal. In practice, few brave the waters at the Court of Appeals and those who do should certainly have the assistance of a lawyer.

Expungement is a sometimes overlooked but desirable way for a rehabilitated offender to make one last visit to juvenile court. Once a child turns eighteen, and after a year has passed since the court's jurisdiction terminated or since unconditional release from a Youth Corrections secure facility, the person can petition for expungement. At a hearing, the judge will examine the person's record and determine whether rehabilitation has been achieved and may order all records in the case sealed (except fingerprint records). The person can then legally affirm that she has no record.<sup>62</sup>

---

60. See UTAH R. JUD. ADMIN. 7-305. Also note that juvenile court judges can modify or set aside their orders later, although modification of an order to place someone on probation requires a hearing. See UTAH CODE ANN. § 78-3a-120 (2000); UTAH R. JUV. P. 47. See UTAH R. JUV. P. 51 for information on petitions alleging out-of-court contempt charges or violations of probation, which may result in further sanctions.

61. See UTAH CODE ANN. §§ 78-3a-908 to -909 (2000); UTAH R. JUV. P. 48, 52 (dealing with new hearings and appeals).

62. See UTAH CODE ANN. § 78-3a-905 (2000); UTAH R. JUV. P. 56; UTAH R. JUD. ADMIN. 7-308. Whether the person can respond similarly to a question like "Have you ever been referred to juvenile court?" may be another matter. Also, although expungement of sex offenses is possible, expungement does not result in removal from the Utah Department of Human Service's sex offender databases. All legal and social files at juvenile court, except adoption records, are to be destroyed by

### III. TRYING CHILDREN AS ADULTS

Utah has three means of sending children to district court to be tried as adults: direct file, the serious youth offender process, and certification. Although only a small percentage of children are tried as adults, the potential lifelong impact of such proceedings makes it more important that defense attorneys be involved in them than in normal juvenile court proceedings and justifies giving a considerable amount of attention to this area of juvenile court practice.

#### *A. Direct File*

If a sixteen or seventeen-year-old is charged with murder or aggravated murder or commits a felony-level offense after the child was previously committed to a secure facility, then the charge must be filed directly in district court, and the child is tried as an adult.<sup>63</sup> This is non-discretionary, and the child never sees juvenile court. Unless the child is acquitted in district court, the juvenile court will not have jurisdiction over future offenses.<sup>64</sup>

#### *B. Serious Youth Offender*

If a sixteen or seventeen-year-old is charged with any of the felonies listed in the Serious Youth Offender Act (sometimes called the “ten deadly sins”),<sup>65</sup> then the charge must be filed in juvenile court by information rather than by petition and must go through the Serious Youth Offender process.<sup>66</sup> The process is weighted heavily toward transferring the child to district court to be tried as an adult.

The process involves a first appearance, at which the charge is read and an attorney may be appointed; no plea is taken at this stage. The court will then schedule a preliminary hearing in juvenile court (the ju-

---

the time the subject is twenty-eight. *See* UTAH R. JUD. ADMIN. 7-203. The legal file is the part of a child's file containing petitions, offense histories, adjudicatory orders, and so forth; the social file contains notes of probation officers, confidential evaluations, etc. *See* UTAH R. JUD. ADMIN. 4-202.03(9), (10).

63. *See* UTAH CODE ANN. § 78-3a-601 (2000). Utah's direct file scheme is what federal reports sometimes call statutory exclusion.

64. *See* UTAH CODE ANN. § 78-3a-602(7), (10) (2000).

65. *See* UTAH CODE ANN. § 78-3a-602(1) (2000). The complete list includes: aggravated arson, aggravated assault involving intentionally-caused serious bodily injury (second degree, not third degree felony aggravated assault), aggravated kidnapping, aggravated burglary, aggravated robbery, aggravated sexual assault, discharge of a firearm from a vehicle, attempted aggravated murder, or any other felony-level offense involving use of a weapon if the child has previously committed a felony-level offense involving use of a dangerous weapon.

66. *See* UTAH CODE ANN. § 78-3a-602 (2000); UTAH R. JUV. P. 21, 23A. Utah's Serious Youth Offender process is what federal reports sometimes call presumptive waiver.

venile rules call it a "preliminary examination"), although the child can waive the preliminary hearing. Unless the judge extends the time for good cause, the preliminary hearing must be held within ten days of the initial appearance or thirty days if the child is not in custody. Criminal rules of procedure will apply.<sup>67</sup>

At the preliminary hearing, the prosecutor only has to show probable cause that the crime was committed and that the child committed it.<sup>68</sup> Then, if the defense cannot show by clear and convincing evidence that each of three mitigating conditions apply (no previous felony-level offense involving a weapon, less culpability than any co-defendants, and a role in the offense that was not aggressive, violent or premeditated), the child must be transferred to adult court. The defense can seldom show the third factor since aggravated offenses are almost always violent, aggressive, or premeditated.<sup>69</sup> When a child is bound over, the juvenile judge will set initial bail and the child will be taken to jail.<sup>70</sup> Unless the child is acquitted in district court, the juvenile court will not have jurisdiction over future offenses.<sup>71</sup>

### C. Certification

If a fourteen, fifteen, sixteen, or seventeen-year-old commits any offense that would be a felony if committed by an adult, the prosecutor can seek to have the child certified to stand trial in district court by filing an information and a motion to certify with the juvenile court.<sup>72</sup> At a hearing held within thirty days of the motion filing,<sup>73</sup> the prosecutor must show probable cause that a crime occurred and that the child committed it. If the prosecutor meets that burden, he must then show by a preponderance

---

67. See UTAH R. JUV. P. 22, 23A.

68. Probable cause is a low standard, even lower than preponderance of the evidence, and under UTAH R. JUV. P. 23(j), the prosecutor can use reliable hearsay to meet that burden. However, if a question of prior use of a weapon is involved, the prosecutor must show by a preponderance of the evidence that there was a previous adjudication or conviction for such an offense.

69. For a discussion of these factors, see *In re Z.R.S.*, 951 P.2d 1114 (Utah Ct. App. 1998).

70. See UTAH CODE ANN. § 78-3a-602(5) (2000); UTAH R. JUV. P. 23A(f). UTAH CODE ANN. § 78-3a-602 (2000); UTAH R. JUV. P. 23A (allowing for indictment by grand jury). If at a Serious Youth Offender hearing, the prosecution fails to meet its burden, the juvenile court will either proceed on the information as if it were a petition, UTAH CODE ANN. § 78-3a-603(4) (2000), or will dismiss the information and discharge the child, UTAH R. JUV. P. 22(k).

71. See UTAH CODE ANN. § 78-3a-602(7), (10) (2000).

72. See UTAH CODE ANN. § 78-3a-603 (2000); UTAH R. JUV. P. 23. Criminal procedural rules will also apply. There are statutory provisions for indictment by a grand jury, but that process is uncommon. If, in a certification hearing the child manages to escape transfer to district court, the juvenile court will prosecute the child upon the information as if it were a petition. *Id.* Utah's certification procedure is what federal reports sometimes call discretionary waiver.

73. See UTAH R. JUV. P. 22(f)(2).

of the evidence that it would be contrary to the interests of the child or society for the juvenile court to retain jurisdiction.

There are specific statutory criteria<sup>74</sup> for the juvenile court judge to consider in determining whether to retain jurisdiction, and the judge must make findings on those statutory factors. However, the entire process boils down to a hearing at which the judge subjectively determines whether the child can be rehabilitated. If the judge determines that the child can be rehabilitated, the case stays in the juvenile justice system. If the judge decides that the child cannot be rehabilitated, then the case is transferred to the criminal justice system and the child is tried as an adult. A detailed report prepared by juvenile probation, due at least two days before the hearing, assists the judge in this decision.<sup>75</sup> Unless the child is acquitted in district court, the juvenile court will not have jurisdiction over future offenses.<sup>76</sup>

#### *D. Results of Transfer to the Criminal System*

Mandatory, non-discretionary transfer of children to the criminal justice system is controversial. As noted above, children cannot legally contract, vote, smoke, drink or otherwise act as adults because they are not adults. However, a child can be tried as an adult and perhaps put in prison as an adult, without the prosecutor or the juvenile judge having the discretion to keep the child in juvenile court. This situation may arise, for example, if a sixteen-year-old's first offense involves following an older person into a house to steal something and the co-defendant punches the homeowner, resulting in an aggravated burglary charge for both defendants. This result raises the question of whether such results reflect enlightened notions of justice and child development.

Ironically, by the time many of the children who reach serious youth offender status get to that level, they have enough of a record to merit secure confinement in the juvenile justice system. Youth Corrections can incarcerate such people until they turn twenty-one, although most stays in secure confinement are shorter. However, in the criminal justice system they may well only get probation. One study of seven Central Utah children transferred under the Serious Youth Offender process showed that only one got prison time, one got jail time, and the rest got probation in addition to fines, stayed time, etc.<sup>77</sup> In the juvenile justice system,

---

74. See UTAH CODE ANN. § 78-3a-603(3) (2000). These factors involve such things as the nature of the offense, the maturity of the child who perpetrated the offense, and the child's amenability to rehabilitation.

75. See UTAH R. JUV. P. 23(a).

76. See UTAH CODE ANN. § 78-3a-602(12)-(14) (2000).

77. Study on file with author.

most would have gone to Youth Corrections, with at least three almost certainly going to secure confinement.<sup>78</sup>

Nationwide, children transferred to the criminal justice system to be tried as adults are usually dealt with more harshly than those kept in the juvenile justice system; the different outcomes mentioned above may be an aberration. However, as described in the U.S. Department of Justice's 1998 national teleconference on juveniles in the criminal justice system,<sup>79</sup> the available studies tracking transferred children show that transferred children have significantly higher re-arrest rates than children kept in the juvenile justice system.<sup>80</sup> Exposure to more physical and sexual assaults, immersion in a prison culture without positive socializing influences during adolescent development, and exclusion from the job market both during and, to a distinct degree, after prison all contribute to making transferred children more of a threat to society than most would have been if kept in the juvenile justice system. This is not to say that no child should ever be treated as an adult and locked away. Most people in and out of the system realize that a few children are too dangerous to be allowed free access to society. However, throwing children away through wholesale transfer can be counterproductive.<sup>81</sup> Attorneys seeking to prevent such transfer may have greater success arguing early to the prosecutor about selecting appropriate charges than waiting until the child is locked into a course likely to result in transfer.

It is important to remember that most children never become serious youth offenders. Most children who come to juvenile court don't come back more than once, if at all. Only a few hundred children in Utah keep coming back over and over for felony-level offenses, and violent felony-level repeat offenders constitute a very small percentage of the total number of offenders.<sup>82</sup> The recent increase in the number of secure beds

---

78. The reason some of these children would likely not have gone to secure confinement if the juvenile courts had dealt with them is due to their minimal or nonexistent prior offense history.

79. Videotape copy on file with author.

80. In 1999, Dr. Russ Van Vleet of the University of Utah's Social Research Institute studied Utah's system of transferring children into the adult system. That study, performed on behalf of the State of Utah's Commission on Criminal and Juvenile Justice, should be publicly available sometime in the near future.

81. One may wonder why Utah's legislature did not restrict mandatory, non-discretionary transfers to those who are subsequently charged with a felony against a person after already having been on row V of the Disposition Assessment Matrix and in secure confinement. This would have limited transfers to those who have shown that they are not only dangerous but intractable as well.

82. In 1995, 38,052 Utah children turned 18. Of those children, 22,985 were never hailed into juvenile court for an offense; 15,068, or about 40% of the total, did come to court. Of the 15,068 who were processed for various offenses, 715 had four or more felony-level offenses and those 715 children accounted for 60% of all felony-level offenses committed by children. This means that about 2% of all the children in Utah, or 5% of the offenders, were responsible for most of the serious offenses committed by children. Conversely, the vast majority of children are not egregious offenders. Looking at all types of offenses and at recidivism, about half of the children coming to court

should help control these offenders, as should the SHOCAP<sup>83</sup> programs being instituted in some counties. SHOCAP stands for Serious Habitual Offender Comprehensive Action Program, and is designed to allow entities concerned with children—school districts, the Division of Child and Family Services, mental health agencies, law enforcement agencies, the juvenile court, county attorneys, etc.—to share information on serious habitual offenders. As a result, probation officers will be able to more readily track school attendance of serious habitual offenders, police officers will know when contacting offending children on the street whether they are violating the terms of their probation, service providers will know that a particular child needs more intensive help, and so forth.

#### *IV. Conclusion*

Children referred to juvenile court will be screened to see whether they should be handled non-judicially or judicially. Unless a child is innocent and likely to prevail at trial, she is usually best off working out a non-judicial closure agreement with a juvenile probation officer. Defense attorneys should be aware that a child loses the option of a non-judicial closure agreement if she denies her charges in order to seek a plea agreement. Children who do not want to pursue non-judicial closure, or who do not qualify because of the seriousness of their offenses or because of prior offenses, will move onto a judicial track consisting of arraignment, pretrial, and trial. Plea agreements frequently resolve these cases, and the child will then be subject to a regimen of graduated sanctions intended to turn her from her wayward course. A small number of children will be transferred to district court to be tried as adults.

In the juvenile justice system, most parties agree that winning means doing what is best for the child, the community, and the victims. As it happens, the three are interrelated and will best be accomplished by a single approach intended to rehabilitate the child by holding her accountable and helping her improve herself. Juvenile prosecutors and probation officers are working toward this end, and the best way for defense attorneys to represent their clients is to adopt this single approach. By becoming effective practitioners in juvenile court and working creatively with the system to protect a child's rights while helping the child develop morally, defense attorneys will be working toward their client's ultimate benefit.

---

never re-offend. Of those who had two offenses, two-thirds stopped coming back to court. Of those who had three offenses, three-fourths never came back again. Telephone Interview with Robert Turner, Administrative Office of the Courts (September 21, 1999).

83. See UTAH COMMISSION ON CRIMINAL AND JUVENILE JUSTICE, SHOCAP (n.d.); UTAH CODE ANN. §§ 63-92-1 to -3 (2000).

APPENDIX 1

# FORM 1 JUVENILE SENTENCING GUIDELINES

These are guidelines only. They do not create any right or expectation on behalf of the juvenile.

## Criminal Episode History Assessment

<b>I</b>	0 to 3 Misdemeanor Episodes or 0 Felony Episodes
<b>II</b>	4 to 5 Misdemeanor Episodes or 1 Felony Episode
<b>III</b>	6 to 7 Misdemeanor Episodes or 2 to 3 Felony Episodes
<b>IV</b>	8 or More Misdemeanor Episodes or 4 Felony Episodes or 1 Person Felony Episode or 1 Firearm Felony Episode
<b>V</b>	5 or More Felony Episodes or 2 or More Person Felony Episodes or 2 or More Firearm Felony Episodes or Any Felony After Community Placement (Including Presenting Offense)

## Disposition Assessment

### Presenting Episode Severity

		A	B	C	D	E	F	G	H	I	J	
		1st Degree Person Felony	2nd Degree Person Felony	3rd Degree Person Felony	1st Degree Property Felony	1st Degree Public Order Felony	2nd Degree Property & Public Order Felony	3rd Degree Property & Public Order Felony	Class A Misdemeanor	Class B Misdemeanor	Class C Misdemeanor	
Criminal Episode History	V	<b>SECURE FACILITY</b>										
	IV											
	III	<b>COMMUNITY PLACEMENT</b>										
	II											
	I				<b>PROBATION</b>							
										Drug Related Not Drug Related		<b>OTHER SANCTION</b>

Sentence Suggested By Matrix: \_\_\_\_\_

Aggravating Circumstances (list number if applicable): \_\_\_\_\_

Mitigating Circumstances (list number if applicable): \_\_\_\_\_

Sentence Recommended: \_\_\_\_\_

Actual Sentence Imposed: \_\_\_\_\_